PROPOSED NEW YORK CRIMINAL PROCEDURE LAW

1969 BILL

PREPARED
by the
TEMPORARY COMMISSION ON REVISION
of the
PENAL LAW AND CRIMINAL CODE

WEST PUBLISHING CO.

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Prepared by the
Temporary Commission
on Revision of the
Penal Law and Criminal Code

This Proposed New York Criminal Procedure Law is made available in this Pamphlet through the courtesy of West Publishing Company, as a service to the Bench and Bar of New York.

Suggestions, comments and criticisms concerning this proposed law should be sent

to

RICHARD J. BARTLETT, Chairman

TEMPORARY COMMISSION ON REVISION
OF THE
PENAL LAW AND CRIMINAL CODE
155 Leonard Street, New York 10013, New York

EXPLANATION

This pamphlet contains the text of the proposed Criminal Procedure Law which was introduced at the 1969 session of the Legislature as Assembly Int. No. 6579, under the sponsorship of the Commission on Revision of the Penal Law and Criminal Code. Further legislative consideration of the bill has been postponed until the 1970 session of the Legislature to provide for additional public hearings on the proposed law which would replace the present Code of Criminal Procedure.

Explanatory Memorandum

A memorandum prepared by the Revision Commission in support and explanation of the proposed Criminal Procedure Law, is carried in the front of this pamphlet.

Tables

This pamphlet also includes a Distribution Table showing the disposition of sections of the Code of Criminal Procedure in the Criminal Procedure Law or other laws, or the omission of the subject matter. Also included is a Derivation Table showing the sections of the Code of Criminal Procedure from which the sections of the Criminal Procedure Law are derived, and indicating the sections for which there are no counterparts in the Code of Criminal Procedure.

THE PUBLISHER

September, 1969

COMMISSION FOREWORD

This edition of a proposed "Criminal Procedure Law," prepared by the Temporary Commission on Revision of the Penal Law and Criminal Code, is, in effect, the Commission's third draft of a complete revision of the Code of Criminal Procedure.

The first draft was issued by the West Publishing Company in September, 1967, in a publication which includes section-by-section explanatory comments by the Commission staff. Following a wide circulation of that edition, public hearings thereon were held by the Commission throughout the state (in Buffalo, Rochester, Syracuse, Albany, New York City and Mineola) during January and February of 1968. The second draft, containing many changes from the first, consisted of a study bill, submitted to the Legislature at the 1968 session and also published by the West Publishing Company and widely distributed. Public hearings upon that edition were also held in various parts of the state (Rochester, Albany and New York City) during November and December of 1968.

Following those hearings, the Commission and its staff made further changes and, in March of 1969, produced a third draft of the proposed Criminal Procedure Law, which was submitted to the Legislature as a bill for passage. Owing to time factors and other considerations, however, the legislative leaders and the Chairmen of the Senate and Assembly Codes Committees decided, at the suggestion of the Chairman of the Commission, to postpone legislative consideration of the proposal until the 1970 session. The Chairmen of the Codes Committees plan to hold their own public hearings upon the proposal in the fall of 1969.

It is probable that after those hearings a few further changes will be made, and that the bill submitted for passage in 1970 will, therefore, amount to a fourth draft of the proposal. The Commission hopes to hold future alterations to a minimum, however, and the likelihood is that the fourth or 1970 draft will be basically the same as the third or 1969 draft. Moreover, it probably will bear the same effective date, namely September, 1970.

At any rate, it is the 1969 draft—contained in this publication —which will be the subject of the Codes Committees' public hearings. The Commission wishes to express to the West Publishing Company its appreciation of this third publication and circula-

TABLE OF CONTENTS

	Page
Explanation	III
Commission Foreword	V
Legislative Reports	XIII

CRIMINAL PROCEDURE LAW

PART ONE—GENERAL PROVISIONS

TITLE A—SHORT TITLE, APPLICABILITY AND DEFINITIONS

Article		
1.	Short Title, Applicability and Definitions	25

TITLE B—THE CRIMINAL COURTS

10.	The Criminal Courts	32

TITLE C—GENERAL PRINCIPLES RELATING TO REQUIREMENTS FOR AND EXEMPTIONS FROM CRIMINAL PROSECUTION

20.	Geographical Jurisdiction of Offenses	34
30.	Timeliness of Prosecutions and Speedy Trial	39
40.	Exemption from Prosecution by Reason of Previous Prosecution	40
50.	Compulsion of Evidence by Offer of Immunity	43

TITLE D—RULES OF EVIDENCE, STANDARDS OF PROOF AND RELATED MATTERS

60.	Rules of Evidence and Related Matters	45
70.	Standards of Proof	50

PART TWO—THE PRINCIPAL PROCEEDINGS

TITLE H—PRELIMINARY PROCEEDINGS IN LOCAL CRIMINAL COURT

Article		Page
100.	Commencement of Action in Local Criminal Court-Local Criminal Court Accusatory Instruments	51
110.	Requiring Defendant's Appearance in Local Criminal Court for Arraignment	59
120.	Warrant of Arrest	60
130.	The Summons	66
140.	Arrest Without a Warrant	68
150.	The Appearance Ticket	76
160.	Fingerprinting and Photographing of Defendant after Arrest—Criminal Identification Records and Statistics	79
170.	Proceedings upon Information, Simplified Traffic Information, Prosecutor's Information and Misdemeanor Complaint from Arraignment to Plea	81
180.	Proceedings upon Felony Complaint from Arraignment thereon through Disposition thereof	93

TITLE I—PRELIMINARY PROCEEDINGS IN SUPERIOR COURT

190.	The Grand Jury and its Proceedings	101
200.	Indictment and Related Instruments	114
210.	Proceedings in Superior Court from Filing of Indictment to Plea	120

TITLE J—PROSECUTION OF INDICTMENTS IN SUPERIOR COURTS—PLEA TO SENTENCE

220.	The Plea	129
230.	Removal of Action	133
240.	Discovery	136
250.	Pre-Trial Notices of Defenses	138
260.	Jury Trial—Generally	140
270.	Jury Trial—Formation and Conduct of Jury	141
280.	Jury Trial—Motion for a Mistrial	147
290.	Jury Trial—Trial Order of Dismissal	148
300.	Jury Trial—Court's Charge and Instructions to Jury	149
310.	Jury Trial—Deliberation and Verdict of Jury	154
320.	Waiver of Jury Trial and Conduct of Non-Jury Trial	157
330.	Proceedings from Verdict to Sentence	159

TABLE OF CONTENTS

TITLE K—PROSECUTION OF INFORMATIONS IN LOCAL CRIMINAL COURTS—PLEA TO SENTENCE

Article		Page
340.	Pre-trial Proceedings	164
350.	Non-jury Trials	167
360.	Jury Trial	168
370.	Proceedings from Verdict to Sentence	173

TITLE L—SENTENCE

380.	Sentencing in General	173
390.	Pre-sentence Reports	176
400.	Pre-sentence Proceedings	179
410.	Sentences of Probation and of Conditional Discharge	185
420.	Fines	190
430.	Sentences of Imprisonment	192

TITLE M—PROCEEDINGS AFTER JUDGMENT

440.	Post-judgment Motions	194
450.	Appeals—In what Cases Authorized and to what Courts Taken	201
460.	Appeals—Taking and Perfection Thereof and Stays During Pendency Thereof	206
470.	Appeals—Determination Thereof	217

PART THREE—SPECIAL PROCEEDINGS AND MISCELLANEOUS PROCEDURES

TITLE P—PROCEDURES FOR SECURING ATTENDANCE AT CRIMINAL ACTIONS AND PROCEEDINGS OF DEFENDANTS AND WITNESSES UNDER CONTROL OF COURT—RECOGNIZANCE, BAIL AND COMMITMENT

500.	Recognizance, Bail and Commitment—Definitions of Terms	227
510.	Recognizance, Bail and Commitment—Determination of Application for Recognizance or Bail, Issuance of Securing Orders, and Related Matters	229
520.	Bail and Bail Bonds	233
530.	Orders of Recognizance or Bail with Respect to Defendants in Criminal Actions and Proceedings—When and by What Courts Authorized	236
540.	Forfeiture of Bail and Remission Thereof	240

TITLE Q—PROCEDURES FOR SECURING ATTENDANCE AT CRIMINAL ACTIONS AND PROCEEDINGS OF DEFENDANTS NOT UNDER CONTROL OF COURT AND NOT AMENABLE TO ORDINARY PROCESS—AND RELATED MATTERS

Article		Page
550.	Securing Attendance of Defendants—In General	243
560.	Securing Attendance of Defendants Confined in Institutions Within the State	244
570.	Securing Attendance of Defendants who are Outside the State, but within the United States—Rendition to other Jurisdictions of Defendants within the State—Uniform Criminal Extradition Act	245
580.	Securing Attendance of Defendants Confined as Prisoners in Institutions of Other Jurisdictions of the United States—Rendition to Other Jurisdictions of Persons Confined as Prisoners in this State—Agreement on Detainers	256
590.	Securing Attendance of Defendants who are Outside the United States	264
600.	Securing Attendance of Corporate Defendants and Related Matters	266

TITLE R—PROCEDURES FOR SECURING ATTENDANCE OF WITNESSES IN CRIMINAL ACTIONS

610.	Securing Attendance of Witnesses by Subpoena	267
620.	Securing Attendance of Witnesses by Material Witness Order	270
630.	Securing Attendance as Witnesses of Persons Confined in Institutions within the State	275
640.	Securing Attendance as Witnesses of Persons at Liberty Outside the State—Rendition to Other Jurisdiction of Witnesses at Liberty within the State—Uniform Act to Secure Attendance of Witnesses from Without the State in Criminal Cases	277
650.	Securing Attendance as Witnesses of Prisoners Confined in Institutions Outside the State or in Federal Institutions—Rendition to Other Jurisdictions of Prisoners Confined in Institutions Within the State	280

LEGISLATIVE REPORTS

MEMORANDUM IN SUPPORT AND EXPLANATION OF PROPOSED CRIMINAL PROCEDURE LAW

(S. Int. 4624, A. Int. 6579)

Prepared By The
Commission on Revision of the Penal Law
and Criminal Code

March, 1969

INTRODUCTORY

This bill, embodying a proposed "Criminal Procedure Law," prepared by the Temporary Commission on Revision of the Penal Law and Criminal Code, is, in effect, the Commission's third draft of a complete revision of the Code of Criminal Procedure.

The first draft was published by the Edward Thompson Company in September, 1967, and following a wide circulation thereof, public hearings thereon were held by the Commission throughout the state in Buffalo, Rochester, Syracuse, Albany, New York City and Mineola, during January and February of 1968. The second draft, containing many changes from the first, consists of a study bill, submitted to the Legislature at the 1968 session and also published by the Edward Thompson Company and widely circulated. Public hearings upon that edition were also held in various parts of the state (Rochester, Albany and New York City) during November and December of 1968.

The final 1969 bill, or third draft, contains a number of formal and minor changes from the study bill or second draft, and a few of substantive significance. This memorandum first treats the final or 1969 proposal both generally and with respect to some of its major features, and then points out those changes which are of substantive importance.

A derivation table, showing the sections of the 1968 study bill from which those of the final proposal are derived, is contained in the appendix to this memorandum.

A. THE CRIMINAL PROCEDURE LAW IN GENERAL

In structure, substance, form, phraseology and general approach, the proposed Criminal Procedure Law bears little resemblance to the distinctly archaic Code of Criminal Procedure. Ignoring the existing Code format, it lays a new foundation and, in the process, proposes numerous significant changes of substance in an attempt to provide a workable body of procedure accommodated to modern times. Among the innovations are a revamped lower criminal court structure (see Art. 10); a new omnibus motion technique (see §§ 170.30–170.45, 210.20–210.45, 330.30–330.50, 440.10–440.40, 710.10–710.70); a reformulated system of bail and release on recognizance (Arts. 500–540); a scheme involving greatly expanded use of the so-called police summons, relabeled an "appearance ticket" (Art. 150; see, also, § 140.20[2, 3]); changes in the standards of proof required for preliminary judicial action in the lower or "local criminal courts" (see §§ 70.10, 100.40, 180.70); changes in rules of evidence and related matters (Art. 60), including abolition of the long-standing accomplice corroboration rule in favor of one followed in the federal jurisdiction (see § 300.20); a new and tighter system of judicially authorized eavesdropping orders or warrants (Art. 700); establishment of a pre-trial discovery motion and remedy (Art.

240); new and comprehensive post-judgment motions and remedies for non-appellate challenges to judgments of conviction (Art. 440) important alterations in the laws relating to compulsion of evidence by grants of immunity (§§ 190.40, 190.45; see, also, §§ 50.10–50.30); codification of the law of former jeopardy (Art. 40); checks upon lengthy incarceration of defendants prior to the filing of the ultimate charges upon which they are to be prosecuted (see §§ 170.70, 180.80, 190.80); substantial revision of the youthful offender process (Art. 720); and significant changes in the law relating to mental fitness of a defendant to proceed with a criminal action against him (Art. 730).

Some of the procedural areas covered and changes wrought by the proposed Criminal Procedure Law (sometimes referred to as CPL) are treated below.

1. The lower criminal court structure (see Art. 10)

While working within the framework of the existing lower criminal court structure, the proposal creates a new lexicography and a new foundation that frequently leads to procedural simplication and clarification.

The Criminal Code sets forth all of its lower criminal court procedure in terms of "magistrates" and "courts of special sessions." These are traditional oddities in that neither signifies a "court," as such, for there is no such thing as a magistrates court, in the true sense of the word, or a court of special sessions. Rather, these labels or concepts constitute mantles or hats which the various lower courts and justices (justices of the peace, police courts, village police justices, etc.) don and doff at certain stages of a criminal action. A justice of the peace, for example, is said to be and to act as a "magistrate" in the preliminary stages of a criminal action when an information is laid before him, when he issues a warrant of arrest or a summons, when he conducts a preliminary hearing upon a felony charge, when he holds a defendant for the action of a grand jury, and the like. He continues to act as a magistrate when he tries or finally disposes of an information charging a non-criminal offense, such as disorderly conduct or a traffic infraction; but when he tries a misdemeanor charge or accepts a plea thereto he automatically takes off his magistrate hat and puts on his special sessions hat, or "holds a court of special sessions."

The defects and lack of logic in this system of presenting lower court procedure seem apparent. The proposed Criminal Procedure Law abandons the traditional "magistrate" and "special sessions" language in favor of a system that simply describes what the lower criminal courts are and what they do.

The first step in that direction is taken by a provision (§ 10.10[3]) which enumerates various specific courts constituting the lower court structure (sometimes under new labels) and blankets them under the key term, "local criminal court." The local criminal courts consist of the five regular lower court categories (district, city, town and village courts, plus the New York City Criminal Court), and—for limited purposes—Supreme Court justices and County Court judges.

With the creation of the term "local criminal court," and with the enumerative definition thereof, the proposed Criminal Procedure Law subsequently establishes its lower court procedure simply in terms of functions of "local criminal courts." Since all these courts perform the same basic functions, reference to the individual classifications is unnecessary in most of the provisions dealing with them. Owing to some variations in their operation and other factors, however, a number of ensuing sections do, where essential, specifically allude to village courts, town courts, city courts, etc., and provide separate procedures in certain situations.

One significant feature of this new scheme is the inclusion of the New York City Criminal Court, as a "local criminal court," within the ambit of the proposed Criminal Procedure Law. Under existing law, this court operates almost entirely under its own "New York City Criminal Court Act" and its procedure is governed only in small part by the Code of Criminal Procedure (see CCP § 740–d). In an endeavor to provide as much procedural uniformity as possible in the state lower court structure, the proposed formulations embrace the New York City court, allowing for and specifying variations where necessary.

This new and comprehensive lower court scheme would necessarily require the repeal of the principal procedural provisions—some in conflict with the proposal—now contained in the New York City Criminal Court Act, the Uniform District Court Act, the Uniform City Court Act and the Uniform Justice Court Act. Such repealing legislation will be submitted prior to the effective date of the proposed CPL.

2. Preliminary hearings in the local criminal courts

Among the noteworthy changes in the lower or "local criminal court" procedure are those relating to preliminary hearings, both with respect to felony cases and with respect to misdemeanor cases.

(a) As to misdemeanors:

Outside of New York City, there is not and never has been any procedure for a preliminary examination or hearing of a misdemeanor case by the magistrate or local criminal court with which the charge is lodged in order to determine whether the case should be further prosecuted. In New York City, however, the situation is different owing to procedure derived from the old dual lower court system (the Magistrates Court and the Court of Special Sessions) which prevailed prior to 1962. Under that system, misdemeanor charges, if they were to be tried or prosecuted, had to be sent by the Magistrates Court, which did not have trial jurisdiction thereof, to the Court of Special Sessions which did. A hearing, therefor, was held in the former court and, if there was sufficient proof of the defendant's commission of a misdemeanor, he was held for the action of the latter court.

With the consolidation of these courts in 1962 into a single New York City Criminal Court, the entire reason for the preliminary hearing vanished. In a vestigial manner, however, the New York City Criminal Court Act (§ 40[2]) still entitles the defendant to a preliminary hearing in most misdemeanor cases. This anachronism is especially unfortunate in view of that court's overpowering volume problems.

The proposal eliminates the misdemeanor hearing in the New York City court by the simple process of not providing for it. (It is to be remembered that virtually all of the procedural provisions of the New York City Criminal Court Act are to be repealed.)

(b) As to felonies:

Under the Criminal Code (§ 208), the standard of proof necessary for a "magistrate" or local criminal court to hold the defendant for the action of the grand jury upon a felony charge following a preliminary hearing is very cloudy, but most judges require a legally sufficient or prima facie case.

The proposal authorizes such a holding upon the less demanding standard of "reasonable cause to believe that the defendant committed a felony," and, further, permits such "reasonable cause" to be established by hearsay (§§ 180.60[8], 180.70).

Apart from acceleration of the criminal process, this is a most logical change when it is considered that a police officer is under a duty to arrest a person for a felony upon "reasonable cause" and bring him to court promptly; and that a prima facie case will later have to be es-

tablished in the grand jury before the defendant is indicted and prosecuted (see § 190.65[1]). To predicate reasonable cause as sufficient for the first screening process is hardly shocking, especially since most jurisdictions never require any more than that at any stage prior to trial.

3. Arrests without a warrant

The proposed CPL makes several significant changes in the law dealing with arrests without a warrant by police officers and other peace officers.

(a) Concerning misdemeanors not committed in officer's presence

The Criminal Code provisions dealing with warrantless arrests by police officers and peace officers in general are quite confusing (CCP § 177). One matter that is clear from the statute, however, is that, while an arrest for a felony may be made upon "reasonable cause" to believe that the defendant committed it, in the officer's presence or otherwise, a misdemeanor arrest is not authorized—upon reasonable cause or any other basis—unless the crime or the conduct comprising it is committed "in his [the officer's] presence" (CCP id., subd. 1).

Especially in connection with crimes divided into degrees—ordinarily with the higher degrees being felonies and the lowest a misdemeanor—the "in his presence" distinction appears illogical and in some respects almost absurd. Accordingly, the proposal eliminates that distinction. Making the general rule the same for all peace officers, police and non-police, the appropriate sections authorize an arrest for any crime—misdemeanors as well as felonies—upon reasonable cause to believe that the person in question committed it whether in or out of the officer's presence (CPL §§ 140.10[1], 140.25[1]).

(b) Concerning difference in powers of police officers and other peace officers

Under the Criminal Code (§ 154), a "peace officer" is defined by enumeration of a long list of public servants of one sort or another, including regular "police officers," who are also defined by enumeration (§ 154–a). In its provisions dealing with arrests and other law enforcement activities, the Code, for the most part, speaks merely in terms of "peace officers" and does not bother to distinguish between police officers and other kinds of peace officers. Although it cannot really mean it, the Code, by its loose language, seems to imbue every peace officer (e.g., a court attendant) with the full arrest powers of a police officer by authorizing him to make "reasonable cause" arrests anywhere at any time for any offense (§ 177).

In struggling with this problem, the proposed CPL, in its first two drafts, pursued a rather intricate technique which, though preserving the necessary powers of the various peace officer groups, involved elimination of the term "peace officer." The final proposal, however, restores that term, defines both peace officers and police officers in approximately the same manner as does the present Code (§ 1.20[33, 34]), and the pattern is such that all peace officers will retain their exemptions with respect to the weapons crimes of the Penal Law. The proposal does, however, limit the non-police peace officer's authority to make a regular police or reasonable cause arrest to those situations where he is "acting pursuant to his special duties" (§ 140.25)—in the course of his employment or function as a court officer, conservation officer, probation officer, etc. It is noteworthy that nothing contained in these provisions precludes any such agency from obtaining legislation or promulgating regulations according its members the broadest possible functional scope.

(c) Police officers—the bailiwick problem

In a similar vein, the Criminal Code's sweeping and imprecise language leaves, in some quarters, a doubtless unintended impression that any police officer, regardless of the limited geographical scope of his department or force, may make police or reasonable cause arrests without a warrant for any offense no matter where committed. Any such proposition would authorize a village police officer from St. Lawrence County, for example, while vacationing in New York City, to assume all the arrest powers of a New York City police officer, and, for that matter, to act as a state trooper anywhere in the state. Such complete ignoring of inherent territorial limitations does not, in the Commission's view, accord with orderly law enforcement practices, and it creates significant fiscal problems for agencies dealing with tort liability and Workmen's Compensation.

The proposal predicates a general rule that a police officer may make "reasonable cause" arrests only for offenses committed within his bailiwick, or geographical area of employment (§ 140.10[1]). To this rule, however, there are certain exceptions. One is that in his own bailiwick he may arrest a person who has committed an offense elsewhere in the state if another police officer authorized to make the arrest requests him to do so as his agent (§ 140.10[3a, i]); or if—as added in the final draft (id., subd. 3[a, ii])—he has reasonable cause to believe that such person has committed a felony and will be difficult to find if not immediately apprehended. Also, a police officer when outside of his bailiwick may arrest a person upon reasonable cause to believe that the latter has committed a felony in his presence (id., par. [b]).

4. The appearance ticket

The term "appearance ticket," as used in the proposal, denotes a citation or notice issued by a police officer or other public servant, of a kind usually but improperly referred to as a "summons."

On a state-wide basis, the use of appearance tickets is at present largely confined to traffic infraction cases (see Vehicle and Traffic Law § 207). In New York City, however, numerous non-police public officials and employees, such as those of the Sanitation, Fire, Building and Markets Departments, are authorized to issue and serve such tickets in cases involving offenses peculiarly within their ambits (violations of the Health Code, building regulations, etc.; see N.Y.C. Crim.Ct. Act. § 57).

Employed in this manner, an appearance ticket is a substitute for or an alternative to an arrest without a warrant. Upon the theory that the virtues of this alternative have not been sufficiently exploited, the proposal empowers any police officer to issue and serve an appearance ticket upon a person, instead of arresting him, in any case in which an arrest for a misdemeanor or a petty offense would be authorized (§ 150.20[1]); and similar provision is made for the issuance and service of such tickets by other public servants who are by other statutes specially authorized to do so (id., subd. 3).

Another subdivision of the statute in question (§ 150.20[2]) presents a method of employing the appearance ticket in combination with an arrest without a warrant. It contemplates an arrest by a police officer who, after taking the defendant to a station house, determines that, in view of the defendant's roots and all the circumstances of the case, prompt booking, formal charges, court arraignment and bail are unnecessary. In such a case, the officer may then abandon the post-arrest procedure and, instead, issue and serve an appearance ticket upon the defendant in the same manner as if he had never arrested him. As provided in the next section (§ 150.30), still another alternative, involving issuance of a ticket upon a deposit of bail, is available (see, also, § 140.20 [2, 3]).

The results to be expected from the new appearance ticket scheme are (1) an immense saving of police time, (2) elimination of much expense and embarrassment to defendants charged with minor offenses who are excellent risks to appear in court when required, and (3) above all, a significant reduction of that portion of our jail population consisting of unconvicted defendants awaiting trial or other disposition of their cases.

5. Concerning bail

(a) The unsecured and partially secured bail bonds

Another type of endeavor to reduce the unconvicted portion of our jail population is found in the proposed CPL provisions dealing with the subject of bail.

One of the current difficulties in this field is that the courses of action available to the court for assuring the defendant's future attendance are quite limited. On the one hand, a judge may commit the defendant to prison or fix bail—which may well be beyond the defendant's means. On the other, he may release the defendant upon his own recognizance. In many instances, none of these decisions seems attractive or satisfactory.

With this in mind, the proposal inserts two intermediate devices, one termed an "unsecured bail bond" and the other a "partially secured bail bond" (§ 520.10[1]). The unsecured bond is executed by a surety (other than a bonding company), or by the defendant himself where permitted by the court, who deposits no security with the court but contracts to pay a designated sum of money in case of the defendant's failure to appear (§ 500.10[19]). The "partially secured bail bond" differs only in that the surety or obligor deposits a fractional sum of money fixed by the court, not to exceed ten percent of the total undertaking (id. [18]).

The possible advantages of these new devices may be hypothetically illustrated by a case of a young man charged with burglary who has previously been embroiled with the law but resides in the community and whose father is a reputable person long employed in the same position at a fairly modest but adequate salary. Here, a judge not inclined to release the defendant on his own recognizance doubtless would, under present law, fix bail, and in a fairly substantial and possibly burdensome amount owing to the seriousness of the crime. If so authorized, however, he might well be satisfied to release the defendant upon his father's undertaking to pay $1,000 (possibly accompanied by a $100 deposit) in the event of the defendant's failure of appearance.

(b) Preventive detention

Another change relates to the criteria for commitment, fixing of bail or releasing defendants on their own recognizance. Strictly and traditionally speaking, the only reason for bail or commitment is, under present law, to assure the defendant's future appearance in the action, and the only factors to be considered in determining the amount of bail are those relating to the risk of the defendant's non-appearance. As a practical matter, however, courts invariably consider whether the defendant is likely to be a danger to society during release. In the case of a defendant charged with forcible rape who has a bad record of sex crimes, for instance, it would be a rare judge who would not commit him or fix very high bail regardless of the likelihood of his future attendance; nor, in the opinion of most, could the judge be faulted for such action. The proposal candidly recognizes this factor and expressly predicates possible danger to society as one of the factors to be considered upon the bail determination (§ 510.30[2]).

6. Verification of information and other instruments (§ 100.30)

The proposal authorizes the verification of an information, misdemeanor complaint, felony complaint and supporting deposition by (1)

having the deponent swear to it before the court, or (2) having the deponent swear to it before another police officer of designated rank, or in some cases before a non-police public servant, or (3) not requiring the defendant to swear to it at all but merely having him sign such an instrument containing a form notice that false statements therein are punishable as a class A misdemeanor pursuant to a specified Penal Law section (CPL § 100.20).

Only the first of these methods—a swearing before the court—is permitted under present law. Relaxing the procedure to allow police officers and witnesses to have the verification performed in the station house, and in fact to authorize verification without actual oath, should be of immense aid in speeding up the criminal process and should save many hours of both police and private citizen time.

7. Omnibus motions

The proposal adopts a streamlining system of motion practice which may be referred to as the omnibus motion technique. This is chiefly reflected in the following motions:

(1) Motion to dismiss indictment (§ 210.20) and information (§ 170.30);
(2) Motion to suppress evidence (Art. 710);
(3) Motion to set aside verdict (§ 330.30);
(4) Post-judgment motions—to vacate judgment and set aside sentence (Art. 440);

Each of these motions embraces many grounds or contentions which under present law must be separately raised by different types of motions, some of which must be brought in different courts. The motion to dismiss an indictment accommodates all contentions now raised by demurrer, motion to dismiss on the ground of insufficient grand jury evidence, plea of double jeopardy and several other motions and devices (§ 210.20[1]). The two post-judgment motions encompass all contentions challenging an indictment or other accusatory instrument which now sail under the flags of coram nobis, motion for resentence, motion for a new trial by reason of newly discovered evidence, state habeas corpus and federal habeas corpus (§§ 440.10[1], 440.20[1]).

Perhaps the most intricate of these omnibus motions is the motion to suppress evidence (Art. 710). There are certain kinds of evidence or potential evidence which may be excludable by reason of the manner of its acquisition, and the admissibility of which is ordinarily litigated upon a pre-trial motion and proceeding. Among the types of evidence excludable in this manner are tangible property obtained by an unlawful search and seizure, evidence obtained by improper eavesdropping, and evidence of a defendant's confession or admission involuntarily given to a police or other law enforcement official. The Criminal Code provides two separate motions and procedures in this area; for pre-trial challenges to evidence claimed (a) to be the product of unlawful search and seizure or (b) to consist of involuntary statements of a defendant (CCP §§ 813–c–813–h). The CPL study bill, or second draft, combined these two and the presently uncodified motion addressed to eavesdropping into a single motion to suppress; the motion as then drafted accommodated any of the three indicated challenges plus a contention of inadmissibility based upon the "poison fruit" doctrine (study bill § 375.20).

The final bill adds another ground or kind of challenge, derived from some United States Supreme Court decisions of fairly recent vintage. This consists of a claim that potential identification testimony should be excluded upon the ground that it emanates from an improper pre-trial identification of the defendant by the prospective witness (§ 712.20[5]).

8. Compulsion of grand jury testimony by immunity grant

The proposal completely overhauls the method of compelling a witness to testify in a grand jury proceeding through an offer or grant of immunity. The primary change applies only to grand jury proceedings and not to trials or other proceedings, criminal or otherwise. This change automatically confers immunity upon any grand jury witness (§ 190.40), in contrast to the present complex system which requires several occurrences before the witness receives immunity (CCP § 619–c), thus subjecting the whole scheme to grave constitutional attack and doubt. Also, the proposal extends the immunity statute structure to investigations into any crime (§§ 50.20, 50.30, 190.40), in contrast to the present law, which illogically confines its utility to cases involving certain selected crimes.

The net effect of these innovations upon grand jury investigations would unquestionably be (1) to remove the present doubt and confusion as to whether a so-called "target" of an investigation may be called as a witness and compelled by an offer of immunity to testify concerning the activity of other persons implicated in the crime under investigation; and (2) to extend the immunity grant weapon to prosecutors in their investigation of all crime rather than, as at present, only with respect to investigation of a selected few offenses.

9. Discovery (Art. 240)

Discovery in criminal cases has never before been the subject of statute in New York. The case law on the subject is rather sparse, unsatisfactory and inconsistent, so that it is difficult to discern whether there is any criminal discovery in New York, or if so how much.

The discovery article of the proposal (Art. 240) is virtually identical with that adopted in the federal jurisdiction in 1966 (Fed. "Rules of Criminal Procedure," Rule 16). It represents a rather moderate, middle-of-the road approach, half way between the extreme liberal position which advocates almost unlimited discovery and the extreme prosecution approach which would permit virtually none.

10. Elimination of the accomplice corroboration requirement

§ 300.20 of the proposal would change the New York rule requiring corroboration of accomplice testimony (CCP § 399) and replace it with a doctrine similar to that prevailing in the federal jurisdiction (e.g., United States v. Vito, 1961, 294 F.2d 524, 526, cert. den. 369 U.S. 823, 82 S.Ct. 837; Pina v. United States, 1948, 16 F.2d 890, 802; United States v. Becker, 1933, 62 F.2d 1007, 1009). The proposed provision, however, is stricter than the federal rule in that it mandates the cautionary instructions concerning accomplice testimony. In the federal courts, such instructions, though deemed "usually desirable," are "never an absolute necessity" (United States v. Becker, supra).

The present New York rule (CCP § 399) is, of course, predicated upon the theory that accomplice testimony is sometimes apt to be unreliable by reason of possible motives of self interest on the part of the witness. The difficulty with this principle lies in its rigidity. It is true that few would favor a criminal prosecution based solely upon the testimony of a single polluted and self-interested source; nor, in general, are prosecutors inclined to initiate or conduct such actions, or juries to convict in such cases. In many instances, however, the indicated credibility defects are not present and the accomplice testimony may be highly reliable and utterly convincing. Yet, such testimony—indeed the testimony of twenty such witnesses—is arbitrarily stamped insufficient as a matter of law.

The federal rule is adopted herein in the belief that it provides desirable flexibility without sacrificing essential safeguards.

11. The trial court's charge to the jury—in general (Art. 300)

In its mandates concerning the principal matters which a trial judge conducting a jury trial must submit to the jury in its charge (§ 300.10), and especially with respect to the counts and crimes contained and charged in an indictment which must or may be submitted under varying circumstances (§§ 300.40, 300.50), the proposal is considerably more precise, clear and thorough than the existing Code of Criminal Procedure. Among other matters, the Article codifies the rather difficult principles relating to questions of when the court is authorized or required to submit lesser offenses included within the crimes charged (§ 300.50).

One provision which may or may not work a change in the present law is of particular interest to trial judges. Whether or not such actually is the law, almost every trial judge believes that, in the course of his charge to a jury, he is required to marshal the evidence in exhaustive detail in every case. If such be the rule, it is illogical and wasteful, and the proposal changes it by requiring reference to the evidence only to the extent necessary to explain the application of the law to the facts (§ 300.10[2]).

12. Two changes in appellate law

The whole area of appeals has been overhauled and reformulated by the proposal (Arts. 450, 460, 470), with several changes of substance inserted. Two of the more interesting of these are treated below.

(a) Concerning review of sufficiency of grand jury evidence

The long-standing and controversial rule of People v. Nitzberg (289 N.Y. 523) is that an improper denial of a motion to dismiss an indictment upon the ground of insufficient grand jury evidence requires a reversal of the judgment of conviction on appeal no matter how strong and sufficient the trial proof was. This doctrine, shocking to many, is changed by the proposed provision that denial of the motion "is not reviewable upon an appeal from an ensuing judgment of conviction based upon legally sufficient trial evidence" (§ 210.30[6]).

(b) Appeal from trial order of dismissal

The Criminal Code, while according the People an appellate remedy for an improper trial court dismissal of an indictment upon alleged insufficiency of grand jury evidence, provides no such remedy for an improper dismissal or "directed acquittal"—termed a "trial order of dismissal" in the proposal (§ 290.10)—based upon alleged insufficiency of trial evidence. This clearly appears as a gap in the law. The proposed CPL fills this gap with provisions authorizing an appeal by the People from such an order; the order is reversible not only upon a determination that the trial evidence was legally sufficient, but also upon a determination that, though insufficient, it would have been sufficient had the trial court not improperly excluded admissible evidence offered by the People (§§ 280.10, 450.20[2], 450.40).

13. Youthful offender treatment (Art. 720)

The Youthful Offender process is very cumbersome under the Criminal Code, partly because an investigation of the Youthful Offender candidate is required in every case, regardless of the nature of the crime charged or of background factors.

One of the innovations worked by the proposed CPL in this area is as follows. Eligible youths are divided into three categories. Without defining two of these, it suffices to point out that the first group consists of those youths who are charged with misdemeanors only and have no previous convictions for crimes or Youthful Offender adjudications. Under the study bill, members of this group were not required to undergo investigation but were automatically granted Youthful Offender

treatment (study bill § 400.20[2]). Under the final bill, however, the court may in its discretion either grant Youthful Offender treatment without an investigation or order an investigation and determine the matter later (§ 720.20[1, 2]).

The last change was made because it frequently happens that youths of this group, though having no prior convictions or Youthful Offender adjudications, have two or more as yet undisposed of cases pending against them at the same time, and many judges feel that they should not be rigidly bound to grant Youthful Offender treatment in such instances.

14. Fitness to proceed

Under the existing Code, when a defendant under indictment is found mentally unfit to stand trial, he is generally committed to Matteawan State Hospital—a Department of Correction facility (§ 662–b[1]). He remains confined in this institution until he is found to be able to stand trial (§ 662–b[2]). The Code provides no machinery for periodic judicial review of the need for continued confinement.

Under the proposal, an indicted defendant who lacks the mental capacity to proceed to trial, is committed to the custody of the Commissioner of Mental Hygiene (§ 730.50[1]). The latter must place the defendant in a non-correctional facility, unless the court determines that the defendant is "dangerously" mentally ill (§ 730.60[1]). The proposal mandates periodic court review of the need for hospitalization (§ 730.-50[2] [3]). It also provides that a defendant may not be confined under a criminal order of commitment for more than two-thirds of the authorized period of imprisonment for the highest crime charged in the indictment (§ 730.50[3]).

Most of the provisions in Article 730 are based upon the recommendations made in 1968 by the Special Committee on the Study of Commitment Procedures and the Law Relating to Incompetents of the Association of the Bar of the City of New York. The recommendations are contained in the Committee's 261 page report, "Mental Illness, Due Process and the Criminal Defendant."

B. CHANGES OF SUBSTANCE FROM 1968 STUDY BILL

The final proposal of 1969 shows a great many formal and language alterations from the 1968 study bill and some changes of substance. The important changes of substance are noted below.

(1) As already indicated, the final bill, in its general definitions section, defines the term "peace officer" (F § 1.20[33])*—by enumeration, in the same manner as does the existing Criminal Code (§ 154)—whereas the study bill contains no such definition (see S § 1.20). Also as previously explained, the final bill, unlike the study bill (S. Art. 70), uses the term peace officer in its Article dealing with warrantless arrests (F Art. 140) and, while in one sense according full "reasonable cause" arrest powers to non-police peace officers, limits their authority to make such arrests to those occasions when they are acting pursuant to the special duties of their particular employment (F § 140.25).

(2) The final proposal's provision dealing with the circumstances in which a confession or other statement of a defendant is deemed "involuntarily made" and, hence, inadmissible in evidence (F § 60.45) differs from the study bill provision (S § 30.80). The prohibition of the latter was considerably more restrictive than any rule established by the United States Supreme Court, or by any decision or statute, and the final proposal substantially conforms the exclusionary principles of this area to existing law.

* The letter "F" is used in article and section citations to denote the final 1969 proposal, and the letter "S" to denote the 1968 study bill.

(3) In establishing the procedure to be followed with respect to a "simplified traffic information," the study bill declares that a defendant arraigned thereon is entitled as of right to a "bill of particulars," which is described as an unverified instrument which designates factual particulars, needed by the defendant for purposes of defense, without reciting items of evidence (S § 50.25[3, 4]). The final proposal somewhat changes this concept by entitling the defendant to a "supporting deposition" rather than a bill of particulars. Unlike a bill of particulars, a supporting deposition is a verified instrument which must contain evidentiary matter showing reasonable cause to believe that the defendant has committed the offense charged (F § 100.25[2]). It is this that the defendant really needs in order to ascertain fully the charge against him.

(4) The final bill increases by one the kinds of offenses for which fingerprinting and photographing of an arrested person are required. The added offense is one of "Loitering" for homosexual purposes (cf. F § 160.10[1] and S § 80.10[1]). Also, the final bill, unlike the study bill, permits a police officer to fingerprint an arrested defendant in certain situations even though he is not required to do so (F § 160.10[2]).

(5) The study bill requires that the fingerprinting and photographing for designated offenses be performed only upon an arrest of a person for such an offense (S § 80.10[1]). The final bill further provides for fingerprinting and photographing in connection with such an offense not only upon an arrest therefor but also when the defendant has been served with a summons or an appearance ticket for alleged commission thereof; and it describes the manner in which this is to be achieved (F §§ 130.60, 150.70, 160.10; see, also, § 120.90).

(6) Both the study bill and the final proposal establish a general rule to the effect that a police officer's power to make police or "reasonable cause" arrests applies only where the offense in question is or was committed within his bailiwick or "geographical area of * * * employment"; but both bills make generous and significant exceptions to this rule (F § 140.10; S § 70.30). The final bill adds an exception not found in the study bill: namely, that a police officer may arrest a person in his (the officer's) bailiwick when "he has reasonable cause to believe that such person has committed a felony somewhere[else] in the state and that it will be difficult to find or arrest him therefor unless he is apprehended immediately" (F § 140.10[3, a, ii]).

(7) Two changes in the procedure to be followed by a police officer after making a warrantless arrest are worthy of note (F § 140.20; S § 70.50).

(a) Both the study bill statute and the final provision authorize the arresting officer in non-felony cases to serve an appearance ticket upon the defendant, either unconditionally or upon the posting of designated station house bail, instead of promptly taking him to a court, and they require the officer either to serve a ticket or fix bail if an appropriate local criminal court is not readily available (F § 140.20[2, 3]; S § 70.50 [3, 4]). To all this, the final proposal adds a proviso: that a police officer is never required "to serve an appearance ticket upon an arrested person or release him from custody at a time when such person appears to be under the influence of alcohol, narcotics or other drug to the degree that he may endanger himself or other persons" (F § 140.20 [3]).

(b) The study bill section perhaps leaves an unintended impression that following an arrest the arresting officer must always proceed with the case either by taking the defendant to court or employing the appearance ticket and station house bail procedures, and that even if he becomes satisfied that the arrested person is completely innocent, he may not terminate the matter and unconditionally release him (S § 70.-

50). The final proposal explicitly authorizes such a release under such circumstances (F § 140.20[4]).

(8) At one time, a procedural device known as the "D.O.R." (discharge on own recognizance) was used in some courts, and prolifically in the New York City Criminal Court, on or following arraignment of the defendant. This was nothing more than an adjournment without date in contemplation of an ultimate dismissal. If the defendant behaved himself and the People did not restore the case to the calendar in a year or so, the charge would be dismissed. In recent years, the D.O.R. has fallen into disuse and many judges and prosecutors, who deem it a valuable and salutary vehicle for disposition of some types of cases, seem to feel that legislation is needed to restore it. While this is probably not so, the final proposal—unlike the study bill—does codify the old D.O.R. under the more descriptive label of "adjournment in contemplation of dismissal" (F § 170.55). This provision, which applies only to non-felony prosecutions in the local criminal courts, deems a charge dismissed six months after the adjournment if the case has not been restored to the calendar within that period (id, subd. 2).

(9) The Code of Criminal Procedure contains a section providing that after a magistrate has held for grand jury action a defendant charged with a felony who has waived examination, the "county court," upon motion of the district attorney, may return the case to the magistrate, who may then rescind his original holding for the grand jury and take other action (CCP § 190–a). No such provision is contained in the CPL study bill, but the final bill adds a section embodying the substance of the Code section (F § 180.40).

(10) The study bill authorizes a local criminal court to reduce a felony charge pending before it to a misdemeanor or petty offense which is supported by the available evidence, only when it is satisfied that the proof does not support the felony charge; if it does, the court may not reduce but must hold the defendant for grand jury action (S §§ 90.40[1, 3], 90.69[1]).

The appropriate section of the final bill changes that proposition by according the local criminal court discretion to reduce to a non-felony offense even though it is satisfied that a felony also was committed—provided that the district attorney consents to the reduction (F §§ 180.50 [2b], 180.70[3]).

(11) Under certain circumstances a defendant may be convicted, either by verdict or plea, of a lesser offense than the one charged so long as it is a "lesser included offense" (F §§ 220.10[4, 5], 300.40[3], 300.50; S §§ 115.10[4, 5], 155.30[3], 155.40). The final bill and the study bill differ slightly in their definitions of the term "lesser included offense" (F § 1.20[37]; S § 1.20[35]). Either definition, however, places substantial limitations upon the kinds and numbers of lesser offenses which are proper subjects of conviction in any given case.

This is largely unavoidable in the area of conviction by verdict owing to certain inherent restrictions involved in the court's submission of a case to a jury. It is both possible and desirable, however, to expand artificially the concept of a "lesser included offense" solely for purposes of conviction by plea of guilty, and thus to inject much greater flexibility in the criminal process. The study bill did not attempt any such project but the final proposal does (F § 220.20).

(12) Upon the subject of removal of indictments from one superior court to another of the same county at the instances of the courts or judges rather than of the parties, the study bill contains a rather narrow section, derived from the Criminal Code, authorizing the Supreme Court in any particular county to transfer its indictments to the County Court of such county (S § 120.10). Expanding the procedure of this area, the final bill seeks more flexibility by authorizing transfer of in-

dictments in both directions—from Supreme Court to County Court and vice versa—with the particular courts or judges empowered to order such transfers in any given Department to be determined by rules of the Appellate Division of such Department (F § 230.10).

(13) In connection with appeals, the final proposal adds three provisions not contained in the study bill which achieve the following:

(a) Extend the defendant's time for taking an appeal from a judgment of conviction when the People, by means of a specialized new appellate vehicle, succeed in having the original sentence set aside and a more severe sentence or resentence imposed (F § 450.30[4]);

(b) Authorize the Court of Appeals and the Appellate Divisions to promulgate rules, if they so desire, establishing periods of limitation—of which there are none either under the Criminal Code or the study bill—for the making of motions for reargument of appeals (F § 470.-50[2]; cf. S § 240.90); and

(c) Provide for an appeal to the Court of Appeals from an order of an intermediate appellate court dismissing an appeal to the latter (F § 470.60[3]; cf. S § 240.97).

(14) The study bill provisions dealing with bail do not permit any local criminal court, other than a Supreme Court justice sitting as such, to fix bail or release on his own recognizance a defendant charged with a class A felony in or before such court or a defendant charged with a felony who has two prior felony convictions (S § 285.30[2]). The final bill changes this rule to some extent by authorizing District Courts and the New York City Criminal Court—but not city, town or village courts—to release defendants on bail or recognizance in such circumstances provided that the district attorney is accorded an opportunity to be heard in the matter (F § 530.20[2]).

(15) The final proposal contains an Article consisting of three sections, entitled "Forfeiture of Bail and Remission Thereof" (F Art. 540, §§ 540.10–540.30), as well as another section dealing with the surrendering of a defendant upon forfeiture of a bail bond (F § 530.80), none of which is contained in the study bill.

These provisions, which are adopted from the Criminal Code (see §§ 590–606), were not included in the study bill because the Commission had for some time been considering transferring the Code sections in question to another body of law, such as the General Obligations Law. Since that plan has been discarded, the surrender, forfeiture and remission provisions are now included in the final CPL proposal.

(16) For reasons very similar to those expressed in the preceding paragraph, two provisions derived from the Criminal Code dealing with witness fees, which were not included in the study bill, are now added to the final proposal (F §§ 610.50, 620.80).

(17) Since submission of the study bill in 1968, with its Article addressed to eavesdropping warrants (S Art. 370), the entire area of eavesdropping has been drastically affected by the requirements and limitations of federal legislation on the subject, contained in a federal bill colloquially known as the "Safe Streets Act." Accordingly, the final proposal's Article devoted to "Eavesdropping warrants" (F Art. 700) is appreciably different from that of the study bill.

(18) As already pointed out (Part A of memorandum, No. 7), the final bill expands the pre-trial motion to suppress evidence, as it appears in the study bill, by adding another kind of evidence which is a subject of suppression thereunder, namely, potential identification testimony emanating from an improper pre-trial identification of the defendant by the identifying witness (F Art. 710, § 712.20[5]; cf. S § 375.20).

(19) Also as previously shown (Part A., No. 13), whereas the study bill extends Youthful Offender treatment to a large group of youth

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(14) The study bill provisions dealing with bail do not permit any local criminal court, other than a Supreme Court justice sitting as such, to fix bail or release on his own recognizance a defendant charged with a class A felony in or before such court or a defendant charged with a felony who has two prior felony convictions (S § 285.30[2]). The final bill changes this rule to some extent by authorizing District Courts and the New York City Criminal Court—but not city, town or village courts—to release defendants on bail or recognizance in such circumstances provided that the district attorney is accorded an opportunity to be heard in the matter (F § 530.20[2]).

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(19) Also as previously shown (Part A., No. 13), whereas the study bill extends Youthful Offender treatment to a large group of youth

defendants as a matter of right and without any investigation of them (S § 400.20[2]), the final proposal changes that principle by granting the court discretion either to accord Youthful Offender treatment to a member of this group without any investigation or to order an investigation of the defendant and determine the matter thereafter (F § 720.20 [1, 2]).

(20) The study bill provides that, in the absence of certain factors and circumstances, a defendant charged with a felony in a local criminal court who has spent more than forty-eight hours in the custody of the sheriff without any disposition of the matter or commencement of a hearing is ordinarily entitled to be released on his own recognizance pending such disposition or hearing (S § 90.70). The final provision increases the forty-eight hour period to seventy-two hours (F § 180.80).

APPENDIX

DERIVATION TABLE

The left column of this table lists each section of the 1969 bill (A. 6579) establishing a Criminal Procedure Law. The right column shows the corresponding section of the 1968 study bill (S. 5878)* from which the new section is specifically or generally derived. The word "new" indicates that there is no counterpart in the 1968 study bill.

1969 Bill	1968 Study Bill	1969 Bill	1968 Study Bill
1.00	1.00	100.50	50.45
1.10	1.10	100.55	50.50
1.20	1.20	110.10	55.10
10.10	5.10	120.10	60.10
10.20	5.20	120.20	60.20
10.30	5.30	120.30	60.30
20.10	10.10	120.40	60.35
20.20	10.20	120.50	60.40
20.30	10.30	120.60	60.45
20.40	10.40	120.70	60.50
20.50	10.50	120.80	60.60
20.60	New	120.90	60.70
30.10	15.10	130.10	65.10
30.20	15.20	130.20	65.20
40.10	20.10	130.30	65.30
40.20	20.20	130.40	65.40
40.30	20.30	130.50	65.50
40.40	20.40	130.60	New
50.10	25.10	140.05	70.10
50.20	25.20	140.10	70.30
50.30	25.30	140.15	70.40
60.10	30.10	140.20	70.50
60.15	30.15	140.25	New
60.20	30.20	140.30	70.53
60.25	30.30	140.35	70.55
60.30	30.40	140.40	70.57
60.35	30.50	140.45	70.60
60.40	30.60	140.50	70.70
60.45	30.80	140.55	70.80
60.50	30.90	150.10	75.10
60.55	30.95	150.20	75.20
60.60	New	150.30	75.30
70.10	35.10	150.40	75.40
70.20	35.20	150.50	75.50
100.05	50.05	150.60	75.60
100.10	50.10	150.70	New
100.15	50.15	160.10	80.10
100.20	50.20	160.20	80.20
100.25	50.25	160.30	80.30
100.30	50.27	160.40	80.40
100.35	50.30	170.10	85.02, 85.05, 85.10
100.40	50.35	170.15	85.20
100.45	50.40	170.20	85.21

*** Note:—The 1968 Study Bill contains a Distribution Table and a Derivation Table with respect to the existing Code of Criminal Procedure.**

1969 Bill	1968 Study Bill
170.25	85.22
170.30	85.25
170.35	85.30
170.40	85.35
170.45	85.40
170.50	85.45
170.55	New
170.60	85.60
170.65	85.65
170.70	New
180.10	90.10
180.20	90.25
180.30	90.30
180.40	New
180.50	90.40
180.60	90.50
180.70	90.60
180.80	90.70
190.05	95.05
190.10	95.10
190.15	95.15
190.20	95.20
190.25	95.25
190.30	95.30
190.35	95.35
190.40	95.40
190.45	95.50
190.50	95.45
190.55	95.55
190.60	95.60
190.65	95.65
190.70	95.70
190.75	95.75
190.80	95.80
190.85	95.85
190.90	95.90
200.10	100.05
200.20	100.20
200.30	100.30
200.40	100.40
200.50	100.45
200.60	100.50
200.70	100.60
200.80	100.70
200.90	100.80
210.05	105.05
210.10	105.20
210.15	105.30
210.20	105.40
210.25	105.45
210.30	105.50
210.35	105.55
210.40	105.60
210.45	105.65
210.50	105.70
220.10	115.10
220.20	New
220.30	115.20
220.40	115.30
220.50	115.40
220.60	115.50
230.10	New
230.20	120.20, 120.30
230.30	120.40
230.40	New
240.10	125.10
240.20	125.20
240.30	125.30
240.40	125.40
250.10	130.10
250.20	130.20
260.10	135.10
260.20	135.15
260.30	135.20
270.05	140.05
270.10	140.10
270.15	140.15
270.20	140.20
270.25	140.25
270.30	140.30
270.35	140.35
270.40	140.40
270.45	140.45
270.50	140.50
280.10	145.10
280.20	145.15
290.10	150.10
300.10	155.10
300.20	30.70
300.30	155.20
300.40	155.30
300.50	155.40
310.10	160.10
310.20	160.20
310.30	160.30
310.40	160.40
310.50	160.50
310.60	160.60
310.70	160.70
310.80	160.80
320.10	165.10
320.20	165.20
330.10	170.10
330.20	170.20
330.30	170.30
330.40	170.40
330.50	170.50
340.10	175.10
340.20	175.20
340.30	175.40
340.40	175.50
340.50	175.60
350.10	180.10
350.20	180.20
360.05	185.05
360.10	185.10

1969 Bill	1968 Study Bill
360.15	185.15
360.20	185.20
360.25	185.25
360.30	185.30
360.35	185.35
360.40	185.40
360.45	185.45
360.50	185.50
360.55	185.55
370.10	190.10
380.10	195.10
380.20	195.20
380.30	195.30
380.40	195.40
380.50	195.50
380.60	195.60
380.70	195.70
390.10	200.10
390.20	200.20
390.30	200.30
390.40	200.40
390.50	200.50
390.60	200.60
400.10	205.10
400.20	205.20
400.30	205.30
400.40	205.40
410.10	210.10
410.20	210.20
410.30	210.40
410.40	210.30
410.50	210.60
410.60	New
410.70	210.50
410.80	210.70
410.90	210.80
420.10	215.10
420.20	215.20
420.30	215.30
430.10	220.10
430.20	220.20
430.30	220.30
440.10	225.10
440.20	225.20
440.30	225.30
440.40	225.40
450.10	230.10
450.20	230.20
450.30	230.30
450.40	New
450.50	230.40
450.60	230.50
450.70	230.60
450.80	230.70
450.90	230.80
460.10	235.10
460.20	235.20
460.30	235.25
460.40	235.30
460.50	235.40
460.60	235.50
460.70	235.60
460.80	235.70
470.05	240.10
470.10	240.20
470.15	240.30
470.20	240.40
470.25	240.50
470.30	240.60
470.35	240.70
470.40	240.80
470.45	240.85
470.50	240.90
470.55	240.95
470.60	240.97
500.10	270.10
510.10	275.10
510.20	275.20
510.30	275.30
510.40	275.40
510.50	275.50
520.10	280.10
520.20	280.20
520.30	280.30
530.10	285.10
530.20	285.30
530.30	285.40
530.40	285.50
530.50	285.60
530.60	285.70
530.70	285.80
530.80	New
540.10	New
540.20	New
540.30	New
550.10	300.10
560.10	305.10
570.02	310.02
570.04	310.04
570.06	310.06
570.08	310.08
570.10	310.10
570.12	310.12
570.14	310.14
570.16	310.16
570.18	310.18
570.20	310.20
570.22	310.22
570.24	310.24
570.26	310.26
570.28	310.28
570.30	310.30
570.32	310.32
570.34	310.34
570.36	310.36
570.38	310.38

1969 Bill	1968 Study Bill	1969 Bill	1968 Study Bill
570.40	310.40	680.80	360.80
570.42	310.42	690.05	365.05
570.44	310.44	690.10	365.10
570.46	310.46	690.15	365.15
570.48	310.48	690.20	365.20
570.50	310.50	690.25	365.25
570.52	310.52	690.30	365.30
570.54	310.54	690.35	365.35
570.56	310.56	690.40	365.40
570.58	310.58	690.45	365.45
570.60	310.60	690.50	365.50
570.62	310.62	690.55	365.55
570.64	310.64	700.05	New
570.66	310.66	700.10	New
580.10	320.10	700.15	New
580.20	320.20	700.20	New
580.30	320.30	700.25	New
590.10	322.10	700.30	New
600.10	324.00	700.35	New
600.20	324.05	700.40	New
610.10	325.10	700.45	New
610.20	325.20	700.50	New
610.30	325.30	700.55	New
610.40	325.40	700.60	New
610.50	New	700.65	New
620.10	330.10	700.70	New
620.20	330.20	710.10	375.10
620.30	330.30	710.20	375.20
620.40	330.40	710.30	375.30
620.50	330.50	710.40	375.40
620.60	330.60	710.50	375.50
620.70	330.70	710.60	375.60
620.80	New	710.70	375.70
630.10	335.10	720.05	400.05
630.20	335.20	720.10	400.10
640.10	340.10	720.15	400.15
650.10	345.10	720.20	400.20
650.20	345.20	720.25	400.25
650.30	345.30	720.30	400.27
660.10	350.10	720.35	400.30
660.20	350.20	720.40	400.35
660.30	350.30	720.45	400.40
660.40	350.40	720.50	400.45
660.50	350.50	720.55	400.50
660.60	350.60	720.60	400.55
670.10	355.10	720.65	400.60
670.20	355.20	720.70	400.65
680.10	360.10	730.10	405.10
680.20	360.20	730.20	405.20
680.30	360.30	730.30	405.30
680.40	360.40	730.40	405.40
680.50	360.50	730.50	405.50
680.60	360.60	730.60	405.60
680.70	360.70	730.70	405.70

†

1969 BILL

AN ACT to establish a criminal procedure law, constituting chapter eleven–A of the consolidated laws, and to repeal the code of criminal procedure.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The criminal procedure law is hereby enacted to read as follows:

CRIMINAL PROCEDURE LAW

PART ONE—GENERAL PROVISIONS

TITLE A—SHORT TITLE, APPLICABILITY AND DEFINITIONS

Article		Sections
1.	Short Title, Applicability and Definitions	1.00–1.20

TITLE B—THE CRIMINAL COURTS

10.	The Criminal Courts	10.10–10.30

TITLE C—GENERAL PRINCIPLES RELATING TO REQUIREMENTS FOR AND EXEMPTIONS FROM CRIMINAL PROSECUTION

20.	Geographical Jurisdiction of Offenses	20.10–20.60
30.	Timeliness of Prosecutions and Speedy Trial	30.10–30.20
40.	Exemption from Prosecution by Reason of Previous Prosecution	40.10–40.40
50.	Compulsion of Evidence by Offer of Immunity	50.10–50.30

TITLE D—RULES OF EVIDENCE, STANDARDS OF PROOF AND RELATED MATTERS

60.	Rules of Evidence and Related Matters	60.10–60.60
70.	Standards of Proof	70.10–70.20

PART TWO—THE PRINCIPAL PROCEEDINGS

TITLE H—PRELIMINARY PROCEEDINGS IN LOCAL CRIMINAL COURT

100.	Commencement of Action in Local Criminal Court-Local Criminal Court Accusatory Instruments	100.05–100.55
110.	Requiring Defendant's Appearance in Local Criminal Court for Arraignment	110.10
120.	Warrant of Arrest	120.10–120.90
130.	The Summons	130.10–130.60
140.	Arrest Without a Warrant	140.05–140.55

Article		Sections
150.	The Appearance Ticket	150.10–150.70
160.	Fingerprinting and Photographing of Defendant after Arrest—Criminal Identification Records and Statistics	160.10–160.40
170.	Proceedings upon Information, Simplified Traffic Information, Prosecutor's Information and Misdemeanor Complaint from Arraignment to Plea	170.10–170.70
180.	Proceedings upon Felony Complaint from Arraignment thereon through Disposition thereof	180.10–180.80

TITLE I—PRELIMINARY PROCEEDINGS IN SUPERIOR COURT

190.	The Grand Jury and its Proceedings	190.05–190.90
200.	Indictment and Related Instruments	200.10–200.90
210.	Proceedings in Superior Court from Filing of Indictment to Plea	210.05–210.50

TITLE J—PROSECUTION OF INDICTMENTS IN SUPERIOR COURTS —PLEA TO SENTENCE

220.	The Plea	220.10–220.60
230.	Removal of Action	230.10–230.40
240.	Discovery	240.10–240.40
250.	Pre-trial Notices of Defenses	250.10–250.20
260.	Jury Trial—Generally	260.10–260.30
270.	Jury Trial—Formation and Conduct of Jury	270.05–270.50
280.	Jury Trial—Motion for a Mistrial	280.10–280.20
290.	Jury Trial—Trial Order of Dismissal	290.10
300.	Jury Trial—Court's Charge and Instructions to Jury	300.10–300.50
310.	Jury Trial—Deliberation and Verdict of Jury	310.10–310.80
320.	Waiver of Jury Trial and Conduct of Non-Jury Trial	320.10–320.20
330.	Proceedings from Verdict to Sentence	330.10–330.50

TITLE K—PROSECUTION OF INFORMATIONS IN LOCAL CRIMINAL COURTS—PLEA TO SENTENCE

340.	Pre-trial Proceedings	340.10–340.50
350.	Non-jury Trials	350.10–350.20
360.	Jury Trial	360.05–360.55
370.	Proceedings from Verdict to Sentence	370.10

TITLE L—SENTENCE

380.	Sentencing in General	380.10–380.70
390.	Pre-sentence Reports	390.10–390.60
400.	Pre-sentence Proceedings	400.10–400.40
410.	Sentences of Probation and of Conditional Discharge	410.10–410.90
420.	Fines	420.10–420.30
430.	Sentences of Imprisonment	430.10–430.30

TITLE M—PROCEEDINGS AFTER JUDGMENT

Article		Sections
440.	Post-judgment Motions	440.10–440.40
450.	Appeals—in what Cases Authorized and to what Courts Taken	450.10–450.90
460.	Appeals—Taking and Perfection Thereof and Stays During Pendency Thereof	460.10–460.80
470.	Appeals—Determination Thereof	470.05–470.60

PART THREE—SPECIAL PROCEEDINGS AND MISCELLANEOUS PROCEDURES

TITLE P—PROCEDURES FOR SECURING ATTENDANCE AT CRIMINAL ACTIONS AND PROCEEDINGS OF DEFENDANTS AND WITNESSES UNDER CONTROL OF COURT—RECOGNIZANCE, BAIL AND COMMITMENT

500.	Recognizance, Bail and Commitment—Definitions of Terms	500.10
510.	Recognizance, Bail and Commitment—Determination of Application for Recognizance or Bail, Issuance of Securing Orders, and Related Matters	510.10–510.50
520.	Bail and Bail Bonds	520.10–520.30
530.	Orders of Recognizance or Bail with Respect to Defendants in Criminal Actions and Proceedings—When and by What Courts Authorized	530.10–530.80
540.	Forfeiture of Bail and Remission Thereof	540.10–540.30

TITLE Q—PROCEDURES FOR SECURING ATTENDANCE AT CRIMINAL ACTIONS AND PROCEEDINGS OF DEFENDANTS NOT UNDER CONTROL OF COURT AND NOT AMENABLE TO ORDINARY PROCESS—AND RELATED MATTERS

550.	Securing Attendance of Defendants—In General	550.10
560.	Securing Attendance of Defendants Confined in Institutions Within the State	560.10
570.	Securing Attendance of Defendants who are Outside the State, but within the United States—Rendition to other Jurisdictions of Defendants within the State—Uniform Criminal Extradition Act	570.02–570.66
580.	Securing Attendance of Defendants Confined as Prisoners in Institutions of Other Jurisdictions of the United States—Rendition to Other Jurisdictions of Persons Confined as Prisoners in this State—Agreement on Detainers	580.10–580.30
590.	Securing Attendance of Defendants who are Outside the United States	590.10
600.	Securing Attendance of Corporate Defendants and Related Matters	600.10–600.20

TITLE R—PROCEDURES FOR SECURING ATTENDANCE OF WITNESSES IN CRIMINAL ACTIONS

610.	Securing Attendance of Witnesses by Subpoena	610.10–610.50
620.	Securing Attendance of Witnesses by Material Witness Order	620.10–620.80

Article — Sections

630. Securing Attendance as Witnesses of Persons Confined in Institutions within the State 630.10–630.20

640. Securing Attendance as Witnesses of Persons at Liberty Outside the State—Rendition to Other Jurisdiction of Witnesses at Liberty within the State—Uniform Act to Secure Attendance of Witnesses from Without the State in Criminal Cases 640.10

650. Securing Attendance as Witnesses of Prisoners Confined in Institutions Outside the State or in Federal Institutions —Rendition to Other Jurisdictions of Prisoners Confined in Institutions Within the State 650.10–650.30

TITLE S—PROCEDURES FOR SECURING TESTIMONY FOR FUTURE USE, AND FOR USING TESTIMONY GIVEN IN A PRIOR PROCEEDING

660. Securing Testimony for Use in a Subsequent Proceeding—Examination of Witnesses Conditionally 660.10–660.60

670. Use in a Criminal Proceeding of Testimony Given in a Previous Proceeding 670.10–670.20

680. Securing Testimony Outside the State for use in Proceeding Within the State—Examination of Witnesses on Commission 680.10–680.80

TITLE T—PROCEDURES FOR SECURING EVIDENCE BY MEANS OF COURT ORDER AND FOR SUPPRESSING EVIDENCE UNLAWFULLY OR IMPROPERLY OBTAINED

690. Search Warrants 690.05–690.55

700. Eavesdropping Warrants 700.05–700.70

710. Motion to Suppress Evidence 710.10–710.70

TITLE U—SPECIAL PROCEEDINGS WHICH REPLACE, SUSPEND OR ABATE CRIMINAL ACTIONS

720. Youthful Offender Treatment 720.05–720.70

730. Mental Disease or Defect Excluding Fitness to Proceed 730.10–730.70

PART ONE—GENERAL PROVISIONS

TITLE A—SHORT TITLE, APPLICABILITY AND DEFINITIONS

ARTICLE 1—SHORT TITLE, APPLICABILITY AND DEFINITIONS

Section

1.00 Short title.
1.10 Applicability of chapter to actions and matter occurring before and after effective date.
1.20 Definitions of terms of general use in this chapter.

TITLE B—THE CRIMINAL COURTS

ARTICLE 10—THE CRIMINAL COURTS

10.10 The criminal courts; enumeration and definitions.
10.20 Superior courts; jurisdiction.
10.30 Local criminal courts; jurisdiction.

TITLE C—GENERAL PRINCIPLES RELATING TO REQUIREMENTS FOR AND EXEMPTIONS FROM CRIMINAL PROSECUTION

ARTICLE 20—GEOGRAPHICAL JURISDICTION OF OFFENSES

20.10 Geographical jurisdiction of offenses; definitions of terms.
20.20 Geographical jurisdiction of offenses; jurisdiction of state.
20.30 Geographical jurisdiction of offenses; effect of laws of other jurisdictions upon this state's jurisdiction.
20.40 Geographical jurisdiction of offenses; jurisdiction of counties.
20.50 Geographical jurisdiction of offenses; jurisdiction of cities, towns and villages.
20.60 Geographical jurisdiction of offenses; communications and transportation of property between jurisdictions.

ARTICLE 30—TIMELINESS OF PROSECUTIONS AND SPEEDY TRIAL

30.10 Timeliness of prosecutions; periods of limitation.
30.20 Speedy trial.

ARTICLE 40—EXEMPTION FROM PROSECUTION BY REASON OF PREVIOUS PROSECUTION

40.10 Previous prosecution; definitions of terms.
40.20 Previous prosecution; when a bar to a second prosecution.

Section
40.30 Previous prosecution; what constitutes.
40.40 Separate prosecution of jointly prosecutable offenses; when barred.

ARTICLE 50—COMPULSION OF EVIDENCE BY OFFER OF IMMUNITY

50.10 Compulsion of evidence by offer of immunity; definitions of terms.
50.20 Compulsion of evidence by offer of immunity.
50.30 Authority to confer immunity in criminal proceedings; court a competent authority.

TITLE D—RULES OF EVIDENCE, STANDARDS OF PROOF AND RELATED MATTERS

ARTICLE 60—RULES OF EVIDENCE AND RELATED MATTERS

60.10 Rules of evidence; in general.
60.15 Rules of evidence; what witnesses may be called.
60.20 Rules of evidence; evidence given by children.
60.25 Rules of evidence; identification by means of previous recognition, in absence of present identification.
60.30 Rules of evidence; identification by means of previous recognition, in addition to present identification.
60.35 Rules of evidence; impeachment of own witness by proof of prior contradictory statement.
60.40 Rules of evidence; proof of previous conviction; when allowed.
60.45 Rules of evidence; admissibility of statements of defendants.
60.50 Rules of evidence; statements of defendants; corroboration.
60.55 Rules of evidence; psychiatric testimony in certain cases.
60.60 Rules of evidence; certificates concerning judgments of conviction and fingerprints.

ARTICLE 70—STANDARDS OF PROOF

70.10 Standards of proof; definitions of terms.
70.20 Standards of proof for conviction.

PART TWO—THE PRINCIPAL PROCEEDINGS

TITLE H—PRELIMINARY PROCEEDINGS IN LOCAL CRIMINAL COURT

ARTICLE 100—COMMENCEMENT OF ACTION IN LOCAL CRIMINAL COURT—LOCAL CRIMINAL COURT ACCUSATORY INSTRUMENTS

Section

100.05 Commencement of action; in general.
100.10 Local criminal court accusatory instruments; definitions thereof.
100.15 Information, misdemeanor complaint and felony complaint; form and content.
100.20 Supporting deposition; definition, form and content.
100.25 Simplified traffic information; form and content; defendant's right to supporting deposition.
100.30 Information, misdemeanor complaint, felony complaint and supporting deposition; verification.
100.35 Prosecutor's information; form and content.
100.40 Local criminal court accusatory instruments; sufficiency on face.
100.45 Information, prosecutor's information, misdemeanor complaint; severance, consolidation, amendment, bill of particulars.
100.50 Superseding informations and prosecutor's informations.
100.55 Local criminal court accusatory instruments; in what courts filed.

ARTICLE 110—REQUIRING DEFENDANT'S APPEARANCE IN LOCAL CRIMINAL COURT FOR ARRAIGNMENT

110.10 Methods of requiring defendant's appearance in local criminal court for arraignment; in general.

ARTICLE 120—WARRANT OF ARREST

120.10 Warrant of arrest; definition, function, form and content.
120.20 Warrant of arrest; when issuable.
120.30 Warrant of arrest; by what courts issuable and in what courts returnable.
120.40 Warrant of arrest; attaching accusatory instrument to warrant of town court or village court.
120.50 Warrant of arrest; to what police officers addressed.
120.60 Warrant of arrest; what police officers may execute.
120.70 Warrant of arrest; where executable.
120.80 Warrant of arrest; when and how executed.
120.90 Warrant of arrest; procedure after arrest.

ARTICLE 130—THE SUMMONS

Section

130.10 Summons; definition, function, form and content.
130.20 Summons; by what courts issuable and in what courts returnable.
130.30 Summons; when issuable.
130.40 Summons; service.
130.50 Summons; defendant's failure to appear.
130.60 Summons; fingerprinting and photographing of defendant.

ARTICLE 140—ARREST WITHOUT A WARRANT

140.05 Arrest without a warrant; in general.
140.10 Arrest without a warrant; by police officer; when and where authorized.
140.15 Arrest without a warrant; when and how made by police officer.
140.20 Arrest without a warrant; procedure after arrest by police officer.
140.25 Arrest without a warrant; by peace officer other than police officer.
140.30 Arrest without a warrant; by any person; when and where authorized.
140.35 Arrest without a warrant; when and how made by person acting other than as a peace officer.
140.40 Arrest without a warrant; procedure after arrest made by person acting other than as a peace officer.
140.45 Arrest without a warrant; dismissal of insufficient information, misdemeanor complaint or felony complaint.
140.50 Temporary questioning of persons in public places; search for weapons.
140.55 Arrest without a warrant; by peace officers of other states for offense committed outside state; uniform close pursuit act.

ARTICLE 150—THE APPEARANCE TICKET

150.10 Appearance ticket; definition, form and content.
150.20 Appearance ticket; when and by whom issuable.
150.30 Appearance ticket; issuance and service thereof after arrest upon posting of pre-arraignment bail.
150.40 Appearance ticket; where returnable; how and where served.
150.50 Appearance ticket; filing an information or misdemeanor complaint; dismissal of insufficient instrument.
150.60 Appearance ticket; defendant's failure to appear.
150.70 Appearance ticket; fingerprinting and photographing of defendant.

ARTICLE 160—FINGERPRINTING AND PHOTOGRAPHING OF DEFENDANT AFTER ARREST—CRIMINAL IDENTIFICATION RECORDS AND STATISTICS

Section

160.10 Fingerprinting and photographing; duties of police with respect thereto.

160.20 Fingerprinting and photographing; forwarding of fingerprints and photographs to other agencies.

160.30 Fingerprinting and photographing; duties of New York state identification and intelligence system.

160.40 Fingerprinting and photographing; transmission to district attorney of report received by police.

ARTICLE 170—PROCEEDINGS UPON INFORMATION, SIMPLIFIED TRAFFIC INFORMATION, PROSECUTOR'S INFORMATION AND MISDEMEANOR COMPLAINT FROM ARRAIGNMENT TO PLEA

170.10 Arraignment upon information, simplified traffic information, prosecutor's information or misdemeanor complaint; defendant's presence, defendant's rights, court's instructions and bail matters.

170.15 Removal of action from one local criminal court to another.

170.20 Divestiture of jurisdiction by indictment; removal of case to superior court at district attorney's instance.

170.25 Divestiture of jurisdiction by indictment; removal of case to superior court at defendant's instance.

170.30 Motion to dismiss information, simplified traffic information, prosecutor's information or misdemeanor complaint.

170.35 Motion to dismiss information, simplified traffic information, prosecutor's information or misdemeanor complaint; as defective.

170.40 Motion to dismiss information, simplified traffic information, prosecutor's information or misdemeanor complaint; in furtherance of justice.

170.45 Motion to dismiss information, simplified traffic information, prosecutor's information or misdemeanor complaint; procedure.

170.50 Motion in superior court to dismiss prosecutor's information.

170.55 Adjournment in contemplation of dismissal.

170.60 Requirement of plea to information, simplified traffic information or prosecutor's information.

170.65 Replacement of misdemeanor complaint by information or prosecutor's information, and waiver thereof.

170.70 Release of defendant upon failure to replace misdemeanor complaint by information or prosecutor's information.

ARTICLE 180—PROCEEDINGS UPON FELONY COMPLAINT FROM ARRAIGNMENT THEREON THROUGH DISPOSITION THEREOF

Section

180.10 Proceedings upon felony complaint; arraignment; defendant's rights, court's instructions and bail matters.

180.20 Proceedings upon felony complaint; removal of action from one local criminal court to another.

180.30 Proceedings upon felony complaint; waiver of hearing; action to be taken.

180.40 Proceedings upon felony complaint; application in superior court following waiver of hearing.

180.50 Proceedings upon felony complaint; reduction of charge.

180.60 Proceedings upon felony complaint; the hearing; conduct thereof.

180.70 Proceedings upon felony complaint; disposition of felony complaint after hearing.

180.80 Proceedings upon felony complaint; release of defendant from custody upon failure of timely disposition.

TITLE I—PRELIMINARY PROCEEDINGS IN SUPERIOR COURT

ARTICLE 190—THE GRAND JURY AND ITS PROCEEDINGS

190.05 Grand jury; definition and general functions.

190.10 Grand jury; for what courts drawn.

190.15 Grand jury; duration of term and discharge.

190.20 Grand jury; formation, organization and other matters preliminary to assumption of duties.

190.25 Grand jury; proceedings and operation in general.

190.30 Grand jury; rules of evidence.

190.35 Grand jury; definitions of terms.

190.40 Grand jury; witnesses, compulsion of evidence and immunity.

190.45 Grand jury; waiver of immunity.

190.50 Grand jury; who may call witnesses; defendant as witness.

190.55 Grand jury; matters to be heard and examined; duties and authority of district attorney.

190.60 Grand jury; action to be taken.

190.65 Grand jury; when indictment is authorized.

190.70 Grand jury; direction to file prosecutor's information and related matters.

190.75 Grand jury; dismissal of charge.

190.80 Grand jury; release of defendant upon failure of timely grand jury action.

190.85 Grand jury; grand jury reports.

190.90 Grand jury; appeal from order concerning grand jury reports.

ARTICLE 200—INDICTMENT AND RELATED INSTRUMENTS

Section
200.10 Indictment; definition.
200.20 Indictment; what offenses may be charged; joinder of offenses and consolidation of indictments.
200.30 Indictment; duplicitous counts prohibited.
200.40 Indictment; joinder of defendants and consolidation of indictments against different defendants.
200.50 Indictment; form and content.
200.60 Indictment; allegations of previous convictions prohibited.
200.70 Indictment; amendment of.
200.80 Indictment; superseding indictments.
200.90 Indictment; bill of particulars.

ARTICLE 210—PROCEEDINGS IN SUPERIOR COURT FROM FILING OF INDICTMENT TO PLEA

210.05 Indictment exclusive method of prosecution.
210.10 Requirement of, and methods of securing defendant's appearance for arraignment upon indictment.
210.15 Arraignment upon indictment; defendant's rights, court's instructions and bail matters.
210.20 Motion to dismiss indictment.
210.25 Motion to dismiss indictment; as defective.
210.30 Motion to dismiss indictment on ground of insufficiency of grand jury evidence; motion to inspect grand jury minutes.
210.35 Motion to dismiss indictment; defective grand jury proceeding.
210.40 Motion to dismiss indictment; in furtherance of justice.
210.45 Motion to dismiss indictment; procedure.
210.50 Requirement of plea.

TITLE J—PROSECUTION OF INDICTMENTS IN SUPERIOR COURTS—PLEA TO SENTENCE

ARTICLE 220—THE PLEA

220.10 Plea; kinds of pleas.
220.20 Plea; meaning of lesser included offense for plea purposes.
220.30 Plea; plea of guilty to part of indictment; plea covering other indictments.
220.40 Plea; plea of not guilty; meaning.
220.50 Plea; entry of plea.
220.60 Plea; change of plea.

ARTICLE 230—REMOVAL OF ACTION

Section

230.10 Removal of action; from supreme court to county court and from county court to supreme court; at instance of court.
230.20 Removal of action; removal from county court to supreme court and change of venue; upon motion of party.
230.30 Removal of action; stay of trial pending motion therefor.
230.40 Removal of action; determinations and rulings before and after removal; by which courts made.

ARTICLE 240—DISCOVERY

240.10 Discovery; definitions of terms.
240.20 Discovery; when authorized.
240.30 Discovery; when motion made.
240.40 Discovery; continuing duty to disclose; failure to comply.

ARTICLE 250—PRE-TRIAL NOTICES OF DEFENSES

250.10 Notice of defense of mental disease or defect.
250.20 Notice of alibi.

ARTICLE 260—JURY TRIAL—GENERALLY

260.10 Jury trial; requirement thereof.
260.20 Jury trial; defendant's presence at trial.
260.30 Jury trial; in what order to proceed.

ARTICLE 270—JURY TRIAL—FORMATION AND CONDUCT OF JURY

270.05 Trial jury; formation in general.
270.10 Trial jury; challenge to the panel.
270.15 Trial jury; examination of prospective jurors; challenges generally.
270.20 Trial jury; challenge for cause of an individual juror.
270.25 Trial jury; peremptory challenge of an individual juror.
270.30 Trial jury; alternate jurors.
270.35 Trial jury; discharge of juror; replacement by alternate juror.
270.40 Trial jury; preliminary instructions by court.
270.45 Trial jury; when separation permitted.
270.50 Trial jury; viewing of premises.

ARTICLE 280—JURY TRIAL—MOTION FOR A MISTRIAL

280.10 Motion for mistrial.
280.20 Motion for mistrial; status of indictment upon new trial.

ARTICLE 290—JURY TRIAL—TRIAL ORDER OF DISMISSAL

Section
290.10 Trial order of dismissal.

ARTICLE 300—JURY TRIAL—COURT'S CHARGE AND INSTRUCTIONS TO JURY

300.10 Court's charge; in general.
300.20 Court's charge; accomplice testimony.
300.30 Court's charge; submission of indictment to jury; definitions of terms.
300.40 Court's charge; submission of indictment to jury; counts to be submitted.
300.50 Court's charge; submission of lesser included offenses.

ARTICLE 310—JURY TRIAL—DELIBERATION AND VERDICT OF JURY

310.10 Jury deliberation; requirement of; where conducted.
310.20 Jury deliberation; use of exhibits and other material.
310.30 Jury deliberation; request for information.
310.40 Verdict; rendition thereof.
310.50 Verdict; form; reconsideration of defective verdict.
310.60 Discharge of jury rendition of verdict and effect thereof.
310.70 Rendition of partial verdict and effect thereof.
310.80 Recording and checking of verdict and polling of jury.

ARTICLE 320—WAIVER OF JURY TRIAL AND CONDUCT OF NON-JURY TRIAL

320.10 Non-jury trial; when authorized.
320.20 Non-jury trial; nature and conduct thereof.

ARTICLE 330—PROCEEDINGS FROM VERDICT TO SENTENCE

330.10 Disposition of defendant after verdict of acquittal.
330.20 Commitment, confinement and release of defendant acquitted on ground of mental disease or defect.
330.30 Motion to set aside verdict; grounds for.
330.40 Motion to set aside verdict; procedure.
330.50 Motion to set aside verdict; order granting motion.

TITLE K—PROSECUTION OF INFORMATIONS IN LOCAL CRIMINAL COURTS—PLEA TO SENTENCE

ARTICLE 340—PRE-TRIAL PROCEEDINGS

340.10 Definitions of terms.
340.20 The plea.

Section
340.30 Pre-trial discovery and notices of defenses.
340.40 Modes of trial.
340.50 Defendant's presence at trial.

ARTICLE 350—NON-JURY TRIALS

350.10 Conduct of single judge trial.
350.20 Conduct of three-judge trial.

ARTICLE 360—JURY TRIAL

360.05 Jury trial; order of trial.
360.10 Trial jury; formation in general.
360.15 Trial jury; challenge to the panel.
360.20 Trial jury; examination of prospective jurors; challenges generally.
360.25 Trial jury; challenge for cause of an individual juror.
360.30 Trial jury; peremptory challenge of an individual juror.
360.35 Trial jury; alternate juror.
360.40 Trial jury; conduct of jury trial in general.
360.45 Court's charge and instructions; in general.
360.50 Court's submission of information to jury; counts and offenses to be submitted.
360.55 Deliberation and verdict of jury.

ARTICLE 370—PROCEEDINGS FROM VERDICT TO SENTENCE

370.10 Proceedings from verdict to sentence.

TITLE L—SENTENCE

ARTICLE 380—SENTENCING IN GENERAL

380.10 Applicability.
380.20 Sentence required.
380.30 Time for pronouncing sentence.
380.40 Defendant's presence at sentencing.
380.50 Statements at time of sentence.
380.60 Authority for the execution of sentence.
380.70 Minutes of sentence.

ARTICLE 390—PRE-SENTENCE REPORTS

390.10 Requirement of fingerprint report.
390.20 Requirement of pre-sentence report.
390.30 Scope of pre-sentence investigation and report.
390.40 Defendant's pre-sentence memorandum.
390.50 Confidentiality of pre-sentence reports and memoranda.
390.60 Copy of reports to accompany defendant sentenced to imprisonment.

ARTICLE 400—PRE-SENTENCE PROCEEDINGS

Section
400.10 Pre-sentence conference.
400.20 Procedure for determining whether defendant should be sentenced as a persistent felony offender.
400.30 Procedure for determining the amount of a fine based upon the defendant's gain from the offense.
400.40 Procedure for determining prior convictions for the purpose of sentence in certain cases.

ARTICLE 410—SENTENCES OF PROBATION AND OF CONDITIONAL DISCHARGE

410.10 Specification of conditions of the sentence.
410.20 Modification or enlargement of conditions.
410.30 Declaration of delinquency.
410.40 Notice to appear, warrant.
410.50 Custody and supervision of probationers.
410.60 Appearance before court.
410.70 Hearing on violation.
410.80 Transfer of supervision of probationers.
410.90 Termination of sentence.

ARTICLE 420—FINES

420.10 Collection of fines.
420.20 Collection of fines imposed upon corporations.
420.30 Remission of fines.

ARTICLE 430—SENTENCES OF IMPRISONMENT

430.10 Sentence of imprisonment not to be changed after commencement.
430.20 Commitment of defendant.
430.30 Duty to deliver defendant.

TITLE M—PROCEEDINGS AFTER JUDGMENT

ARTICLE 440—POST-JUDGMENT MOTIONS

440.10 Motion to vacate judgment.
440.20 Motion to set aside sentence; by defendant.
440.30 Motion to vacate judgment and to set aside sentence; procedure.
440.40 Motion to set aside sentence; by people.

ARTICLE 450—APPEALS—IN WHAT CASES AUTHORIZED AND TO WHAT COURTS TAKEN

450.10 Appeal by defendant to intermediate appellate court; in what cases authorized.
450.20 Appeal by people to intermediate appellate court; in what cases authorized.
450.30 Appeal from sentence.

Section
450.40 Appeal by people from trial order of dismissal.
450.50 Appeal by people from order suppressing evidence; filing of statement in appellate court.
450.60 Appeal to intermediate appellate court; to what court taken.
450.70 Appeal by defendant directly to court of appeals; in what cases authorized.
450.80 Appeal by people directly to court of appeals; in what cases authorized.
450.90 Appeal to court of appeals from order of intermediate appellate court; in what cases authorized.

ARTICLE 460—APPEALS—TAKING AND PERFECTION THEREOF AND STAYS DURING PENDENCY THEREOF

460.10 Appeal; how taken.
460.20 Certificate granting leave to appeal to court of appeals.
460.30 Extension of time for taking appeal.
460.40 Effect of taking of appeal upon judgment or order of courts below; when stayed.
460.50 Stay of judgment pending appeal to intermediate appellate court.
460.60 Stay of judgment pending appeal to court of appeals from intermediate appellate court.
460.70 Appeal; how perfected.
460.80 Appeal; argument and submission thereof.

ARTICLE 470—APPEALS—DETERMINATION THEREOF

470.05 Determination of appeals; general criteria.
470.10 Determination of appeals; definitions of terms.
470.15 Determination of appeals by intermediate appellate courts; scope of review.
470.20 Determination of appeals by intermediate appellate courts; corrective action upon reversal or modification.
470.25 Determination of appeals by intermediate appellate courts; form and content of order.
470.30 Determination by court of appeals of appeals taken directly thereto from judgments and orders of criminal courts.
470.35 Determination by court of appeals of appeals from orders of intermediate appellate courts; scope of review.
470.40 Determination by court of appeals of appeals from intermediate appellate courts; corrective action upon reversal or modification.
470.45 Remission of case by appellate court to criminal court upon reversal or modification of judgment; action by criminal court.
470.50 Reargument of appeal; motion and criteria for.
470.55 Status of accusatory instrument upon order of new trial or restoration of action to pre-pleading status.
470.60 Dismissal of appeal.

PART THREE—SPECIAL PROCEEDINGS AND MISCELLANEOUS PROCEDURES

TITLE P—PROCEDURES FOR SECURING ATTENDANCE AT CRIMINAL ACTIONS AND PROCEEDINGS OF DEFENDANTS AND WITNESSES UNDER CONTROL OF COURT—RECOGNIZANCE, BAIL AND COMMITMENT

ARTICLE 500—RECOGNIZANCE, BAIL AND COMMITMENT—DEFINITIONS OF TERMS

Section

500.10 Recognizance, bail and commitment; definitions of terms.

ARTICLE 510—RECOGNIZANCE, BAIL AND COMMITMENT—DETERMINATION OF APPLICATION FOR RECOGNIZANCE OR BAIL, ISSUANCE OF SECURING ORDERS, AND RELATED MATTERS

510.10 Securing order; when required.

510.20 Application for recognizance or bail; making and determination thereof in general.

510.30 Application for recognizance of bail; rules of law and criteria controlling determination.

510.40 Application for recognizance or bail; determination thereof, form of securing order and execution thereof.

510.50 Enforcement of securing order.

ARTICLE 520—BAIL AND BAIL BONDS

520.10 Bail and bail bonds; fixing of bail and authorized forms thereof.

520.20 Bail and bail bonds; posting of bail bond and justifying affidavits; form and contents thereof.

520.30 Bail and bail bonds; examination as to sufficiency.

ARTICLE 530—ORDERS OF RECOGNIZANCE OR BAIL WITH RESPECT TO DEFENDANTS IN CRIMINAL ACTIONS AND PROCEEDINGS—WHEN AND BY WHAT COURTS AUTHORIZED

530.10 Order of recognizance or bail; in general.

530.20 Order of recognizance or bail, by local criminal court when action is pending therein.

530.30 Order of recognizance or bail; by superior court judge when action is pending in local criminal court.

530.40 Order of recognizance or bail; by superior court when action is pending therein.

530.50 Order of recognizance or bail; during pendency of appeal.

Section
530.60 Order of recognizance or bail; revocation thereof.
530.70 Order of recognizance or bail; bench warrant.
530.80 Order of recognizance or bail; surrender of defendant.

ARTICLE 540—FORFEITURE OF BAIL AND REMISSION THEREOF

540.10 Fofeiture of bail; generally.
540.20 Forfeiture of bail; certain local criminal courts.
540.30 Remission of forfeiture.

TITLE Q—PROCEDURES FOR SECURING ATTENDANCE AT CRIMINAL ACTIONS AND PROCEEDINGS OF DEFENDANTS NOT UNDER CONTROL OF COURT AND NOT AMENABLE TO ORDINARY PROCESS—AND RELATED MATTERS

ARTICLE 550—SECURING ATTENDANCE OF DEFENDANTS—IN GENERAL

550.10 Securing attendance of defendants; in general.

ARTICLE 560—SECURING ATTENDANCE OF DEFENDANTS CONFINED IN INSTITUTIONS WITHIN THE STATE

560.10 Securing attendance of defendants confined in institutions within the state.

ARTICLE 570—SECURING ATTENDANCE OF DEFENDANTS WHO ARE OUTSIDE THE STATE BUT WITHIN THE UNITED STATES—RENDITION TO OTHER JURISDICTIONS OF DEFENDANTS WITHIN THE STATE—UNIFORM CRIMINAL EXTRADITION ACT

570.02 Short title.
570.04 Definitions.
570.06 Fugitives from justice; duty of governor.
570.08 Demand; form.
570.10 Investigation by governor.
570.12 Extradition of persons imprisoned or awaiting trial in another state.
570.14 Extradition of persons who left the demanding state under compulsion.
570.16 Extradition of persons not present in demanding state at time of commission of crime.
570.18 Issuance of warrant of arrest by governor; recitals therein.
570.20 Execution of warrant; manner and place thereof.
570.22 Authority of arresting officer.
570.24 Rights of accused person; application for writ of habeas corpus.

Section
570.26 Noncompliance with preceding section; penalties for violation.
570.28 Confinement of the accused in jail when necessary.
570.30 Confinement of extradited persons passing through this state.
570.32 Arrest of accused before making of requisition.
570.34 Arrest of accused without warrant therefor.
570.36 Commitment to await requisition; bail.
570.38 Bail; in what cases; conditions of bond.
570.40 Extension of time of commitment; adjournment.
570.42 Bail; when forfeited.
570.44 Persons under criminal prosecution in this state at time of requisition.
570.46 Guilt or innocence of accused; when inquired into.
570.48 Alias warrant of arrest.
570.50 Written waiver of extradition proceedings.
570.52 Fugitives from this state; duty of governor.
570.54 Application for issuance of requisition; by whom made; contents.
570.56 Expense of extradition.
570.58 Immunity from service of process in certain civil actions.
570.60 No immunity from other criminal prosecution while in this state.
570.62 Non-waiver by this state.
570.64 Interpretation.
570.66 Constitutionality.

ARTICLE 580—SECURING ATTENDANCE OF DEFENDANTS CONFINED AS PRISONERS IN INSTITUTIONS OF OTHER JURISDICTIONS OF THE UNITED STATES—RENDITION TO OTHER JURISDICTIONS OF PERSONS CONFINED AS PRISONERS IN THIS STATE—AGREEMENT ON DETAINERS

580.10 Securing attendance of defendants confined as prisoners in institutions outside the state; methods.
580.20 Agreement on detainers.
580.30 Securing attendance of defendants confined in federal prisons.

ARTICLE 590—SECURING ATTENDANCE OF DEFENDANTS WHO ARE OUTSIDE THE UNITED STATES

590.10 Securing attendance of defendants who are outside the United States.

ARTICLE 600—SECURING ATTENDANCE OF CORPORATE DEFENDANTS AND RELATED MATTERS

600.10 Corporate defendants; securing attendance.
600.20 Corporate defendants; prosecution thereof.

TITLE R—PROCEDURES FOR SECURING ATTENDANCE OF WITNESSES IN CRIMINAL ACTIONS

ARTICLE 610—SECURING ATTENDANCE OF WITNESSES BY SUBPOENA

Section

610.10 Securing attendance of witnesses by subpoena; in general.

610.20 Securing attendance of witnesses by subpoena; when and by whom subpoena may be issued.

610.30 Securing attendance of witnesses by subpoena; where subpoena may be served.

610.40 Securing attendance of witnesses by subpoena; how and by whom subpoena may be served.

610.50 Securing attendance of witness by subpoena; fees.

ARTICLE 620—SECURING ATTENDANCE OF WITNESSES BY MATERIAL WITNESS ORDER

620.10 Material witness order; defined.

620.20 Material witness order; when authorized; by what courts issuable; duration thereof.

620.30 Material witness order; commencement of proceeding by application; procurement of appearance of prospective witness.

620.40 Material witness order; arraignment.

620.50 Material witness order; hearing, determination and execution of order.

620.60 Material witness order; vacation, modification and amendment thereof.

620.70 Material witness order; compelling attendance of witness who fails to appear.

620.80 Material witness order; witness fee.

ARTICLE 630—SECURING ATTENDANCE AS WITNESSES OF PERSONS CONFINED IN INSTITUTIONS WITHIN THE STATE

630.10 Securing attendance of witnesses confined in institutions within the state; in general.

630.20 Securing attendance of witnesses confined in institutions within the state; when and by what courts order may be issued.

ARTICLE 640—SECURING ATTENDANCE AS WITNESSES OF PERSONS AT LIBERTY OUTSIDE THE STATE—RENDITION TO OTHER JURISDICTIONS OF WITNESSES AT LIBERTY WITHIN THE STATE—UNIFORM ACT TO SECURE ATTENDANCE OF WITNESSES FROM WITHOUT THE STATE IN CRIMINAL CASES

640.10 Securing attendance of witnesses from within and without the state in criminal proceedings.

ARTICLE 650—SECURING ATTENDANCE AS WITNESSES OF PRISONERS CONFINED IN INSTITUTIONS OUTSIDE THE STATE OR IN FEDERAL INSTITUTIONS—RENDITION TO OTHER JURISDICTIONS OF PRISONERS CONFINED IN INSTITUTIONS WITHIN THE STATE

Section

650.10 Securing attendance of prisoner as witness in proceeding without the state.

650.20 Securing attendance of prisoner outside the state as witness in criminal action in the state.

650.30 Securing attendance of prisoner in federal institution as witness in criminal action in the state.

TITLE S—PROCEDURES FOR SECURING TESTIMONY FOR FUTURE USE, AND FOR USING TESTIMONY GIVEN IN A PRIOR PROCEEDING

ARTICLE 660—SECURING TESTIMONY FOR USE IN A SUBSEQUENT PROCEEDING—EXAMINATION OF WITNESSES CONDITIONALLY

660.10 Examination of witnesses conditionally; in general.

660.20 Examination of witnesses conditionally; grounds for order.

660.30 Examination of witnesses conditionally; when and to what courts application may be made.

660.40 Examination of witnesses conditionally; application and notice.

660.50 Examination of witnesses conditionally; determination of application.

660.60 Examination of witnesses conditionally; the examination proceeding.

ARTICLE 670—USE IN A CRIMINAL PROCEEDING OF TESTIMONY GIVEN IN A PREVIOUS PROCEEDING

670.10 Use in a criminal proceeding of testimony given in a previous proceeding; when authorized.

670.20 Use in a criminal proceeding of testimony given in a previous proceeding; procedure.

ARTICLE 680—SECURING TESTIMONY OUTSIDE THE STATE FOR USE IN PROCEEDING WITHIN THE STATE—EXAMINATION OF WITNESSES ON COMMISSION

680.10 Examination of witnesses on commission; in general.

680.20 Examination of witnesses on commission; when commission issuable; form and content of application.

680.30 Examination of witnesses on commission; application by people for examination of witnesses.

Section
680.40 Examination of witnesses on commission; when commission issuable upon application of people.
680.50 Examination of witnesses on commission; interrogatories.
680.60 Examination of witnesses on commission; form and content of the commission.
680.70 Examination of witnesses on commission; the examination.
680.80 Examination of witnesses on commission; use at trial of transcript of examination.

TITLE T—PROCEDURES FOR SECURING EVIDENCE BY MEANS OF COURT ORDER AND FOR SUPPRESSING EVIDENCE UNLAWFULLY OR IMPROPERLY OBTAINED

ARTICLE 690—SEARCH WARRANTS

690.05 Search warrants; in general; definition.
690.10 Search warrants; property subject to seizure thereunder.
690.15 Search warrants; what and who are subject to search thereunder.
690.20 Search warrants; where executable.
690.25 Search warrants; to whom addressable and by whom executable.
690.30 Search warrants; when executable.
690.35 Search warrants; the application.
690.40 Search warrants; determination of application.
690.45 Search warrants; form and content.
690.50 Search warrants; execution thereof.
690.55 Search warrants; disposition of seized property.

ARTICLE 700—EAVESDROPPING WARRANTS

700.05 Eavesdropping warrants; definitions of terms.
700.10 Eavesdropping warrants; in general.
700.15 Eavesdropping warrants; when issuable.
700.20 Eavesdropping warrants; application.
700.25 Eavesdropping warrants; determination of application.
700.30 Eavesdropping warrants; form and content.
700.35 Eavesdropping warrants; manner and time of execution.
700.40 Eavesdropping warrants; order of extension.
700.45 Eavesdropping warrants; emergency authority.
700.50 Eavesdropping warrants; progress reports and notice.
700.55 Eavesdropping warrants; custody of warrants, applications and recordings.
700.60 Eavesdropping warrants; reports to the administrative office of the United States courts and the judicial conference.
700.65 Eavesdropping warrants; disclosure and use of information; order of amendment.
700.70 Eavesdropping warrants; notice before use of evidence.

ARTICLE 710—MOTION TO SUPPRESS EVIDENCE

Section
710.10 Motion to suppress evidence; definitions of terms.
710.20 Motion to suppress evidence; in general; grounds for.
710.30 Motion to suppress evidence; notice to defendant of intention to offer evidence.
710.40 Motion to suppress evidence; when made and determined.
710.50 Motion to suppress evidence; in what courts made.
710.60 Motion to suppress evidence; procedure.
710.70 Motion to suppress evidence; orders of suppression; effects of orders and of failure to make motion.

TITLE U—SPECIAL PROCEEDINGS WHICH REPLACE, SUSPEND OR ABATE CRIMINAL ACTIONS

ARTICLE 720—YOUTHFUL OFFENDER TREATMENT

720.05 Youthful offender treatment; definitions of terms.
720.10 Youthful offender treatment; in general.
720.15 Youthful offender treatment; sealing of accusatory instrument.
720.20 Youthful offender treatment; when accorded.
720.25 Youthful offender treatment; youthful offender information.
720.30 Youthful offender treatment; arraignment upon youthful offender information.
720.35 Youthful offender treatment; the plea; pre-pleading and pre-trial procedure.
720.40 Youthful offender treatment; the trial.
720.45 Youthful offender treatment; verdict.
720.50 Youthful offender treatment; procedure from verdict through sentence.
720.55 Youthful offender treatment; sentence.
720.60 Youthful offender treatment; post-judgment motions and appeals.
720.65 Youthful offender treatment; privacy of proceedings.
720.70 Youthful offender treatment; effect of adjudication; records, finger-prints and photographs.

ARTICLE 730—MENTAL DISEASE OR DEFECT EXCLUDING FITNESS TO PROCEED

730.10 Fitness to proceed; definitions.
730.20 Fitness to proceed; generally.
730.30 Fitness to proceed; order of examination.

Section
730.40 Fitness to proceed; local criminal court accusatory instrument.
730.50 Fitness to proceed; indictment.
730.60 Fitness to proceed; procedure following custody by commissioner.
730.70 Fitness to proceed; procedure following termination of custody by commissioner.

PART ONE—GENERAL PROVISIONS

TITLE A—SHORT TITLE, APPLICABILITY AND DEFINITIONS

ARTICLE 1—SHORT TITLE, APPLICABILITY AND DEFINITIONS

Section

1.00 Short title.
1.10 Applicability of chapter to actions and matter occurring before and after effective date.
1.20 Definitions of terms of general use in this chapter.

§ 1.00 Short title

This chapter shall be known as the criminal procedure law, and may be cited as "CPL".

§ 1.10 Applicability of chapter to actions and matter occurring before and after effective date

1. The provisions of this chapter apply exclusively to:

(a) All criminal actions and proceedings commenced upon or after the effective date thereof and all appeals and other post-judgment proceedings relating or attaching thereto; and

(b) All matters of criminal procedure prescribed in this chapter which do not constitute a part of any particular action or case, occurring upon or after such effective date.

2. The provisions of this chapter apply to (a) all criminal actions and proceedings commenced prior to the effective date thereof but still pending on such date, and (b) all appeals and other post-judgment proceedings commenced upon or after such effective date which relate or attach to criminal actions and proceedings commenced or concluded prior to such effective date; provided that, if application of such provisions in any particular case would not be feasible or would work injustice, the provisions of the code of criminal procedure apply thereto.

3. The provisions of this chapter do not impair or render ineffectual any proceedings or procedural matters which occurred prior to the effective date thereof.

§ 1.20 Definitions of terms of general use in this chapter

Except where different meanings are expressly specified in subsequent provisions of this chapter, the term definitions contained in section 10.00 of the penal law are applicable to this chapter, and, in addition, the following terms have the following meanings:

1. "Accusatory instrument" means an indictment, an information, a simplified traffic information, a prosecutor's information, a misdemeanor complaint or a felony complaint. Every accusatory instrument, regardless of the subscribing person or agency designated therein as the accuser, constitutes an accusation on behalf of the state as plaintiff and must be entitled "the people of the state of New York" against a designated person, known as the defendant.

2. "Local criminal court accusatory instrument" means any accusatory instrument other than an indictment.

3. "Indictment" means a written accusation by a grand jury, more fully defined and described in article two hundred, filed with a superior court, which charges one or more defendants with the commission of one or more offenses, at least one of which is a crime, and which serves as a basis for prosecution thereof.

4. "Information" means a verified written accusation by a person, more fully defined and described in article one hundred, filed with a local criminal court, which charges one or more defendants with the commission of one or more offenses, none of which is a felony, and which may serve both to commence a criminal action and as a basis for prosecution thereof.

5. "Simplified traffic information" means a written accusation by a police officer, more fully defined and described in article one hundred, filed with a local criminal court, which, being in a brief or simplified form prescribed by the commissioner of motor vehicles, charges a person with one or more traffic infractions or misdemeanors relating to traffic, and which may serve both to commence a criminal action for such offense and as a basis for prosecution thereof.

6. "Prosecutor's information" means a written accusation by a district attorney, more fully defined and described in article one hundred, filed with a local criminal court, which charges one or more defendants with the commission of one or more offenses, none of which is a felony, and which serves as a basis for prosecution thereof.

7. "Misdemeanor complaint" means a verified written accusation by a person, more fully defined and described in article one hundred, filed with a local criminal court, which charges one or more defendants with the commission of one or more offenses, at least one of which is a misdemeanor and none of which is a felony, and which serves to commence a criminal action but which may not, except upon the defendant's consent, serve as a basis for prosecution of the offenses charged therein.

8. "Felony complaint" means a verified written accusation by a person, more fully defined and described in article one hundred, filed with a local criminal court, which charges one or more defendants with the commission of one or more felonies and which serves to commence a criminal action but not as a basis for prosecution thereof.

9. "Arraignment" means the occasion upon which a defendant against whom an accusatory instrument has been filed appears before the court in which the criminal action is pending for the purpose of having such court acquire and exercise control over his person with respect to such accusatory instrument and of setting the course of further proceedings in the action.

10. "Plea," in addition to its ordinary meaning as prescribed in sections 220.10 and 340.20, means, where appropriate, the occasion upon which a defendant enters such a plea to an accusatory instrument.

11. "Trial." A jury trial commences with the selection of the jury and includes all further proceedings through the rendition of a verdict. A non-jury trial commences with the first opening address, if there be any, and, if not, when the first witness is sworn, and includes all further proceedings through the rendition of a verdict.

12. "Verdict" means the announcement by a jury in the case of a jury trial, or by the court in the case of a non-jury trial, of its decision upon the defendant's guilt or innocence of the charges submitted to or considered by it.

13. "Conviction" means the entry of a plea of guilty to, or a verdict of guilty upon, an accusatory instrument other than a felony complaint, or to one or more counts of such instrument.

14. "Sentence" means the imposition and entry of sentence upon a conviction.

15. "Judgment." A judgment is comprised of a conviction and the sentence imposed thereon and is completed by imposition and entry of the sentence.

16. "Criminal action." A criminal action (a) commences with the filing of an accusatory instrument against a defendant in a criminal court, as specified in subdivision seventeen; (b) includes the filing of all further accusatory instruments directly derived from the initial one, and all proceedings, orders and motions conducted or made by a criminal court in the course of disposing of any such accusatory instrument, or which, regardless of the court in which they occurred or were made, could properly be considered as a part of the record of the case by an appellate court upon an appeal from a judgment of conviction; and (c) terminates with the imposition of sentence or some other final disposition in a criminal court of the last accusatory instrument filed in the case.

17. "Commencement of criminal action." A criminal action is commenced by the filing of an accusatory instrument against a defendant in a criminal court, and, if more than one accusatory instrument is filed in the course of the action, it commences when the first of such instruments is filed.

18. "Criminal proceeding" means any proceeding which (a) constitutes a part of a criminal action or (b) occurs in a criminal court and is related to a prospective, pending or completed criminal action, either of this state or of any other jurisdiction, or involves a criminal investigation.

19. "Criminal court" means any court defined as such by section 10.10.

20. "Superior court" means any court defined as such by subdivision two of section 10.10.

21. "Local criminal court" means any court defined as such by subdivision three of section 10.10.

22. "Intermediate appellate court" means any court possessing appellate jurisdiction, other than the court of appeals.

23. "Judge" means any judicial officer who is a member of or constitutes a court, whether referred to in another provision of law as a justice or by any other title.

24. "Trial jurisdiction." A criminal court has "trial jurisdiction" of an offense when an indictment or an information charging such offense may properly be filed with such court, and when such court has authority to accept a plea to, try or otherwise finally dispose of such accusatory instrument.

25. "Preliminary jurisdiction." A criminal court has "preliminary jurisdiction" of an offense when, regardless of whether it has trial jurisdiction thereof, a criminal action for such offense may be commenced therein, and when such court may con-

duct proceedings with respect thereto which lead or may lead to prosecution and final disposition of the action in a court having trial jurisdiction thereof.

26. "Appearance ticket" means a written notice issued by a public servant, more fully defined in section 150.10, requiring a person to appear before a local criminal court in connection with an accusatory instrument to be filed against him therein.

27. "Summons" means a process of a local criminal court, more fully defined in section 130.10, requiring a defendant to appear before such court for the purpose of arraignment upon an accusatory instrument filed therewith by which a criminal action against him has been commenced.

28. "Warrant of arrest" means a process of a local criminal court, more fully defined in section 120.10, directing a police officer to arrest a defendant and to bring him before such court for the purpose of arraingnment upon an accusatory instrument filed therewith by which a criminal action against him has been commenced.

29. "Superior court warrant of arrest" means a process of a superior court directing a police officer to arrest a defendant and to bring him before such a court for the purpose of arraignment upon an indictment filed therewith by which a criminal action against him has been commenced.

30. "Bench warrant" means a process of a criminal court in which a criminal action is pending, directing a police officer to take into custody a defendant in such action who has previously been arraigned upon the accusatory instrument by which the action was commenced, and to bring him before such court. The function of a bench warrant is to achieve the court appearance of a defendant in a pending criminal action for some purpose other than his initial arraignment in the action.

31. "Prosecutor" means a district attorney or any other public servant who represents the people in a criminal action.

32. "District attorney" means a district attorney or an assistant district attorney, and, where appropriate, the attorney general or an assistant attorney general.

33. "Peace officer." The following persons are peace officers:

(a) A police officer;

(b) An attendant, uniformed court officer or an official of the supreme court in the first and second departments;

(c) An attendant, uniformed court officer or other official attached to the county courts of Nassau and Suffolk counties;

(d) A clerk or attendant of a district court;

(e) A clerk, uniformed court officer or other official of the criminal court of the city of New York;

(f) A uniformed court officer or an official of the civil court of the city of New York;

(g) An attendant, clerk or uniformed court officer of the family court;

(h) An attendant, or an official, or guard of any state prison or of any penal correctional institution;

(i) An officer of the staff of the board of parole in the executive department;

(j) A harbor master appointed by a county, city, town or village;

(k) An investigator of the office of the state commission of investigation;

(*l*) Onondaga county park rangers;

(m) An officer or agent of a duly incorporated society for the prevention of cruelty to animals or children;

(n) An inspector or investigator of the department of agriculture and markets;

(*o*) An employee of the department of taxation and finance assigned to enforcement of the tax on cigarettes imposed by article twenty of the tax law by the commissioner of taxation and finance;

(p) An employee of the New York City department of finance assigned to enforcement of the tax on cigarettes imposed by section D46–2.0 of the administrative code of the city of New York by the director of finance;

(q) The chief and deputy fire marshals, the supervising fire marshals and the fire marshals of the bureau of fire investigation of the New York City fire department;

(r) The chief of the bureau of law enforcement and field services, assistant superintendent of law enforcement, regional conservation officers, assistant regional conservation officers and conservation officers in the conservation department;

(s) A probation officer;

(t) The sheriff, under-sheriff and deputy sheriffs of New York City.

34. "Police officers." The following persons are police officers:

(a) A sworn officer of the division of state police;

(b) Sheriffs, under-sheriffs and deputy sheriffs of counties outside of New York City;

(c) A sworn officer of an authorized county or county parkway police department;

(d) A sworn officer of an authorized police department or force of a city, town, village or police district;

(e) A sworn officer of an authorized police department of an authority or a regional state park commission;

(f) A sworn officer of the capital buildings police force of the office of general services;

(g) An investigator employed in the office of a district attorney;

(h) An investigator employed by a commission created by an interstate compact who is, to a substantial extent, engaged in the enforcement of the criminal laws of this state.

35. "Commitment to the custody of the sheriff," when referring to an order of a court located in a county or city which has established a department of correction, means commitment to the commissioner of correction of such county or city.

36. "County" ordinarily means (a) any county outside of New York City or (b) New York City in its entirety. Unless the context requires a different construction, New York City, despite its five counties, is deemed a single county within the meaning of the provisions of this chapter in which that term appears.

37. "Lesser included offense." When it is impossible to commit a particular crime without concomitantly committing, by the same conduct, another offense of lesser grade or degree, the latter is, with respect to the former, a "lesser included offense." In any case in which it is legally possible to attempt to commit a crime, an attempt to commit it constitutes a lesser included offense with respect thereto.

38. "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated.

39. "Petty offense" means a violation or a traffic infraction.

40. "Evidence in chief" means evidence, received at a trial or other criminal proceeding in which a defendant's guilt or innocence of an offense is in issue, which may be considered as a

part of the quantum of substantive proof establishing or tending to establish the commission of such offense or an element thereof or the defendant's connection therewith, as distinguished from non-substantive evidence which may be considered only for its effect in bolstering or impairing the credibility of a witness in the case or for some other limited purpose of a collateral nature.

TITLE B—THE CRIMINAL COURTS

ARTICLE 10—THE CRIMINAL COURTS

Section

10.10 The criminal courts; enumeration and definitions.
10.20 Superior courts; jurisdiction.
10.30 Local criminal courts; jurisdiction.

§ 10.10 The criminal courts; enumeration and definitions

1. The "criminal courts" of this state are comprised of the superior courts and the local criminal courts.

2. "Superior court" means:

(a) The supreme court; or

(b) A county court.

3. "Local criminal court" means:

(a) A district court; or

(b) The New York City criminal court; or

(c) A city court; or

(d) A town court; or

(e) A village court; or

(f) A supreme court justice sitting as a local criminal court; or

(g) A county judge sitting as a local criminal court.

4. "City court" means any court for a city, other than New York City, having trial jurisdiction of offenses of less than felony grade only committed within such city, whether such court is entitled a city court, a municipal court, a police court, a recorder's court or is known by any other name or title.

5. "Town court." A "town court" is comprised of all the town justices of a town.

6. "Village court." A "village court" is comprised of the justice of a village, or all the justices thereof if there be more than one, or, at a time when he or they are absent, an acting justice

of a village who is authorized to perform the functions of a village justice during his absence.

7. Notwithstanding any other provision of this section, a court specified herein which possesses civil as well as criminal jurisdiction does not act as a criminal court when acting solely in the exercise of its civil jurisdiction, and an order or determination made by such a court in its civil capacity is not an order or determination of a criminal court even though it may terminate or otherwise control or affect a criminal action or proceeding.

§ 10.20 Superior courts; jurisdiction

1. A superior court has trial jurisdiction of all offenses. It has:

(a) Exclusive trial jurisdiction of all felonies; and

(b) Trial jurisdiction of all misdemeanors concurrent with that of the local criminal courts; and

(c) Trial jurisdiction of all petty offenses, but only when such an offense is charged in an indictment which also charges a crime.

2. A superior court has preliminary jurisdiction of all offenses, but it exercises such jurisdiction only by reason of and through the agency of its grand juries.

§ 10.30 Local criminal courts; jurisdiction

1. A local criminal court has trial jurisdiction of all offenses other than felonies. It has:

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

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

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

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

TITLE C—GENERAL PRINCIPLES RELATING TO REQUIREMENTS FOR AND EXEMPTIONS FROM CRIMINAL PROSECUTION

ARTICLE 20—GEOGRAPHICAL JURISDICTION OF OFFENSES

Section

20.10 Geographical jurisdiction of offenses; definitions of terms.
20.20 Geographical jurisdiction of offenses; jurisdiction of state.
20.30 Geographical jurisdiction of offenses; effect of laws of other jurisdictions upon this state's jurisdiction.
20.40 Geographical jurisdiction of offenses; jurisdiction of counties.
20.50 Geographical jurisdiction of offenses; jurisdiction of cities, towns and villages.
20.60 Geographical jurisdiction of offenses; communications and transportation of property between jurisdictions.

§ 20.10 Geographical jurisdiction of offenses; definitions of terms

The following definitions are applicable to this article:

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

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

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

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

§ 20.20 Geographical jurisdiction of offenses; jurisdiction of state

Except as otherwise provided in this section and section 20.30, a person may be convicted in the criminal courts of this state

of an offense defined by the laws of this state, committed either by his own conduct or by the conduct of another for which he is legally accountable pursuant to section 20.00 of the penal law, when:

1. Conduct occurred within this state sufficient to establish:

(a) An element of such offense; or

(b) An attempt to commit such offense; or

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

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

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

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

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

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

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

§ 20.30 Geographical jurisdiction of offenses; effect of laws of other jurisdictions upon this state's jurisdiction

1. Notwithstanding the provisions of section 20.20, the courts of this state do not have jurisdiction to prosecute an alleged offense partly committed within this state but consummated in another jurisdiction, or an offense of criminal solicitation, conspiracy or attempt in this state to commit a crime in another

jurisdiction, or an offense of criminal facilitation in this state of a felony committed in another jurisdiction, unless the conduct constituting the consummated offense or, as the case may be, the conduct constituting the crime solicited, conspiratorially contemplated or facilitated, constitutes an offense under the laws of such other jurisdiction as well as under the laws of this state.

2. The courts of this state are not deprived of the jurisdiction accorded them by section 20.20 to prosecute an offense partly committed in another jurisdiction but consummated in this state, or to prosecute an offense of attempt or conspiracy in another jurisdiction to commit a crime in this state, by the circumstance that the conduct constituting the consummated offense or, as the case may be, the crime attempted or conspiratorially contemplated, does not constitute an offense under the laws of such other jurisdiction.

§ 20.40 Geographical jurisdiction of offenses; jurisdiction of counties

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

1. Conduct occurred within such county sufficient to establish:

(a) An element of such offense; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 20.60 Geographical jurisdiction of offenses; communications and transportation of property between jurisdictions

For purposes of this article:

1. An oral or written statement made by a person in one jurisdiction to a person in another jurisdiction by means of telecommunication, mail or any other method of communication is deemed to be made in each such jurisdiction.

2. A person who causes property to be transported from one jurisdiction to another by means of mail, common carrier or any other method is deemed to have personally transported it in each jurisdiction, and if delivery is made in the second jurisdiction he is deemed to have personally made such delivery therein.

ARTICLE 30—TIMELINESS OF PROSECUTIONS AND SPEEDY TRIAL

Section

30.10 Timeliness of prosecutions; periods of limitation.
30.20 Speedy trial.

§ 30.10 Timeliness of prosecutions; periods of limitation

1. A criminal action must be commenced within the period of limitation as prescribed in the ensuing subdivisions of this section.

2. Except as otherwise provided in subdivision three:

(a) A prosecution for a class A felony may be commenced at any time;

(b) A prosecution for any other felony must be commenced within five years after the commission thereof;

(c) A prosecution for a misdemeanor must be commenced within two years after the commission thereof;

(d) A prosecution for a petty offense must be commenced within one year after the commission thereof.

3. Notwithstanding the provisions of subdivision two, the periods of limitation for the commencement of criminal actions may be extended as follows in the indicated circumstances:

(a) A prosecution for larceny committed by a person in violation of a fiduciary duty may be commenced within one year after the facts constituting such offense are discovered or, in the exercise of reasonable diligence, should have been discovered by the aggrieved party or by a person under a legal duty to represent him who is not himself implicated in the commission of the offense.

(b) A prosecution for any offense involving misconduct in public office by a public servant may be commenced at any time during the defendant's service in such office or within five years after the termination of such service; provided however, that in no event shall the period of limitation be extended by more than five years beyond the period otherwise applicable under subdivision two.

4. In calculating the time limitation applicable to commencement of a criminal action, the following periods shall not be included:

(a) Any period following the commission of the offense during which (i) the defendant was continuously outside

this state or (ii) the whereabouts of the defendant were continuously unknown and continuously unascertainable by the exercise of reasonable diligence. However, in no event shall the period of limitation be extended by more than five years beyond the period otherwise applicable under subdivision two.

(b) When a prosecution for an offense is lawfully commenced within the prescribed period of limitation therefor, and when an accusatory instrument upon which such prosecution is based is subsequently dismissed by an authorized court under directions or circumstances permitting the lodging of another charge for the same offense or an offense based on the same conduct, the period extending from the commencement of the thus defeated prosecution to the dismissal of the accusatory instrument does not constitute a part of the period of limitation applicable to commencement of prosecution by a new charge.

§ 30.20 Speedy trial

After a criminal action is commenced, the defendant is entitled to a speedy trial.

ARTICLE 40—EXEMPTION FROM PROSECUTION BY REASON OF PREVIOUS PROSECUTION

Section

40.10 Previous prosecution; definitions of terms.
40.20 Previous prosecution; when a bar to a second prosecution.
40.30 Previous prosecution; what constitutes.
40.40 Separate prosecution of jointly prosecutable offenses; when barred.

§ 40.10 Previous prosecution; definitions of terms

The following definitions are applicable to this article:

1. "Offense." An "offense" is committed whenever any conduct is performed which violates a statutory provision defining an offense; and when the same conduct or criminal transaction violates two or more such statutory provisions each such violation constitutes a separate and distinct offense. The same conduct or criminal transaction also establishes separate and distinct offenses when, though violating only one statutory provision, it results in death, injury, loss or other consequences to two or more victims, and such result is an element of the offense as de-

fined. In such case, as many offenses are committed as there are victims.

2. "Criminal transaction" means conduct which establishes at least one offense, and which is comprised of two or more or a series or groups of acts either (a) so closely related and connected in point of time and circumstance of commission as to constitute a single criminal incident, or (b) so closely related in criminal purpose or objective as to constitute elements or integral parts of a single offense.

§ 40.20 Previous prosecution; when a bar to second prosecution

1. A person may not be twice prosecuted for the same offense.

2. A person may not be separately prosecuted for two offenses based upon the same act or criminal transaction unless:

(a) The offenses as defined have substantially different elements and the acts establishing one offense are in the main clearly distinguishable from those establishing the other; or

(b) Each of the offenses as defined contains an element which is not an element of the other, and the statutory provisions defining such offenses are designed to prevent very different kinds of harm or evil; or

(c) One of such offenses consists of criminal possession of contraband matter and the other offense is one involving the use of such contraband matter, other than a sale thereof; or

(d) One of the offenses is assault or some other offense resulting in physical injury to a person, and the other offense is one of homicide based upon the death of such person from the same physical injury, and such death occurs after a prosecution for the assault or other non-homicide offense; or

(e) Each offense involves death, injury, loss or other consequence to a different victim; or

(f) One of the offenses consists of a violation of a statutory provision of another jurisdiction, which offense has been prosecuted in such other jurisdiction and has there been terminated by a court order expressly founded upon insufficiency of evidence to establish some element of such offense which is not an element of the other offense, defined by the laws of this state.

§ 40.30 Previous prosecution; what constitutes

1. Except as otherwise provided in this section, a person "is prosecuted" for an offense, within the meaning of section 40.20, when he is charged therewith by an accusatory instrument filed in a court of this state or of any jurisdiction within the United States, and when the action either:

(a) Terminates in a conviction upon a plea of guilty; or

(b) Proceeds to the trial stage and a witness is sworn.

2. Despite the occurrence of proceedings specified in subdivision one, a person is not deemed to have been prosecuted for an offense, within the meaning of section 40.20, when:

(a) Such prosecution occurred in a court which lacked jurisdiction over the defendant or the offense; or

(b) Such prosecution was for a lesser offense than could have been charged under the facts of the case, and the prosecution was procured by the defendant, without the knowledge of the appropriate prosecutor, for the purpose of avoiding prosecution for a greater offense.

3. Despite the occurrence of proceedings specified in subdivision one, if such proceedings are subsequently nullified by a court order which restores the action to its pre-pleading status or which directs a new trial of the same accusatory instrument, the nullified proceedings do not bar further prosecution of such offense under the same accusatory instrument.

4. Despite the occurrence of proceedings specified in subdivision one, if such proceedings are subsequently nullified by a court order which dismisses the accusatory instrument but authorizes the people to obtain a new accusatory instrument charging the same offense or an offense based upon the same conduct, the nullified proceedings do not bar further prosecution of such offense under any new accusatory instrument obtained pursuant to such court order or authorization.

§ 40.40 Separate prosecution of jointly prosecutable offenses; when barred

1. Where two or more offenses are joinable in a single accusatory instrument against a person by reason of being based upon the same criminal transaction, pursuant to paragraph (a) of subdivision two of section 200.20, such person may not, under circumstances prescribed in this section, be separately prosecuted for such offenses even though such separate prosecutions are not otherwise barred by any other provision of this article.

2. When (a) one of two or more joinable offenses of the kind specified in subdivision one is charged in an accusatory instrument, and (b) another is not charged therein, or in any other accusatory instrument filed in the same court, despite possession by the people of evidence legally sufficient to support a conviction of the defendant for such uncharged offense, and (c) either a trial of the existing accusatory instrument is commenced or the action thereon is disposed of by a plea of guilty, any subsequent prosecution for the uncharged offense is thereby barred.

3. When (a) two or more of such offenses are charged in separate accusatory instruments filed in the same court, and (b) an application by the defendant for consolidation thereof for trial purposes, pursuant to subdivision five of section 200.20 or section 100.45, is improperly denied, the commencement of a trial of one such accusatory instrument bars any subsequent prosecution upon any of the other accusatory instruments with respect to any such offense.

ARTICLE 50—COMPULSION OF EVIDENCE BY OFFER OF IMMUNITY

Section

50.10 Compulsion of evidence by offer of immunity; definitions of terms.
50.20 Compulsion of evidence by offer of immunity.
50.30 Authority to confer immunity in criminal proceedings; court a competent authority.

§ 50.10 Compulsion of evidence by offer of immunity; definitions of terms

The following definitions are applicable to this article:

1. "Immunity." A person has "immunity" when, by reason of having given evidence in a legal proceeding, (a) he cannot be prosecuted for any offense or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he gave evidence, and (b) neither such evidence nor any other evidence discovered as a result of the information contained therein may be received against him in any criminal proceeding. Notwithstanding the foregoing, a person who has immunity is not exempt from prosecution for or conviction of perjury based upon false testimony given by him in the legal proceeding in question, or from prosecution for or conviction of contempt based upon contumacious refusal to give evidence

therein, and any evidence given by him in such a proceeding is admissible upon such a prosecution for perjury or contempt.

2. "Legal proceeding" means a proceeding in or before any court or grand jury, or before any body, agency or person authorized by law to conduct the same and to administer the oath or to cause it to be administered.

3. "Give evidence" means to testify or produce physical evidence.

§ 50.20 Compulsion of evidence by offer of immunity

1. Any witness in a legal proceeding, other than a grand jury proceeding, may refuse to give evidence requested of him on the ground that it may tend to incriminate him and he may not, except as provided in subdivision two, be compelled to give such evidence.

2. Such a witness may be compelled to give evidence in such a proceeding notwithstanding an assertion of his privilege against self-incrimination if:

(a) The proceeding is one in which, by express provision of statute, a person conducting or connected therewith is declared a competent authority to confer immunity upon witnesses therein; and

(b) Such competent authority (i) orders such witness to give the requested evidence notwithstanding his assertion of his privilege against self-incrimination, and (ii) advises him that upon so doing he will receive immunity.

3. A witness who is ordered to give evidence pursuant to the provisions of subdivision two and who complies with such order receives immunity. Such witness is not deprived of such immunity because such competent authority did not comply with statutory provisions requiring notice to a specified public servant of intention to confer immunity.

4. A witness who, without asserting his privilege against self-incrimination, gives evidence in a legal proceeding other than a grand jury proceeding does not receive immunity.

5. The rules governing the circumstances in which witnesses may be compelled to give evidence and in which they receive immunity therefor in a grand jury proceeding are prescribed in section 190.40.

§ 50.30 Authority to confer immunity in criminal proceedings; court a competent authority

In any criminal proceeding, other than a grand jury proceeding, the court is a competent authority to confer immunity in accordance with the provisions of section 50.20, but only when expressly requested by the district attorney to do so.

TITLE D—RULES OF EVIDENCE, STANDARDS OF PROOF AND RELATED MATTERS

ARTICLE 60—RULES OF EVIDENCE AND RELATED MATTERS

Section

60.10 Rules of evidence; in general.
60.15 Rules of evidence; what witnesses may be called.
60.20 Rules of evidence; evidence given by children.
60.25 Rules of evidence; identification by means of previous recognition, in absence of present identification.
60.30 Rules of evidence; identification by means of previous recognition, in addition to present identification.
60.35 Rules of evidence; impeachment of own witness by proof of prior contradictory statement.
60.40 Rules of evidence; proof of previous conviction; when allowed.
60.45 Rules of evidence; admissibility of statements of defendants.
60.50 Rules of evidence; statements of defendants; corroboration.
60.55 Rules of evidence; psychiatric testimony in certain cases.
60.60 Rules of evidence; certificates concerning judgments of conviction and fingerprints.

§ 60.10 Rules of evidence; in general

Unless otherwise provided by statute or by judicially established rules of evidence applicable to criminal cases, the rules of evidence applicable to civil cases are, where appropriate, also applicable to criminal proceedings.

§ 60.15 Rules of evidence; what witnesses may be called

1. Unless otherwise expressly provided, in any criminal proceeding involving a defendant in which evidence is or may be received, both the people and the defendant may as a matter of right call and examine witnesses, and each party may cross-examine every witness called by the other party.

2. A defendant may testify in his own behalf, but his failure to do so is not a factor from which any inference unfavorable to him may be drawn.

§ 60.20 Rules of evidence; evidence given by children

1. Any person may be a witness in a criminal proceeding unless the court finds that, by reason of infancy or mental disease or defect, he does not possess sufficient intelligence or capacity to justify the reception of his evidence.

2. Every witness more than twelve years old may testify only under oath. A child less than twelve years old may not testify under oath, but the court may permit him to give unsworn evidence if it is satisfied that he possesses sufficient intelligence and capacity to justify the reception thereof.

3. A defendant may not be convicted of an offense upon the unsworn evidence of a child or children less than twelve years old, given pursuant to subdivision two, unsupported by corroborative evidence tending to (a) demonstrate that the offense on trial was in fact committed and (b) connect the defendant with the commission of such offense.

§ 60.25 Rules of evidence; identification by means of previous recognition, in absence of present identification

1. In any criminal proceeding in which the defendant's commission of an offense is in issue, testimony as provided in subdivision two may be given by a witness when:

(a) Such witness testifies that:

(i) He observed the person claimed by the people to be the defendant either at the time and place of the commission of the offense or upon some other occasion relevant to the case; and

(ii) On a subsequent occasion, but prior to the criminal proceeding, he observed, under circumstances consistent with such rights as an accused person may derive under the constitution of this state or of the United States, a person whom he recognized as the same person whom he had observed on the first or incriminating occasion; and

(iii) He is unable at the proceeding to state, on the basis of present recollection, whether or not the defendant is the person in question; and

(b) It is established that the defendant is in fact the person whom the witness observed and recognized on the second occasion. Such fact may be established by testimony of another person or persons to whom the witness promptly declared his recognition on such occasion.

2. Under circumstances prescribed in subdivision one, such witness may testify at the criminal proceeding that the person whom he observed and recognized on the second occasion is the same person whom he observed on the first or incriminating occasion. Such testimony, together with the evidence that the defendant is in fact the person whom the witness observed and recognized on the second occasion, constitutes evidence in chief.

§ 60.30 Rules of evidence; identification by means of previous recognition, in addition to present identification

In any criminal proceeding in which the defendant's commission of an offense is in issue, a witness who testifies that (a) he observed the person claimed by the people to be the defendant either at the time and place of the commission of the offense or upon some other occasion relevant to the case, and (b) on the basis of present recollection, the defendant is the person in question and (c) on a subsequent occasion but prior to the criminal proceeding, he observed the defendant, under circumstances consistent with such rights as an accused person may derive under the constitution of this state or of the United States, and then also recognized him as the same person whom he had observed on the first or incriminating occasion, may, in addition to making an identification of the defendant at the criminal proceeding on the basis of present recollection as the person whom he observed on the first or incriminating occasion, also describe his previous recognition of the defendant and testify that the person whom he observed on such second occasion is the same person whom he had observed on the first or incriminating occasion. Such testimony constitutes evidence in chief.

§ 60.35 Rules of evidence; impeachment of own witness by proof of prior contradictory statement

1. When, upon examination by the party who called him, a witness in a criminal proceeding gives testimony upon a material issue of the case which tends to disprove the position of such party, such party may introduce evidence that such witness has previously made either a written statement signed by him or an oral statement under oath contradictory to such testimony.

2. Evidence concerning a prior contradictory statement introduced pursuant to subdivision one may be received only for the purpose of impeaching the credibility of the witness with respect to his testimony upon the subject, and does not constitute evidence in chief. Upon receiving such evidence at a jury trial, the court must so instruct the jury.

3. When a witness has made a prior signed or sworn statement contradictory to his testimony in a criminal proceeding upon a material issue of the case, but his testimony does not tend to disprove the position of the party who called him and elicited such testimony, evidence that the witness made such prior statement is not admissible, and such party may not use such prior statement for the purpose of refreshing the recollection of the witness in a manner that discloses its contents to the trier of the facts.

§ 60.40 Rules of evidence; proof of previous conviction; when allowed

1. If in the course of a criminal proceeding, any witness, including a defendant, is properly asked whether he was previously convicted of a specified offense and answers in the negative or in an equivocal manner, the party adverse to the one who called him may independently prove such conviction. If in response to proper inquiry whether he has ever been convicted of any offense the witness answers in the negative or in an equivocal manner, the adverse party may independently prove any previous conviction of the witness.

2. If a defendant in a criminal proceeding, through the testimony of a witness called by him, offers evidence of his good character, the people may independently prove any previous conviction of the defendant for an offense the commission of which would tend to negate any character trait or quality attributed to the defendant in such witness' testimony.

3. Subject to the limitations prescribed in section 200.60, the people may prove that a defendant has been previously convicted of an offense when the fact of such previous conviction constitutes an element of the offense charged, or proof thereof is otherwise essential to the establishment of a legally sufficient case.

§ 60.45 Rules of evidence; admissibility of statements of defendants

1. Evidence of a written or oral confession, admission, or other statement made by a defendant with respect to his participation or lack of participation in the offense charged, may not be

received in evidence against him in a criminal proceeding if such statement was involuntarily made.

2. A confession, admission or other statement is "involuntarily made" by a defendant when it is obtained from him:

(a) By any person by the use or threatened use of physical force upon the defendant or another person, or by means of any other improper conduct or undue pressure which impaired the defendant's physical or mental condition to the extent of undermining his ability to make a choice whether or not to make a statement; or

(b) By a public servant engaged in law enforcement activity or by a person acting under his direction or in cooperation with him:

(i) by means of any promise or statement of fact, which promise or statement creates a substantial risk that the defendant might falsely incriminate himself; or

(ii) in violation of such rights as the defendant may derive from the constitution of this state or of the United States.

§ 60.50 Rules of evidence; statements of defendants; corroboration

A person may not be convicted of any offense solely upon evidence of a confession or admission made by him without additional proof that the offense charged has been committed.

§ 60.55 Rules of evidence; psychiatric testimony in certain cases

When, in connection with a defense of mental disease or defect, a psychiatrist who has examined the defendant testifies at a trial concerning the defendant's mental condition at the time of the conduct charged to constitute a crime, he must be permitted to make a statement as to the nature of the examination, the diagnosis of the mental condition of the defendant and his opinion as to the extent, if any, to which the capacity of the defendant to know or appreciate the nature and consequence of such conduct, or its wrongfulness, was impaired as a result of mental disease or defect at that time. The psychiatrist must be permitted to make any explanation reasonably serving to clarify his diagnosis and opinion, and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion.

§ 60.60 Rules of evidence; certificates concerning judgments of conviction and fingerprints

1. A certificate issued by a criminal court, or the clerk thereof, certifying that a judgment of conviction against a designated defendant has been entered in such court, constitutes presumptive evidence of the facts stated in such certificate.

2. A report of a public servant charged with the custody of official fingerprint records which contains a certification that the fingerprints of a designated person who has previously been convicted of an offense are identical with those of a defendant in a criminal action, constitutes presumptive evidence of the fact that such defendant has previously been convicted of such offense.

ARTICLE 70—STANDARDS OF PROOF

Section

70.10 Standards of proof; definitions of terms.
70.20 Standards of proof for conviction.

§ 70.10 Standards of proof; definitions of terms

The following definitions are applicable to this chapter:

1. "Legally sufficient evidence" means competent evidence which, if accepted as true, would establish every element of an offense charged and the defendant's commission thereof; except that such evidence is not legally sufficient when corroboration required by law is absent.

2. "Reasonable cause to believe that a person has committed an offense" exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it. Such apparently reliable evidence may include or consist of hearsay.

§ 70.20 Standards of proof for conviction

No conviction of an offense by verdict is valid unless based upon trial evidence which is legally sufficient and which establishes beyond a reasonable doubt every element of such offense and the defendant's commission thereof.

PART TWO—THE PRINCIPAL PROCEEDINGS

TITLE H—PRELIMINARY PROCEEDINGS IN LOCAL CRIMINAL COURT

ARTICLE 100—COMMENCEMENT OF ACTION IN LOCAL CRIMINAL COURT—LOCAL CRIMINAL COURT ACCUSATORY INSTRUMENTS

Section

100.05 Commencement of action; in general.

100.10 Local criminal court accusatory instruments; definitions thereof.

100.15 Information, misdemeanor complaint and felony complaint; form and content.

100.20 Supporting deposition; definition, form and content.

100.25 Simplified traffic information; form and content; defendant's right to supporting deposition.

100.30 Information, misdemeanor complaint, felony complaint and supporting deposition; verification.

100.35 Prosecutor's information; form and content.

100.40 Local criminal court accusatory instruments; sufficiency on face.

100.45 Information, prosecutor's information, misdemeanor complaint; severance, consolidation, amendment, bill of particulars.

100.50 Superseding informations and prosecutor's informations.

100.55 Local criminal court accusatory instruments; in what courts filed.

§ 100.05 Commencement of action; in general

A criminal action is commenced by the filing of an accusatory instrument with a criminal court, and if more than one such instrument is filed in the course of the same criminal action, such action commences when the first of such instruments is filed. The only way in which a criminal action can be commenced in a superior court is by the filing therewith by a grand jury of an indictment against a defendant who has never been held by a local criminal court for the action of such grand jury with respect to any charge contained in such indictment. Otherwise, a criminal action can be commenced only in a local criminal court, by the filing therewith of a local criminal court accusatory instrument, namely:

1. An information; or

2. A simplified traffic information; or
3. A prosecutor's information; or
4. A misdemeanor complaint; or
5. A felony complaint.

§ 100.10 Local criminal court accusatory instruments; definitions thereof

1. An "information" is a verified written accusation by a person, filed with a local criminal court, charging one or more other persons with the commission of one or more offenses, none of which is a felony. It may serve as a basis both for the commencement of a criminal action and for the prosecution thereof in a local criminal court.

2. A "simplified traffic information" is a written accusation by a police officer, filed with a local criminal court, which charges a person with the commission of one or more traffic infractions or misdemeanors relating to traffic, and which, being in a brief or simplified form prescribed by the commissioner of motor vehicles, designates the offense or offenses charged but contains no factual allegations of an evidentiary nature supporting such charge or charges. It serves as a basis for commencement of a criminal action for such traffic offenses, alternative to the charging thereof by a regular information, and, under circumstances prescribed in section 100.25, it may serve, either in whole or in part, as a basis for prosecution of such charges.

3. A "prosecutor's information" is a written accusation by a district attorney, filed with a local criminal court, either (a) at the direction of a grand jury pursuant to section 190.70, or (b) at the direction of a local criminal court pursuant to section 180.50 or 180.70, or (c) at the district attorney's own instance pursuant to subdivision two of section 100.50, charging one or more persons with the commission of one or more offenses, none of which is a felony. It serves as a basis for the prosecution of a criminal action, but it commences a criminal action only where it results from a grand jury direction issued in a case not previously commenced in a local criminal court.

4. A "misdemeanor complaint" is a verified written accusation by a person, filed with a local criminal court, charging one or more other persons with the commission of one or more offenses, at least one of which is a misdemeanor and none of which is a felony. It serves as a basis for the commencement of a criminal action, but it may serve as a basis for prosecution thereof

only where a defendant has waived prosecution by information pursuant to subdivision three of section 170.65.

5. A "felony complaint" is a verified written accusation by a person, filed with a local criminal court, charging one or more other persons with the commission of one or more felonies. It serves as a basis for the commencement of a criminal action, but not as a basis for prosecution thereof.

§ 100.15 Information, misdemeanor complaint and felony complaint; form and content

1. An information, a misdemeanor complaint and a felony complaint must each specify the name of the court with which it is filed and the title of the action, and must be subscribed and verified by a person known as the "complainant." The complainant may be any person having knowledge, whether personal or upon information and belief, of the commission, and the manner thereof, of the offense or offenses charged. Each instrument must contain an accusatory part and a factual part. The complainant's verification of the instrument is deemed to apply only to the factual part thereof and not to the accusatory part.

2. The accusatory part of each such instrument must designate the offense or offenses charged. As in the case of an indictment, and subject to the rules of joinder applicable to indictments, two or more offenses may be charged in separate counts. Also as in the case of an indictment, such instrument may charge two or more defendants provided that all such defendants are jointly charged with every offense alleged therein.

3. The factual part of such instrument must contain a statement of the complainant alleging facts of an evidentiary character supporting or tending to support the offense or offenses charged. Where more than one offense is charged, the factual part may consist of a single factual account applicable to all the counts of the accusatory part. The factual allegations may be based either upon personal knowledge of the complainant or upon information and belief. Nothing contained in this section, however, limits or affects the requirement, prescribed in subdivision one of section 100.40, that in order for an information or a count thereof to be sufficient on its face, every element of the offense charged and the defendant's commission thereof must be supported by non-hearsay allegations of such information and/or any supporting depositions.

§ 100.20 Supporting deposition; definition, form and content

A supporting deposition is a written instrument accompanying or filed in connection with an information, a simplified traffic information, a misdemeanor complaint or a felony complaint, subscribed and verified by a person having a familiarity with the offense or offenses charged in such accusatory instrument, and containing factual allegations of an evidentiary character, based either upon personal knowledge or upon information and belief, which support or tend to support such charge or charges.

§ 100.25 Simplified traffic information; form and content; defendant's right to supporting deposition

1. A simplified traffic information must be substantially in the form prescribed by the commissioner or motor vehicles pursuant to section two hundred seven of the vehicle and traffic law.

2. A defendant arraigned upon a simplified traffic information is, upon a request made before entry of a plea of guilty thereto or commencement of a trial thereof, entitled as a matter of right to have filed with the court and served upon him a supporting deposition of the police officer complainant, containing allegations of fact, based either upon personal knowledge or upon information and belief, providing reasonable cause to believe that the defendant committed the offense or offenses charged. Upon such a request, the court must order the police officer complainant to file such a supporting deposition with the court and to serve a copy thereof upon the defendant.

§ 100.30 Information, misdemeanor complaint, felony complaint and supporting deposition; verification

1. An information, a misdemeanor complaint, a felony complaint and a supporting deposition may be verified in any of the following manners:

(a) Such instrument may be sworn to before the court with which it is filed.

(b) Such instrument may be sworn to before a desk officer in charge at a police station or police headquarters or any of his superior officers.

(c) Where such instrument is filed by a public servant, other than a police officer, following the issuance and service of an appearance ticket, and whereby express provision

of law another designated public servant is authorized to administer the oath with respect to such instrument, it may be sworn to before such public servant.

(d) Such instrument may bear a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law, and such form notice together with the subscription of the deponent constitute a verification of the instrument.

2. An instrument specified in subdivision one may be verified in any manner prescribed therein unless in a particular case the court expressly directs verification in a particular manner prescribed in said subdivision one.

§ 100.35 Prosecutor's information; form and content

A prosecutor's information must contain the name of the local criminal court with which it is filed and the title of the action, and must be subscribed by the district attorney by whom it is filed. Otherwise it should be in the form prescribed for an indictment, pursuant to section 200.50, and must, in one or more counts, allege the offense or offenses charged and a plain and concise statement of the conduct constituting each such offense. The rules prescribed in sections 200.20 and 200.40 governing joinder of different offenses and defendants in a single indictment are also applicable to a prosecutor's information.

§ 100.40 Local criminal court accusatory instruments; sufficiency on face

1. An information, or a count thereof, is sufficient on its face when:

(a) It substantially conforms to the requirements prescribed in section 100.15; and

(b) The allegations of the factual part of the information, together with those of any supporting depositions which may accompany it, provide reasonable cause to believe that the defendant committed the offense charged in the accusatory part of the information; and

(c) Non-hearsay allegations of the factual part of the information and/or of any supporting depositions establish, if true, every element of the offense charged and the defendant's commission thereof.

2. A simplified traffic information is sufficient on its face when, as provided by subdivision one of section 100.25, it substantially conforms to the requirements therefor prescribed by

the commissioner of motor vehicles; provided that when the filing of a supporting deposition is ordered by the court pursuant to subdivision two of said section 100.25, a failure of the police officer complainant to comply with such order renders the simplified traffic information insufficient on its face.

3. A prosecutor's information, or a count thereof, is sufficient on its face when it substantially conforms to the requirements prescribed in section 100.35.

4. A misdemeanor complaint or a felony complaint, or a count thereof, is sufficient on its face when:

(a) It substantially conforms to the requirements prescribed in section 100.15; and

(b) The allegations of the factual part of such accusatory instrument, together with those of any supporting depositions which may accompany it, provide reasonable cause to believe that the defendant committed the offense charged in the accusatory part of such instrument.

§ 100.45 Information, prosecutor's information, misdemeanor complaint; severance, consolidation, amendment, bill of particulars

1. The provisions of sections 200.20 and 200.40, governing severance of counts of an indictment and severance of defendants for trial purposes, and governing consolidation of indictments for trial purposes, apply to informations, to prosecutor's informations and to misdemeanor complaints.

2. The provisions of section 200.70 governing amendment of indictments apply to informations, prosecutor's informations and misdemeanor complaints. An information may also be amended in the manner provided in subdivision three of this section.

3. At any time before the entry of a plea of guilty to or the commencement of a trial of an information, the court may, upon application of the people and with notice to the defendant and opportunity to be heard, order the amendment of the accusatory part of such information by addition of a count charging an offense supported by the allegations of the factual part of such information and/or any supporting depositions which may accompany it. In such case, the defendant must be accorded any reasonable adjournment necessitated by the amendment.

4. The provisions of section 200.90, governing motions and orders for bills of particulars with respect to indictments, apply to informations, to misdemeanor complaints and to prosecutor's informations.

§ 100.50 Superseding informations and prosecutor's informations

1. If at any time before entry of a plea of guilty to or commencement of a trial or an information or a prosecutor's information another information or, as the case may be, another prosecutor's information, is filed with the same local criminal court charging the defendant with an offense charged in the first instrument, the first such instrument is, with respect to such offense, superseded by the second and, upon the defendant's arraignment upon the latter, the count of the first instrument charging such offense must be dismissed by the court. The first instrument is not, however, superseded with respect to any count contained therein which charges an offense not charged in the second instrument.

2. At any time before entry of a plea of guilty to or commencement of a trial of an information, the district attorney may file with the local criminal court a prosecutor's information charging any offenses supported, pursuant to the standards prescribed in subdivision one of section 100.40, by the allegations of the factual part of the original information and/or any supporting depositions which may accompany it. In such case, the original information is superseded by the prosecutor's information and, upon the defendant's arraignment upon the latter, is deemed dismissed.

3. A misdemeanor complaint must or may be replaced and superseded by an information pursuant to the provisions of section 170.65.

§ 100.55 Local criminal court accusatory instruments; in what courts filed

1. Any local criminal court accusatory instrument may be filed with a district court of a particular county when an offense charged therein was allegedly committed in such county or that part thereof over which such court has jurisdiction.

2. Any local criminal court accusatory instrument may be filed with the New York City criminal court when an offense charged therein was allegedly committed in New York City.

3. Any local criminal court accusatory instrument may be filed with a city court of a particular city when an offense charged therein was allegedly committed in such city.

4. An information, a simplified traffic information, a prosecutor's information or a misdemeanor complaint may be filed

with a town court of a particular town when an offense charged therein was allegedly committed anywhere in such town other than in a village thereof having a village court.

5. An information, a simplified traffic information, a prosecutor's information or a misdemeanor complaint may be filed with a village court of a particular village when an offense charged therein was allegedly committed in such village.

6. A felony complaint may be filed with any town court or village court of a particular county when a felony charged therein was allegedly committed in some town of such county. Such court need not be that of the town or village in which such felony was allegedly committed.

7. An information, a simplified traffic information, a misdemeanor complaint or a felony complaint may be filed with a judge of a superior court sitting as a local criminal court when an offense charged therein was allegedly committed in a county in which such judge is then present and in which he either resides or is currently holding, or has been assigned to hold, a term of a superior court.

8. Where it is otherwise expressly provided by law that a particular kind of accusatory instrument may under given circumstances be filed with a local criminal court other than one authorized by this section, nothing contained in this section precludes the filing of such accusatory instrument accordingly.

9. In any case where each of two or more local criminal courts is authorized as a proper court with which to file an accusatory instrument, such an instrument may, in the absence of an express provision of law to the contrary, be filed with any one of such courts but not with more than one.

10. For purposes of this section, an offense is "committed in" a particular county, city, town, village or other specified political subdivision or area, not only when it is in fact committed therein but also when it is, for other reasons specified in sections 20.40 and 20.50, prosecutable in the criminal courts having geographical jurisdiction over such political subdivision or area.

ARTICLE 110—REQUIRING DEFENDANT'S APPEARANCE IN LOCAL CRIMINAL COURT FOR ARRAIGNMENT

Section

110.10 Methods of requiring defendant's appearance in local criminal court for arraignment; in general.

§ 110.10 Methods of requiring defendant's appearance in local criminal court for arraignment; in general

1. After a criminal action has been commenced in a local criminal court by the filing of an accusatory instrument therewith, a defendant who has not been arraigned in the action and has not come under the control of the court may under certain circumstances be compelled or required to appear for arraignment upon such accusatory instrument by:

(a) The issuance and execution of a warrant of arrest, as provided in article one hundred twenty; or

(b) The issuance and service upon him of a summons, as provided in article one hundred thirty; or

(c) Procedures provided in articles five hundred sixty, five hundred seventy, five hundred eighty, five hundred ninety and six hundred for securing attendance of defendants in criminal actions who are not at liberty within the state.

2. Although no criminal action against a person has been commenced in any court, he may under certain circumstances be compelled or required to appear in a local criminal court for arraignment upon an accusatory instrument to be filed therewith at or before the time of his appearance by:

(a) An arrest made without a warrant, as provided in article one hundred forty; or

(b) The issuance and service upon him of an appearance ticket, as provided in article one hundred fifty.

ARTICLE 120—WARRANT OF ARREST

Section

120.10 Warrant of arrest; definition, function, form and content.
120.20 Warrant of arrest; when issuable.
120.30 Warrant of arrest; by what courts issuable and in what courts returnable.
120.40 Warrant of arrest; attaching accusatory instrument to warrant of town court or village court.
120.50 Warrant of arrest; to what police officers addressed.
120.60 Warrant of arrest; what police officers may execute.
120.70 Warrant of arrest; where executable.
120.80 Warrant of arrest; when and how executed.
120.90 Warrant of arrest; procedure after arrest.

§ 120.10 Warrant of arrest; definition, function, form and content

1. A warrant of arrest is a process issued by a local criminal court directing a police officer to arrest a defendant designated in an accusatory instrument filed with such court and to bring him before such court in connection with such instrument. The sole function of a warrant of arrest is to achieve a defendant's court appearance in a criminal action for the purpose of arraignment upon the accusatory instrument by which such action was commenced.

2. A warrant of arrest must be subscribed by the issuing judge and must state or contain (a) the name of the issuing court, and (b) the date of issuance of the warrant, and (c) the name or title of an offense charged in the underlying accusatory instrument, and (d) the name of the defendant to be arrested or, if such be unknown, any name or description by which he can be identified with reasonable certainty, and (e) the police officer or officers to whom the warrant is addressed, and (f) a direction that such police officer arrest the defendant and bring him before the issuing court.

3. A warrant of arrest may be addressed to a classification of police officers, or to two or more classifications thereof, as well as to a designated individual police officer or officers. Multiple copies of such a warrant may be issued.

§ 120.20 Warrant of arrest; when issuable

1. When a criminal action has been commenced in a local criminal court by the filing therewith of an accusatory instrument, other than a simplified traffic information, against a de-

fendant who has not been arraigned upon such accusatory instrument and has not come under the control of the court with respect thereto, such court may, if such accusatory instrument is sufficient on its face, issue a warrant for such defendant's arrest.

2. Even though such accusatory instrument is sufficient on its face, the court may refuse to issue a warrant of arrest based thereon until it has further satisfied itself, by inquiry or examination of witnesses, that there is reasonable cause to believe that the defendant committed the offense charged. Upon such inquiry or examination, the court may examine, under oath or otherwise, any available person whom it believes may possess knowledge concerning the subject matter of the charge.

3. Notwithstanding the provisions of subdivision one, if a summons may be issued in lieu of a warrant of arrest pursuant to section 130.20, and if the court is satisfied that the defendant will respond thereto, it may not issue a warrant of arrest.

§ 120.30 Warrant of arrest; by what courts issuable and in what courts returnable

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

2. The particular local criminal court or courts with which any particular local criminal court accusatory instrument may be filed for the purpose of obtaining a warrant of arrest are determined, generally, by the provisions of section 100.55. If, however, a particular town court is the only one with which a particular accusatory instrument may be filed pursuant to said section 100.55, and if such town court is not available at the time such instrument is sought to be filed and a warrant obtained, such accusatory instrument may be filed with the town court of any adjoining town of the same county. If a particular village court is the only one with which a particular accusatory instrument may be filed pursuant to said section 100.55 and such village court is not available at the time, such accusatory instrument may be filed with the town court of the town embracing such village, or if such town court is not available either, with the town court of any adjoining town of the same county.

§ 120.40 Warrant of arrest; attaching accusatory instrument to warrant of town court, or village court

A town court or a village court which issues a warrant of arrest may attach thereto a duplicate copy of the underlying accusatory instrument. If one or more duplicate copies of the warrant are issued, such court may attach as many copies of such accusatory instrument to copies of such warrant as it chooses. In any case where, pursuant to subdivision three of section 120.90, a defendant arrested upon such a warrant of arrest is brought before a local criminal court other than the town court or village court in which the warrant is returnable, a copy of the accusatory instrument constitutes a valid basis for arraignment, as provided in subdivision two of section 170.15.

§ 120.50 Warrant of arrest; to what police officers addressed

A warrant of arrest may be addressed to any police officer or classification of police officers whose geographical area of employment embraces either the place where the offense charged was allegedly committed or the locality of the court by which the warrant is issued.

§ 120.60 Warrant of arrest; what police officers may execute

1. A warrant of arrest may be executed by (a) any police officer to whom it is addressed, or (b) any other police officer delegated to execute it under circumstances prescribed in subdivisions two and three.

2. A police officer to whom a warrant of arrest is addressed may delegate another police officer to whom it is not addressed to execute such warrant as his agent when:

(a) He has reasonable cause to believe that the defendant is in a particular county other than the one in which the warrant is returnable; and

(b) The warrant is, pursuant to section 120.70, executable in such other county without indorsement by a local criminal court thereof; and

(c) The geographical area of employment of the delegated police officer embraces the locality where the arrest is to be made.

3. Under circumstances specified in subdivision two, the police officer to whom the warrant is addressed may inform the

delegated police officer, by telecommunication, mail or any other means, of the issuance of the warrant, of the offense charged in the underlying accusatory instrument and of all other pertinent details, and may request him to act as his agent in arresting the defendant pursuant to such warrant. Upon such request, the delegated police officer is to the same extent as the delegating police officer, authorized to make such arrest pursuant to the warrant within the geographical area of such delegated officer's employment. Upon so arresting the defendant, he must proceed as provided in subdivisions two and four of section 120.90.

§ 120.70 Warrant of arrest; where executable

1. A warrant of arrest issued by a district court, by the New York City criminal court or by a superior court judge sitting as a local criminal court may be executed anywhere in the state.

2. A warrant of arrest issued by a city court, a town court or a village court may be executed:

(a) In the county of issuance or in any adjoining county; or

(b) Anywhere else in the state upon the written endorsement thereon of a local criminal court of the county in which the arrest is to be made. When so endorsed, the warrant is deemed the process of the endorsing court as well as that of the issuing court.

§ 120.80 Warrant of arrest; when and how executed

1. A warrant of arrest may be executed on any day of the week and at any hour of the day or night.

2. Unless encountering physical resistance, flight or other factors rendering normal procedure impractical, the arresting police officer must inform the defendant that a warrant for his arrest for the offense designated therein has been issued. Upon request of the defendant, the police officer must show him the warrant if he has it in his possession. The officer need not have the warrant in his possession, and, if he has not, he must show it to the defendant upon request as soon after the arrest as possible.

3. In order to effect the arrest, the police officer may use such physical force as is justifiable pursuant to section 35.30 of the penal law.

4. In order to effect the arrest, the police officer may, under circumstances and in a manner prescribed in this subdivision,

enter any premises in which he reasonably believes the defendant to be present. Before such entry, he must give, or make reasonable effort to give, notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that the giving of such notice will:

(a) Result in the defendant escaping or attempting to escape; or

(b) Endanger the life or safety of the officer or another person; or

(c) Result in the destruction, damaging or secretion of material evidence.

5. If the officer is authorized to enter premises without giving notice of his authority and purpose, or if after giving such notice he is not admitted, he may enter such premises, and by a breaking if necessary.

§ 120.90 Warrant of arrest; procedure after arrest

1. Upon arresting a defendant for any offense pursuant to a warrant of arrest in the county in which the warrant is returnable or in any adjoining county, or upon so arresting him for a felony in any other county, a police officer, if he be one to whom the warrant is addressed, must without unnecessary delay bring the defendant before the local criminal court in which such warrant is returnable.

2. Upon arresting a defendant for any offense pursuant to a warrant of arrest in a county adjoining the county in which the warrant is returnable, or upon so arresting him for a felony in any other county, a police officer, if he be one delegated to execute the warrant pursuant to section 120.60, must without unnecessary delay deliver the defendant or cause him to be delivered to the custody of the police officer by whom he was so delegated, and the latter must then proceed as provided in subdivision one.

3. Upon arresting a defendant for an offense other than a felony pursuant to a warrant of arrest in a county other than the one in which the warrant is returnable or one adjoining it, a police officer, if he be one to whom the warrant is addressed, must inform the defendant that he has a right to appear before a local criminal court of the county of arrest for the purpose of being released on his own recognizance or having bail fixed. If the defendant does not desire to avail himself of such right, the police officer must request him to endorse such fact upon the warrant, and upon such endorsement the police officer must with-

out unnecessary delay bring him before the court in which the warrant is returnable. If the defendant does desire to avail himself of such right, or if he refuses to make the aforementioned endorsement, the police officer must without unnecessary delay bring him before a local criminal court of the county of arrest. Such court must release the defendant on his own recognizance or fix bail for his appearance on a specified date in the court in which the warrant is returnable. If the defendant is in default of bail, the police officer must without unnecessary delay bring him before the court in which the warrant is returnable.

4. Upon arresting a defendant for an offense other than a felony pursuant to a warrant of arrest in a county other than the one in which the warrant is returnable or one adjoining it, a police officer, if he be one delegated to execute the warrant pursuant to section 120.60, may hold the defendant in custody in the county of arrest for a period not exceeding two hours for the purpose of delivering him to the custody of the police officer by whom he was delegated to execute such warrant. If the delegating police officer receives custody of the defendant during such period, he must proceed as provided in subdivision three. Otherwise, the delegated police officer must inform the defendant that he has a right to appear before a local criminal court for the purpose of being released on his own recognizance or having bail fixed. If the defendant does not desire to avail himself of such right, the officer must request him to make, sign and deliver to him a written statement of such fact, and if the defendant does so, the officer must retain custody of him but must without unnecessary delay deliver him or cause him to be delivered to the custody of the delegating police officer. If the defendant does desire to avail himself of such right, or if he refuses to make and deliver the aforementioned statement, the delegated or arresting police officer must without unnecessary delay bring him before a local criminal court of the county of arrest and must submit to such court a written statement reciting the material facts concerning the issuance of the warrant, the offense involved, and all other essential matters relating thereto. Upon the submission of such statement, such court must release the defendant on his own recognizance or fix bail for his appearance on a specified date in the court in which the warrant is returnable. If the defendant is in default of bail, the police officer must retain custody of him but must without unnecessary delay deliver him or cause him to be delivered to the custody of the delegating police officer. Upon receiving such custody, the latter must without unnecessary delay bring the defendant before the court in which the warrant is returnable.

5. Whenever a police officer is required pursuant to this section to bring an arrested defendant before a local criminal court in which a warrant of arrest is returnable, and when such court is a town court which is not available at the time, such police officer must, if a copy of the underlying accusatory instrument has been attached to the warrant pursuant to section 120.40, instead bring such defendant before the town court of an adjoining town of the county. When the court in which the warrant is returnable is a village court which is not available at the time, the police officer must in such circumstances bring the defendant before the town court of the town embracing such village or, if such town court is not available either, before the town court of an adjoining town of the same county.

6. Before bringing a defendant arrested pursuant to a warrant before the local criminal court in which such warrant is returnable, a police officer must without unnecessary delay perform all fingerprinting, photographing and other preliminary police duties required in the particular case. In any case in which the defendant is not brought by a police officer before such court but, following his arrest in another county for an offense specified in subdivision one of section 160.10, is released by a local criminal court of such other county on his own recognizance or on bail for his appearance on a specified date before the local criminal court before which the warrant is returnable, the latter court must, upon arraignment of the defendant before it, direct that he be fingerprinted and photographed by the appropriate police officer or agency, and that he appear at an appropriate designated time and place for such purpose.

ARTICLE 130—THE SUMMONS

Section

130.10 Summons; definition, function, form and content.
130.20 Summons; by what courts issuable and in what courts returnable.
130.30 Summons; when issuable.
130.40 Summons; service.
130.50 Summons; defendant's failure to appear.
130.60 Summons; fingerprinting and photographing of defendant.

§ 130.10 Summons; definition, function, form and content

1. A summons is a process issued by a local criminal court directing a defendant designated in an information, a prosecutor's information or a misdemeanor complaint filed with such court to appear before it at a designated future time in connection

with such accusatory instrument. The sole function of a summons is to achieve a defendant's court appearance in a criminal action for the purpose of arraignment upon the accusatory instrument by which such action was commenced.

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

§ 130.20 Summons; by what courts issuable and in what courts returnable

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

§ 130.30 Summons; when issuable

A local criminal court may issue a summons in any case in which, pursuant to section 120.20, it is authorized to issue a warrant of arrest based upon an information, a prosecutor's information or a misdemeanor complaint.

§ 130.40 Summons; service

1. A summons may be served by a police officer, or by a complainant at least eighteen years old or by any other person at least eighteen years old designated by the court.

2. A summons may be served anywhere in the county of issuance or anywhere in an adjoining county.

§ 130.50 Summons; defendant's failure to appear

If after the service of a summons the defendant does not appear in the designated local criminal court at the time such summons is returnable, the court may issue a warrant of arrest.

§ 130.60 Summons; fingerprinting and photographing of defendant

Upon the arraignment of a defendant whose court attendance has been secured by the issuance and service of a summons, based upon a prosecutor's information or upon an information

or misdemeanor complaint filed by a complainant who is a police officer, the court must, if an offense charged in the accusatory instrument is one specified in subdivision one of section 160.10, direct that the defendant be fingerprinted and photographed by the appropriate police officer or agency, and that he appear at an appropriate designated time and place for such purpose.

ARTICLE 140—ARREST WITHOUT A WARRANT

Section

140.05 Arrest without a warrant; in general.
140.10 Arrest without a warrant; by police officer; when and where authorized.
140.15 Arrest without a warrant; when and how made by police officer.
140.20 Arrest without a warrant; procedure after arrest by police officer.
140.25 Arrest without a warrant; by peace officer other than police officer.
140.30 Arrest without a warrant; by any person; when and where authorized.
140.35 Arrest without a warrant; when and how made by person acting other than as a peace officer.
140.40 Arrest without a warrant; procedure after arrest made by person acting other than as a peace officer.
140.45 Arrest without a warrant; dismissal of insufficient information, misdemeanor complaint or felony complaint.
140.50 Temporary questioning of persons in public places; search for weapons.
140.55 Arrest without a warrant; by peace officers of other states for offense committed outside state; uniform close pursuit act.

§ 140.05 Arrest without a warrant; in general

A person who has committed or is believed to have committed an offense and who is at liberty within the state may, under circumstances prescribed in this article, be arrested for such offense although no warrant of arrest therefor has been issued and although no criminal action therefor has yet been commenced in any criminal court.

§ 140.10 Arrest without a warrant; by police officer; when and where authorized

1. Subject to the provisions of subdivision two, a police officer may arrest a person for an offense committed or believed

by him to have been committed within the geographical area of such police officer's employment, as follows:

(a) He may arrest such person for any offense when he has reasonable cause to believe that he has committed such offense in his presence; and

(b) He may arrest such person for a crime when he has reasonable cause to believe that he has committed such crime, whether in his presence or otherwise.

2. A police officer authorized to arrest a person pursuant to subdivision one may make such arrest anywhere in the county in which the offense was or is beieved by him to have been committed or in any adjoining county, and he may make such arrest elsewhere under the following circumstances:

(a) He may make such arrest anywhere in the state if (i) the arrest is for a felony and (ii) such police officer's geographical area of employment embraces either the entire county in which such felony was, or is believed by him to have been, committed, or in entire city located in such county;

(b) He may, for the purpose of arresting a person for any offense, follow him in continuous close pursuit, commencing either in the county in which the offense was or is believed to have been committed or in an adjoining county, in and through any county of the state, and may arrest such person in any county in which he apprehends him. He may also, if the attempted arrest is for a crime, continue such pursuit outside the state, if necessary, and may arrest such person in any state the laws of which contain provisions equivalent to those of section 140.55.

3. A police officer may arrest a person for an offense committed or believed by him to have been committed outside the geographical area of such police officer's employment, as follows:

(a) He may arrest a person within the geographical area of his employment for an offense committed or believed by him to have been committed elsewhere when:

(i) Another police officer authorized to make such arrest in such locality requests him, by telecommunication, mail or any other means, to make the arrest as his agent; or

(ii) He has reasonable cause to believe that such person has committed a felony somewhere in the state and that it will be difficult to find or arrest him therefor unless he is apprehended immediately;

(b) When outside the geographical area of his employment, a police officer may, in any locality of the state in which he happens to be present, arrest a person for a felony when he has reasonable cause to believe that such person has there committed such felony in his presence, provided that such arrest is made during or immediately after the allegedly criminal conduct or during the alleged perpetrator's immediate flight therefrom.

§ 140.15 Arrest without a warrant; when and how made by police officer

1. A police officer may arrest a person for an offense, pursuant to section 140.10, at any hour of any day or night.

2. The arresting police officer must inform such person of his authority and purpose and of the reason for such arrest unless he encounters physical resistance, flight or other factors rendering such procedure impractical.

3. In order to effect such an arrest, such police officer may use such physical force as is justifiable pursuant to section 35.30 of the penal law.

4. In order to effect such an arrest, a police officer may enter premises in which he reasonably believes such person to be present, under the same circumstances and in the same manner as would be authorized, by the provisions of subdivisions four and five of section 120.80, if he were attempting to make such arrest pursuant to a warrant of arrest.

§ 140.20 Arrest without a warrant; procedure after arrest by police officer

1. Upon arresting a person without a warrant, a police officer, after performing without unnecessary delay all recording, fingerprinting, photographing and other preliminary police duties required in the particular case, must except as otherwise provided in this section, without unnecessary delay bring the arrested person or cause him to be brought before a local criminal court and file therewith an appropriate accusatory instrument charging him with the offense or offenses in question. The arrested person must be brought to the particular local criminal court, or to one of them if there be more than one, designated in section 100.55, as an appropriate court for commencement of the particular action; except that:

(a) If the arrest is for an offense other than a felony committed in a town, but not in a village thereof having a village

court, and the town court of such town is not available at the time, the arrested person may be brought before the town court of any adjoining town of the same county; and

(b) If the arrest is for an offense other than a felony committed in a village having a village court and such court is not available at the time, the arrested person may be brought before the town court of the town embracing such village or, if such town court is not available either, before the town court of any adjoining town of the same county; and

(c) If the arrest is for a traffic infraction or for a misdemeanor relating to traffic, the police officer may, instead of bringing the arrested person before the local criminal court of the political subdivision or locality in which the offense was allegedly committed, bring him before the local criminal court of the same county nearest available by highway travel to the point of arrest.

2. If the arrest is for an offense other than a felony, the arrested person need not be brought before a local criminal court as provided in subdivision one, and the procedure may instead be as follows:

(a) A police officer may issue and serve an appearance ticket upon the arrested person and release him from custody, as prescribed in subdivision two of section 150.20; or

(b) The desk officer in charge at a police station, county jail or police headquarters, or any of his superior officers, may, in such place fix pre-arraignment bail and, upon deposit thereof, issue and serve an appearance ticket upon the arrested person and release him from custody, as prescribed in section 150.30.

3. If (a) the arrest is for an offense other than a felony, and (b) owing to unavailability of a local criminal court the arresting police officer is unable to bring the arrested person before such a court with reasonable promptness, either an appearance ticket must be served unconditionally upon the arrested person or pre-arraignment bail must be fixed, as prescribed in subdivision two. If pre-arraignment bail is fixed but not posted, such arrested person may be temporarily held in custody but must be brought before a local criminal court without unnecessary delay. Nothing contained in this subdivision requires a police officer to serve an appearance ticket upon an arrested person or release him from custody at a time when such person appears to be under the influence of alcohol, narcotics or other drug to the degree that he may endanger himself or other persons.

4. If after arresting a person, for any offense, a police officer upon further investigation or inquiry determines or is satisfied that there is not reasonable cause to believe that the arrested person committed such offense or any other offense based upon the conduct in question, he need not follow any of the procedures prescribed in subdivisions one, two and three, but must immediately release such person from custody.

5. Before service of an appearance ticket upon an arrested person pursuant to subdivision two or three, the issuing police officer must, if the offense designated in such appearance ticket is one of those specified in subdivision one of section 160.10, cause such person to be fingerprinted and photographed in the same manner as would be required were no appearance ticket to be issued or served.

§ 140.25 Arrest without a warrant; by peace officer other than police officer

1. A peace officer other than a police officer, acting pursuant to his special duties, may arrest a person for:

(a) Any offense when he has reasonable cause to believe that such person has committed such offense in his presence; and

(b) A crime when he has reasonable cause to believe that such person has committed such crime, whether in his presence or otherwise.

2. A peace officer other than a police officer acts "pursuant to his special duties" in making an arrest only when the arrest is for:

(a) An offense defined by a statute which such peace officer, by reason of the specialized nature of his particular employment or by express provision of law, is required or authorized to enforce; or

(b) An offense committed or reasonably believed by him to have been committed in such manner or place as to render arrest of the offender by such peace officer under the particular circumstances an integral part of his specialized duties.

3. The rules governing the manner in which a peace officer other than a police officer may make an arrest are the same as those governing arrests by police officers, as prescribed in section 140.15.

4. Upon arresting a person, a peace officer other than a police officer must without unnecessary delay bring him or cause him to be brought before a local criminal court, as provided in section 100.55 and subdivision one of section 140.20, and must without unnecessary delay file or cause to be filed therewith an appropriate accusatory instrument. Such peace officer may, where practicable, perform such functions himself or he may enlist the aid of a police officer for the performance thereof in the manner provided in subdivision one of section 140.20.

§ 140.30 Arrest without a warrant; by any person; when and where authorized

1. Subject to the provisions of subdivision two, any person may arrest another person (a) for a felony when the latter has in fact committed such felony, and (b) for any offense when the latter has in fact committed such offense in his presence.

2. Such an arrest, if for a felony, may be made anywhere in the state. If the arrest is for an offense other than a felony, it may be made only in the county in which such offense was committed.

§ 140.35 Arrest without a warrant; when and how made by person acting other than as a peace officer

1. A person may arrest another person for an offense pursuant to section 140.30 at any hour of any day or night.

2. Such person must inform the person whom he is arresting of the reason for such arrest unless he encounters physical resistance, flight or other factors rendering such procedure impractical.

3. In order to effect such an arrest, such person may use such physical force as is justifiable pursuant to subdivision four of section 35.30 of the penal law.

§ 140.40 Arrest without a warrant; procedure after arrest made by person acting other than as a peace officer

1. A person making an arrest pursuant to section 140.30 must without unnecessary delay deliver or attempt to deliver the person arrested to the custody of an appropriate police officer, as defined in subdivision three. For such purpose, he may solicit the aid of any police officer and the latter, if he is not himself an appropriate police officer, must assist in delivering the ar-

rested person to an appropriate officer. If the arrest is for a felony, the appropriate police officer must, upon receiving custody of the arrested person, perform all recording, fingerprinting, photographing and other preliminary police duties required in the particular case. In any case, the appropriate police officer, upon receiving custody of the arrested person, must bring him, on behalf of the arresting person, before an appropriate local criminal court, as defined in subdivision three, and the arresting person must without unnecessary delay file an appropriate accusatory instrument with such court.

2. Notwithstanding any other provision of this section, a police officer is not required to take an arrested person into custody or to take any other action prescribed in this section on behalf of the arresting person if he has reasonable cause to believe that the arrested person did not commit the alleged offense or that the arrest was otherwise unauthorized.

3. As used in this section:

(a) An "appropriate police officer" means one whose geographical area of employment is such that he would himself be authorized to make the arrest in question as a police officer under circumstances specified in subdivisions one and two of section 140.10;

(b) An "appropriate local criminal court" means one with which an accusatory instrument charging the offense in question may properly be filed pursuant to the provisions of section 100.55.

§ 140.45 Arrest without a warrant; dismissal of insufficient information, misdemeanor complaint or felony complaint

If an information, a misdemeanor complaint or a felony complaint filed with a local criminal court pursuant to section 140.20, 140.25 or 140.40 is not sufficient on its face, as prescribed in section 100.40, and if the court is satisfied that on the basis of the available facts or evidence it would be impossible to draw and file an accusatory instrument which is sufficient on its face, it must dismiss such accusatory instrument and discharge the defendant.

§ 140.50 Temporary questioning of persons in public places; search for weapons

1. In addition to the authority provided by this article for making an arrest without a warrant, a police officer may stop

a person in a public place located within the geographical area of such officer's employment when he reasonably suspects that such person is committing, has committed or is about to commit either (a) a felony or (b) a class A misdemeanor defined in the penal law, and may demand of him his name, address and an explanation of his conduct.

2. When upon stopping a person under circumstances prescribed in subdivision one a police officer reasonably suspects that he is in danger of physical injury, he may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons. If he finds such a weapon or instrument, or any other property possession of which he reasonably believes may constitute the commission of a crime, he may take it and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest such person.

§ 140.55 Arrest without a warrant; by peace officers of other states for offense committed outside state; uniform close pursuit act

1. As used in this section, the word "state" shall include the District of Columbia.

2. Any peace officer of another state of the United States, who enters this state in close pursuit and continues within this state in such close pursuit of a person in order to arrest him, shall have the same authority to arrest and hold in custody such person on the ground that he has committed a crime in another state which is a crime under the laws of the state of New York, as police officers of this state have to arrest and hold in custody a person on the ground that he has committed a crime in this state.

3. If an arrest is made in this state by an officer of another state in accordance with the provisions of subdivision two, he shall without unnecessary delay take the person arrested before a local criminal court which shall conduct a hearing for the sole purpose of determining if the arrest was in accordance with the provisions of subdivision two, and not of determining the guilt or innocence of the arrested person. If such court determines that the arrest was in accordance with such subdivision, it shall commit the person arrested to the custody of the officer making the arrest, who shall without unnecessary delay take him to the state from which he fled. If such court determines that the arrest was unlawful, it shall discharge the person arrested.

4. This section shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

5. Upon the taking effect of this section it shall be the duty of the secretary of state to certify a copy of this section to the executive department of each of the states of the United States.

6. This section shall apply only to peace officers of a state which by its laws has made similar provision for the arrest and custody of persons closely pursued within the territory thereof.

7. If any part of this section is for any reason declared void, it is declared to be the intent of this section that such invalidity shall not affect the validity of the remaining portions of this section.

8. This section may be cited as the uniform act on close pursuit.

ARTICLE 150—THE APPEARANCE TICKET

Section

150.10 Appearance ticket; definition, form and content.
150.20 Appearance ticket; when and by whom issuable.
150.30 Appearance ticket; issuance and service thereof after arrest upon posting of pre-arraignment bail.
150.40 Appearance ticket; where returnable; how and where served.
150.50 Appearance ticket; filing an information or misdemeanor complaint; dismissal of insufficient instrument.
150.60 Appearance ticket; defendant's failure to appear.
150.70 Appearance ticket; fingerprinting and photographing of defendant.

§ 150.10 Appearance ticket; definition, form and content

An appearance ticket is a written notice issued and subscribed by a police officer or other public servant authorized by law to issue the same, directing a designated person to appear in a designated local criminal court at a designated future time in connection with his alleged commission of a designated offense. A notice conforming to such definition constitutes an appearance ticket regardless of whether it is referred to in some other provision of law as a summons or by any other name or title.

§ 150.20 Appearance ticket; when and by whom issuable

1. Whenever a police officer is authorized pursuant to section 140.10 to arrest a person without a warrant for an offense other than a felony, he may, subject to the provisions of sub-

divisions three and four of section 150.40, instead issue to and serve upon such person an appearance ticket.

2. Whenever a police officer has arrested a person without a warrant for an offense other than a felony pursuant to section 140.10, he may, instead of bringing such person before a local criminal court and promptly filing an information, simplied traffic information, or misdemeanor complaint therewith, issue to and serve upon such person an appearance ticket. The issuance and service of an appearance ticket under such circumstances may be conditioned upon a deposit of pre-arraignment bail, as provided in section 150.30.

3. A public servant other than a police officer, who is specially authorized by law to issue and serve appearance tickets with respect to designated offenses of less than felony grade, may in such cases issue and serve upon a person an appearance ticket when he has reasonable cause to believe that such person has committed a misdemeanor, or has committed a petty offense in his presence.

§ 150.30 Appearance ticket; issuance and service thereof after arrest upon posting of pre-arraignment bail

1. Issuance and service of an appearance ticket by a police officer following an arrest without a warrant, as prescribed in subdivision two of section 150.20, may be made conditional upon the posting of a sum of money, known as pre-arraignment bail. A desk officer in charge at a police station, county jail or police headquarters, or any of his superior officers, may, in such place, fix pre-arraignment bail, in an amount prescribed in subdivision two, and upon the posting thereof must issue and serve an appearance ticket upon the arrested person, give a receipt for the bail, and release such person from custody. In such case, the bail becomes forfeit upon failure of such person to comply with the directions of the appearance ticket. A warning that such forfeiture will occur in the event of such noncompliance must be stated in the receipt.

2. Pre-arraignment bail may be fixed in the following amounts:

(a) If the arrest was for a class A misdemeanor, any amount not exceeding five hundred dollars.

(b) If the arrest was for a class B misdemeanor or an unclassified misdemeanor, any amount not exceeding two hundred fifty dollars.

(c) If the arrest was for a petty offense, any amount not exceeding one hundred dollars.

§ 150.40 Appearance ticket; where returnable; how and where served

1. An appearance ticket must be made returnable in a local criminal court designated in section 100.55 as one with which an information for the offense in question may be filed.

2. An appearance ticket, other than one issued for a traffic infraction relating to parking, must be served personally.

3. An appearance ticket may be served anywhere in the county in which the designated offense was allegedly committed or in any adjoining county, and may be served elsewhere as prescribed in subdivision four.

4. A police officer may, for the purpose of serving an appearance ticket upon a person, follow him in continuous close pursuit, commencing either in the county in which the alleged offense was committed or in an adjoining county, in and through any county of the state, and may serve such appearance ticket upon him in any county in which he overtakes him.

§ 150.50 Appearance ticket; filing an information or misdemeanor complaint; dismissal of insufficient instrument

1. A police officer or other public servant who has issued and served an appearance ticket must, at or before the time such appearance ticket is returnable, file or cause to be filed with the local criminal court in which it is returnable an information, a simplified traffic information or a misdemeanor complaint charging the person named in such appearance ticket with the offense specified therein.

2. If such accusatory instrument is not sufficient on its face, as prescribed in section 100.40, and if the court is satisfied that on the basis of the available facts or evidence it would be impossible to draw and file an accusatory instrument which is sufficient on its face, it must dismiss such accusatory instrument.

§ 150.60 Appearance ticket; defendant's failure to appear

If after the service of an appearance ticket and the filing of an information or misdemeanor complaint charging the offense designated therein, the defendant does not appear in the desig-

nated local criminal court at the time such appearance ticket is returnable, the court may issue a summons or a warrant of arrest based upon the information or misdemeanor complaint filed.

§ 150.70 Appearance ticket; fingerprinting and photographing of defendant

Upon the arraignment of a defendant who has not been arrested and whose court attendance has been secured by the issuance and service of an appearance ticket pursuant to subdivision one of section 150.20, the court must, if an offense charged in the accusatory instrument is one specified in subdivision one of section 160.10, direct that the defendant be fingerprinted and photographed by the appropriate police officer or agency, and that he appear at an appropriate designated time and place for such purpose.

ARTICLE 160—FINGERPRINTING AND PHOTOGRAPHING OF DEFENDANT AFTER ARREST—CRIMINAL IDENTIFICATION RECORDS AND STATISTICS

Section

160.10 Fingerprinting and photographing; duties of police with respect thereto.
160.20 Fingerprinting and photographing; forwarding of fingerprints and photographs to other agencies.
160.30 Fingerprinting and photographing; duties of New York state identification and intelligence system.
160.40 Fingerprinting and photographing; transmission to district attorney of report received by police.

§ 160.10 Fingerprinting and photographing; duties of police with respect thereto

1. Following an arrest, or following the arraignment upon a local criminal court accusatory instrument of a defendant whose court attendance has been secured by a summons or an appearance ticket under circumstances described in sections 130.-60 and 150.70, the arresting or other appropriate police officer or agency must take or cause to be taken fingerprints and a photograph of the arrested person or defendant if an offense which is the subject of the arrest or which is charged in the accusatory instrument filed is:

(a) A felony; or

(b) A misdemeanor defined in the penal law; or

(c) A misdemeanor defined outside the penal law which would constitute a felony if such person had a previous judgment of conviction for a crime; or

(d) Prostitution, as defined in section 230.00 of the penal law; or

(e) Loitering, as defined in subdivision three of section 240.35 of the penal law.

2. In addition, a police officer who makes an arrest for any offense, either with or without a warrant, may take or cause to be taken the fingerprints of the arrested person if such police officer:

(a) Is unable to ascertain such person's identity; or

(b) Reasonably suspects that the identification given by such person is not accurate; or

(c) Reasonably suspects that such person is being sought by law enforcement officials for the commission of some other offense.

3. The taking of fingerprints and photographs as prescribed in this section must be in accordance with the standards established by the director of the New York state identification and intelligence system.

§ 160.20 Fingerprinting and photographing; forwarding of fingerprints and photographs to other agencies

Upon the taking of fingerprints and a photograph of an arrested person or defendant as prescribed in section 160.10, the appropriate police officer or agency must without unnecessary delay forward such material and other matter to other agencies as follows:

1. Such police officer or agency must forward to the New York state identification and intelligence system at Albany:

(a) One copy of such fingerprints; and

(b) One copy of such photograph; and

(c) All available information concerning the defendant and concerning the facts and circumstances of the crime charged.

2. Such police officer or agency must forward to the criminal identification unit of the United States department of justice at Washington one copy of such fingerprints.

§ 160.30 Fingerprinting and photographing; duties of New York state identification and intelligence system

1. Upon receiving fingerprints from a police officer or agency, pursuant to subdivision one of section 160.20, the New York state identification and intelligence system must, except as provided in subdivision two, classify them, search its records for information concerning a previous record of the defendant, and promptly transmit to such forwarding police officer or agency a report containing all information on file with respect to such defendant's previous record, if any, or stating that the defendant has no previous record according to its files. Such a report, if certified, constitutes presumptive evidence of the facts so certified.

2. If the fingerprints so received are not sufficiently legible to permit accurate and complete classification, they must be returned to the forwarding police officer or agency with an explanation of the defects and a request that the defendant's fingerprints be retaken if possible.

§ 160.40 Fingerprinting and photographing; transmission to district attorney of report received by police

Upon receipt of a report of the New York state identification and intelligence system as provided in section 160.30, the recipient police officer or agency must promptly transmit such report or a copy thereof to the district attorney of the county.

ARTICLE 170—PROCEEDINGS UPON INFORMATION, SIMPLIFIED TRAFFIC INFORMATION, PROSECUTOR'S INFORMATION AND MISDEMEANOR COMPLAINT FROM ARRAIGNMENT TO PLEA

Section

170.10 Arraignment upon information, simplified traffic information, prosecutor's information or misdemeanor complaint; defendant's presence, defendant's rights, court's instructions and bail matters.

170.15 Removal of action from one local criminal court to another.

170.20 Divestiture of jurisdiction by indictment; removal of case to superior court at district attorney's instance.

170.25 Divestiture of jurisdiction by indictment; removal of case to superior court at defendant's instance.

170.30 Motion to dismiss information, simplified traffic information, prosecutor's information or misdemeanor complaint.

Section
170.35 Motion to dismiss information, simplified traffic information, prosecutor's information or misdemeanor complaint; as defective.
170.40 Motion to dismiss information, simplified traffic information prosecutor's information or misdemeanor complaint; in furtherance of justice.
170.45 Motion to dismiss information, simplified traffic information, prosecutor's information or misdemeanor complaint; procedure.
170.50 Motion in superior court to dismiss prosecutor's information.
170.55 Adjournment in contemplation of dismissal.
170.60 Requirement of plea to information, simplified traffic information or prosecutor's information.
170.65 Replacement of misdemeanor complaint by information or prosecutor's information, and waiver thereof.
170.70 Release of defendant upon failure to replace misdemeanor complaint by information or prosecutor's information.

§ 170.10 Arraignment upon information, simplified traffic information, prosecutor's information or misdemeanor complaint; defendant's presence, defendant's rights, court's instructions and bail matters

1. Following the filing with a local criminal court of an information, a simplied traffic information, a prosecutor's information or a misdemeanor complaint, the defendant must be arraigned thereon. The defendant must appear personally at such arraignment except under the following circumstances:

(a) Where the only offense or offenses charged with traffic infractions and/or misdemeanors relating to traffic and where the procedure provided in sections eighteen hundred five and eighteen hundred six of the vehicle and traffic law is applicable and, if followed, would dispense with an arraignment or personal appearance of the defendant thereat, nothing contained in this section affects the validity of such procedure or requires such personal appearance;

(b) In any case in which the defendant's appearance is required by a summons or an appearance ticket, the court in its discretion may, for good cause shown, permit the defendant to appear by counsel instead of in person.

2. Upon any arraignment at which the defendant is personally present, the court must immediately inform him, or cause him to be informed in its presence, of the charge or charges against

him and must furnish him with a copy of the accusatory instrument.

3. The defendant has the right to the aid of counsel at the arraignment and at every subsequent stage of the action. If he appears upon such arraignment without counsel, he has the following rights:

(a) To an adjournment for the purpose of obtaining counsel; and

(b) To communicate, free of charge, by letter or by telephone, for the purposes of obtaining counsel and informing a relative or friend that he has been charged with an offense; and

(c) To have counsel assigned by the court if he is financially unable to obtain the same; except that this paragraph does not apply where the accusatory instrument charges a traffic infraction or infractions only.

4. Except as provided in subdivision five, the court must inform the defendant:

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

(b) Where a traffic infraction or a misdemeanor relating to traffic is charged, and where a judgment of conviction for such offense will in addition to subjecting the defendant to the sentence provided therefor render his license to drive a motor vehicle and his certificate of registration subject to suspension and revocation as prescribed by law, that such is the case and that a plea of guilty to such offense constitutes a conviction thereof to the same extent as a verdict of guilty after trial; and

(c) Where the accusatory instrument is a simplified traffic information, that the defendant has a right to have a supporting deposition filed, as provided in section 100.25; and

(d) Where the accusatory instrument is a misdemeanor complaint, that the defendant may not be prosecuted thereon or required to enter a plea thereto unless he consents to the same, and that in the absence of such consent such misdemeanor complaint will for prosecution purposes have to be replaced and superseded by an information or a prosecutor's information.

5. In any case where a defendant has appeared for arraignment in response to a summons or an appearance ticket, a printed statement upon such process of any court instruction required by the provisions of subdivision four constitutes compliance with such provisions with respect to the instruction so printed.

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

7. Upon the arraignment, the court, unless it intends to make a final disposition of the action immediately thereafter, must, as provided in subdivision one of section 530.20, issue a securing order either releasing the defendant on his own recognizance or fixing bail for his future appearance in the action; except that where a defendant appears by counsel pursuant to paragraph (b) of subdivision one of this section, the court must release the defendant on his own recognizance.

8. Nothing contained in this section applies to the arraignment of corporate defendants, which is governed generally by the provisions of article six hundred.

§ 170.15 Removal of action from one local criminal court to another

Under circumstances prescribed in this section, a criminal action based upon an information, a simplified traffic information, a prosecutor's information or a misdemeanor complaint may be removed from one local criminal court to another:

1. When a defendant arrested by a police officer for an offense other than a felony, allegedly committed in a town, has, owing to special circumstances and pursuant to law, not been brought before the particular town court or village court which by reason of the situs of such offense has trial jurisdiction thereof, but, instead, before a town court which does not have trial

jurisdiction thereof, and therein stands charged with such offense by information, simplified traffic information or misdemeanor complaint, such town court must arraign him upon such accusatory instrument. If the defendant desires to enter a plea of guilty thereto immediately following such arraignment, such town court must permit him to do so and must thereafter conduct the action to judgment. Otherwise, it must remit the action, together with all pertinent papers and documents, to the town court or village court which has trial jurisdiction of the action, and the latter court must then conduct such action to judgment or other final disposition.

2. When a defendant arrested by a police officer for an offense other than a felony has been brought before a superior court judge sitting as a local criminal court for arraignment upon an information, simplified traffic information or misdemeanor complaint charging such offense, such judge must, as a local criminal court, arraign the defendant upon such accusatory instrument. Such judge must then remit the action, together with all pertinent papers and documents, to a local criminal court having trial jurisdiction thereof. The latter court must then conduct such action to judgment or other final disposition.

3. At any time after arraignment of a defendant upon an information, a simplified traffic information, a prosecutor's information or a misdemeanor complaint pending in a town court or a village court having trial jurisdiction thereof, and before entry of a plea thereto or commencement of a trial thereof, a judge of the county court of the county in which such town court or village court is located may, upon motion of the defendant or the people, order that the action be transferred for disposition from such town court to another designated town court of the county or, as the case may be, from such village court to a designated town court of the county, upon the ground that disposition thereof within a reasonable time in the court from which removal is sought is unlikely owing to:

(a) Death, disability or other incapacity or disqualification of all of the judges of such court; or

(b) Inability of such court to form a jury in a case in which the defendant is entitled to and has requested a jury trial.

§ 170.20 Divestiture of jurisdiction by indictment; removal of case to superior court at district attorney's instance

1. If at any time before entry of a plea of guilty to or commencement of a trial of a local criminal court accusatory instrument containing a charge of misdemeanor, an indictment charging the defendant with such misdemeanor is filed in a superior court, the local criminal court is thereby divested of jurisdiction of such misdemeanor charge and all proceedings therein with respect thereto are terminated.

2. At any time before entry of a plea of guilty to or commencement of a trial of an accusatory instrument specified in subdivision one, the district attorney may apply for an adjournment of the proceedings in the local criminal court upon the ground that he intends to present the misdemeanor charge in question to a grand jury with a view to prosecuting it by indictment in a superior court. In such case, the local criminal court must adjourn the proceedings to a date which affords the district attorney reasonable opportunity to pursue such action, and may subsequently grant such further adjournments for that purpose as are reasonable under the circumstances. Following the granting of such adjournment or adjournments, the proceedings must be as follows:

(a) If such charge is presented to a grand jury within the designated period and either an indictment or a dismissal of such charge results, the local criminal court is thereby divested of jurisdiction of such charge, and all proceedings in the local criminal court with respect thereto are terminated.

(b) If the misdemeanor charge is not presented to a grand jury within the designated period, the proceedings in the local criminal court must continue.

§ 170.25 Divestiture of jurisdiction by indictment; removal of case to superior court at defendant's instance

1. At any time before entry of a plea of guilty to or commencement of a trial of a local criminal court accusatory instrument containing a charge of misdemeanor, a superior court having jurisdiction to prosecute such misdemeanor charge by indictment may, upon motion of the defendant made upon notice to the district attorney, showing good cause to believe that the interests of justice so require, order that such charge be prosecuted by in-

dictment and that the district attorney present it to the grand jury for such purpose.

2. Such order stays the proceedings in the local criminal court pending submission of the charge to the grand jury. Upon the subsequent filing of an indictment in the superior court, the proceedings in the local criminal court terminate and the defendant must be required to appear for arraignment upon the indictment in the manner prescribed in subdivisions one and two of section 210.10. Upon the subsequent filing of a grand jury dismissal of the charge, the proceedings in the local criminal court terminate and the superior court must, if the defendant is not at liberty on his own recognizance, discharge him from custody or exonerate his bail, as the case may be.

3. At any time before entry of a plea of guilty to or commencement of a trial of an accusatory instrument specified in subdivision one, the defendant may apply to the local criminal court for an adjournment of the proceedings therein upon the ground that he intends to make a motion in a superior court, pursuant to subdivision one, for an order that the misdemeanor charge be prosecuted by indictment. In such case, the local criminal court must adjourn the proceedings to a date which affords the defendant reasonable opportunity to pursue such action, and may subsequently grant such further adjournments for that purpose as are reasonable under the circumstances. Following the granting of such adjournment or adjournments, the proceedings must be as follows:

(a) If a motion in a superior court is not made by the defendant within the designated period, the proceedings in the local criminal court must continue.

(b) If a motion in a superior court is made by the defendant within the designated period, such stays the proceedings in the local criminal court until the entry of an order determining such motion.

(c) If the superior court enters an order granting the motion, such order stays the proceedings in the local criminal court as provided in subdivision two; and upon a subsequent indictment or dismissal of such charge by the grand jury, the proceedings in the local criminal court terminate as provided in subdivision two.

(d) If the superior court enters an order denying the motion, the proceedings in the local criminal court must continue.

§ 170.30 Motion to dismiss information, simplified traffic information, prosecutor's information or misdemeanor complaint

1. After arraignment upon an information, a simplified traffic information, a prosecutor's information or a misdemeanor complaint, the local criminal court may, upon motion of the defendant, dismiss such instrument or any count thereof upon the ground that:

(a) It is defective, within the meaning of section 170.35; or

(b) The defendant has received immunity from prosecution for the offense charged, pursuant to sections 50.20 or 190.40; or

(c) The prosecution is barred by reason of a previous prosecution, pursuant to section 40.20; or

(d) The prosecution is untimely, pursuant to section 30.10; or

(e) The defendant has been denied the right to a speedy trial; or

(f) There exists some other jurisdictional or legal impediment to conviction of the defendant for the offense charged; or

(g) Dismissal is required in furtherance of justice, within the meaning of section 170.40.

2. A motion pursuant to this section should be made prior to entry of a plea of guilty or commencement of trial. A motion made thereafter may be summarily denied, but the court, in the interest of justice and for good cause shown, may in its discretion entertain and dispose of the motion on the merits at any time before sentence.

3. Upon the motion, a defendant who is in a position adequately to raise more than one ground in support thereof should raise every such ground upon which he intends to challenge the accusatory instrument. A subsequent motion based upon such a ground not so raised may be summarily denied, although the court, in the interest of justice and for good cause shown, may in its discretion entertain and dispose of such a motion on the merits notwithstanding.

§ 170.35 Motion to dismiss information, simplified traffic information, prosecutor's information or misdemeanor complaint; as defective

1. An information, a simplified traffic information, a prosecutor's information or a misdemeanor complaint, or a count thereof, is defective within the meaning of paragraph (a) of subdivision one of section 170.30 when:

(a) It is not sufficient on its face pursuant to the requirements of section 100.40; provided that such an instrument or count may not be dismissed as defective, but must instead be amended, where the defect or irregularity is of a kind that may be cured by amendment and where the people move to so amend; or

(b) The allegations demonstrate that the court does not have jurisdiction of the offense charged; or

(c) The statute defining the offense charged is unconstitutional or otherwise invalid.

2. An information is also defective when it is filed in replacement of a misdemeanor complaint pursuant to section 170.65 but without satisfying the requirements stated therein.

3. A prosecutor's information is also defective when:

(a) It is filed at the direction of a grand jury, pursuant to section 190.70, and the offense or offenses charged are not among those authorized by such grand jury direction; or

(b) It is filed by the district attorney at his own instance, pursuant to subdivision two of section 100.50, and the factual allegations of the original information underlying it and any supporting depositions are not legally sufficient to support the charge in the prosecutor's information.

§ 170.40 Motion to dismiss information, simplified traffic information, prosecutor's information or misdemeanor complaint; in furtherance of justice

1. An information, a simplified traffic information, a prosecutor's information or a misdemeanor complaint, or any count thereof, may be dismissed in the interest of justice, as provided in paragraph (g) of subdivision one of section 170.30 when, even though there may be no basis for dismissal as a matter of law upon any ground specified in paragraphs (a) through (f) of said subdivision one of section 170.30, such dismissal is required as a matter of judicial discretion by the existence of some compelling

factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant upon such accusatory instrument or count would constitute or result in injustice.

2. An order dismissing an accusatory instrument specified in subdivision one in the interest of justice may be issued upon motion of the people or of the court itself as well as upon that of the defendant. Upon issuing such an order, the court must set forth its reasons therefor upon the record.

§ 170.45 Motion to dismiss information, simplified traffic information, prosecutor's information or misdemeanor complaint; procedure

The procedural rules prescribed in section 210.45 with respect to the making, consideration and disposition of a motion to dismiss an indictment are also applicable to a motion to dismiss an information, a simplified traffic information, a prosecutor's information or a misdemeanor complaint.

§ 170.50 Motion in superior court to dismiss prosecutor's information

1. At any time after arraignment in a local criminal court upon a prosecutor's information filed at the direction of a grand jury and before entry of a plea of guilty thereto or commencement of a trial thereof, the superior court which impaneled such grand jury may, upon motion of the defendant, dismiss such prosecutor's information or a count thereof upon the ground that:

(a) The evidence before the grand jury was not legally sufficient to support the charge; or

(b) The grand jury proceeding resulting in the filing of such prosecutor's information was defective.

2. The criteria and procedures for consideration and disposition of such motion are the same as those prescribed in sections 210.30 and 210.45, governing consideration and disposition of a motion to dismiss an indictment on the ground of insufficiency of grand jury evidence or of a defective grand jury proceeding; and, where appropriate, the general procedural rules prescribed in section 210.45 for consideration and disposition of a motion to dismiss an indictment are also applicable.

3. Upon dismissing a prosecutor's information or a count thereof pursuant to this section, the court may, upon application of the people, in its discretion authorize the people to resubmit

the charge or charges to the same or another grand jury. In the absence of such authorization, such charge or charges may not be resubmitted to a grand jury. The rules prescribed in subdivisions eight and nine of section 210.45 concerning the discharge of a defendant from custody or exoneration of bail in the absence of an authorization to resubmit an indictment to a grand jury, and concerning the issuance of a securing order and the effective period thereof where such an authorization is issued, apply equally where a prosecutor's information is dismissed pursuant to this section.

§ 170.55 Adjournment in contemplation of dismissal

1. Upon or after arraignment in a local criminal court upon an information, a simplified traffic information, a prosecutor's information or a misdemeanor complaint, and before entry of a plea of guilty thereto or commencement of a trial thereof, the court may, upon motion of the people or the defendant and with the consent of the other party, or upon the court's own motion with the consent of both the people and the defendant, order that the action be "adjourned in contemplation of dismissal," as prescribed in subdivision two.

2. An adjournment in contemplation of dismissal is an adjournment of the action without date ordered with a view to ultimate dismissal of the accusatory instrument in furtherance of justice. Upon issuing such an order, the court must release the defendant on his own recognizance. Upon application of the people, made at any time not more than six months after the issuance of such order, the court must restore the case to the calendar and the action must thereupon proceed. If the case is not so restored within such six months period, the accusatory instrument is, at the expiration of such period, deemed to have been dismissed by the court in furtherance of justice.

§ 170.60 Requirement of plea to information, simplified traffic information or prosecutor's information

Unless an information, a simplified traffic information or a prosecutor's information is dismissed or the criminal action thereon terminated or abated pursuant to a provision of this article or some other provision of law, the defendant must be required to enter a plea thereto.

§ 170.65 Replacement of misdemeanor complaint by information or prosecutor's information, and waiver thereof

1. A defendant against whom a misdemeanor complaint is pending is not required to enter a plea thereto. For purposes of prosecution, such instrument must, except as provided in subdivision three, be replaced by an information, and the defendant must be arraigned thereon. If the misdemeanor complaint is supplemented by a supporting deposition and such instruments taken together satisfy the requirements for a valid information, such misdemeanor complaint is deemed to have been converted to and to constitute a replacing information.

2. An information which replaces a misdemeanor complaint need not charge the same offense or offenses, but at least one count thereof must charge the commission by the defendant of an offense based upon conduct which was the subject of the misdemeanor complaint. In addition, the information may, subject to the rules of joinder, charge any other offense which the factual allegations thereof or of any supporting depositions accompanying it are legally sufficient to support, even though such offense is not based upon conduct which was the subject of the misdemeanor complaint.

3. A defendant who has been arraigned upon a misdemeanor complaint may waive prosecution by information and consent to be prosecuted upon the misdemeanor complaint. In such case, the defendant must be required, either upon the date of the waiver or subsequent thereto, to enter a plea to the misdemeanor complaint.

§ 170.70 Release of defendant upon failure to replace misdemeanor complaint by information or prosecutor's information

Upon application of a defendant against whom a misdemeanor complaint is pending in a local criminal court, and who, either at the time of his arraignment thereon or subsequent thereto, has been committed to the custody of the sheriff pending disposition of the action, and who has been confined in such custody for a period of more than five days, not including Sunday, without any information having been filed in replacement of such misdemeanor complaint, the criminal court must release the defendant on his own recognizance unless:

1. The defendant has waived prosecution by information and consented to be prosecuted upon the misdemeanor complaint, pursuant to subdivision three of section 170.65; or

2. The court is satisfied that there is good cause why such order of release should not be issued. Such good cause must consist of some compelling fact or circumstance which precluded replacement of the misdemeanor complaint by an information or a prosecutor's information within the prescribed period.

ARTICLE 180—PROCEEDINGS UPON FELONY COMPLAINT FROM ARRAIGNMENT THEREON THROUGH DISPOSITION THEREOF

Section

180.10 Proceedings upon felony complaint; arraignment; defendant's rights, court's instructions and bail matters.
180.20 Proceedings upon felony complaint; removal of action from one local criminal court to another.
180.30 Proceedings upon felony complaint; waiver of hearing; action to be taken.
180.40 Proceedings upon felony complaint; application in superior court following waiver of hearing.
180.50 Proceedings upon felony complaint; reduction of charge.
180.60 Proceedings upon felony complaint; the hearing; conduct thereof.
180.70 Proceedings upon felony complaint; disposition of felony complaint after hearing.
180.80 Proceedings upon felony complaint; release of defendant from custody upon failure of timely disposition.

§ 180.10 Proceedings upon felony complaint; arraignment; defendant's rights, court's instructions and bail matters

1. Upon the defendant's arraignment before a local criminal court upon a felony complaint, the court must immediately inform him, or cause him to be informed in its presence, of the charge or charges against him and that the primary purpose of the proceedings upon such felony complaint is to determine whether the defendant is to be held for the action of a grand jury with respect to the charges contained therein. The court must furnish the defendant with a copy of the felony complaint.

2. The defendant has a right to a prompt hearing upon the issue of whether there is sufficient evidence to warrant the court in holding him for the action of a grand jury, but he may waive such right.

3. The defendant has a right to the aid of counsel at the arraignment and at every subsequent stage of the action, and, if

he appears upon such arraignment without counsel, has the following rights:

(a) To an adjournment for the purpose of obtaining counsel; and

(b) To communicate, free of charge, by letter or by telephone, for the purpose of obtaining counsel and informing a relative or friend that he has been charged with an offense; and

(c) To have counsel assigned by the court in any case where he is financially unable to obtain the same.

4. The court must inform the defendant of all rights specified in subdivisions two and three. The court must accord the defendant opportunity to exercise such rights and must itself take such affirmative action as is necessary to effectuate them.

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

6. Upon the arraignment, the court, unless it intends immediately thereafter to dismiss the felony complaint and terminate the action, must issue a securing order which, as provided in subdivision two of section 530.20, either releases the defendant on his own recognizance or fixes bail or commits him to the custody of the sheriff for his future appearance in such action.

§ 180.20 Proceedings upon felony complaint; removal of action from one local criminal court to another

Under circumstances prescribed in this section, a criminal action based upon a pending felony complaint may be removed from one local criminal court to another:

1. When a defendant arrested by a police officer for a felony allegedly committed in a town has not been brought before the town court of the town, or as the case may be before the village court of the village, in which the felony charged was allegedly committed, but, instead, to another town court or village court of the county and there stands charged with such offense by

felony complaint, such latter court must arraign him upon such felony complaint. Such court must then either:

(a) Dispose of the felony complaint pursuant to this article. If such disposition results in a reduction of the felony charge and the filing of an information or prosecutor's information charging a misdemeanor or a petty offense pursuant to section 180.50 or subdivision two or three of section 180.70, such court must conduct the action to judgment or other final disposition; or

(b) Remit the action upon the felony complaint, together with all pertinent papers and documents, to the town court of the town, or as the case may be to the village court of the village, in which the felony charged was allegedly committed. In such case, the latter court must dispose of the felony complaint pursuant to this article.

2. When a defendant arrested by a police officer for a felony has been brought before a superior court judge sitting as a local criminal court for arraignment upon felony complaint charging such felony, such judge must, as a local criminal court, arraign the defendant upon such felony complaint. Such court must then either:

(a) Dispose of the felony complaint pursuant to this article. If however, such disposition results in a reduction of the charge and the filing of an information or prosecutor's information charging a misdemeanor or a petty offense, such judge, after arraigning the defendant upon such accusatory instrument, must remit the action, together with all pertinent papers and documents, to a local criminal court having trial jurisdiction of the offense charged, and the latter court must then conduct the action to judgment or other final disposition; or

(b) Remit the action upon the felony complaint, together with all pertinent papers and documents, to a local criminal court having geographical jurisdiction over the area in which the felony charged was allegedly committed. In such case, such latter court must dispose of the felony complaint pursuant to this article.

§ 180.30 Proceedings upon felony complaint; waiver of hearing; action to be taken

If the defendant waives a hearing upon the felony complaint, the court must either:

1. Order that the defendant be held for the action of a grand jury of the appropriate superior court with respect to the charge

or charges contained in the felony complaint. In such case, the court must promptly transmit to such superior court the order, the felony complaint, the supporting depositions and all other pertinent documents. Until such papers are received by the superior court, the action is deemed to be still pending in the local criminal court; or

2. Make inquiry, pursuant to section 180.50 for the purpose of determining whether the felony complaint should be dismissed and an information, a prosecutor's information or a misdemeanor complaint filed with the court in lieu thereof.

§ 180.40 Proceedings upon felony complaint; application in superior court following waiver of hearing

Where a defendant has waived a hearing upon a felony complaint and the local criminal court has held him for the action of a grand jury, the district attorney may, at any time before such matter is submitted to the grand jury, apply, ex parte, to the appropriate superior court for an order directing that the felony complaint and other papers transmitted to such court pursuant to subdivision one of section 180.30 be returned to the local criminal court for reconsideration of the action to be taken. The superior court may issue such an order if it is satisfied that the felony complaint is defective or that such action is required in the interest of justice.

§ 180.50 Proceeding upon felony complaint; reduction of charge

1. Whether or not the defendant waives a hearing upon the felony complaint, the local criminal court may, upon consent of the district attorney, make inquiry for the purpose of determining whether (a) the available facts and evidence relating to the conduct underlying the felony complaint provide a basis for charging the defendant with an offense other than a felony, and (b) if so, whether the charge should, in the manner prescribed in subdivision three, be reduced from one for a felony to one for a non-felony offense. Upon such inquiry, the court may question any person who it believes may possess information relevant to the matter, including the defendant if he wishes to be questioned.

2. If after such inquiry the court is satisfied that there is reasonable cause to believe that the defendant committed an of-

fense other than a felony, it may order the indicated reduction as follows:

(a) If satisfied that there is not reasonable cause to believe that the defendant committed a felony in addition to the non-felony offense in question, the court may as a matter of right order a reduction of the charge to one for the non-felony offense;

(b) If satisfied that there is reasonable cause to believe that the defendant committed a felony in addition to the non-felony offense, the court may order a reduction of the charge to one for the non-felony offense only if (i) it is satisfied that such reduction is in the interest of justice, and (ii) the district attorney consents thereto.

3. A charge is "reduced" from a felony to a non-felony offense, within the meaning of this section, by replacing the felony complaint with, or converting it to, another local criminal court accusatory instrument, as follows:

(a) If the factual allegations of the felony complaint and/or any supporting depositions are legally sufficient to support the charge that the defendant committed the non-felony offense in question, the court may:

(i) Direct the district attorney to file with the court a prosecutor's information charging the defendant with such non-felony offense; or

(ii) Request the complainant of the felony complaint to file with the court an information charging the defendant with such non-felony offense. If such an information is filed, any supporting deposition supporting or accompanying the felony complaint is deemed also to support or accompany the replacing information; or

(iii) Convert the felony complaint, or a copy thereof, into an information by notations upon or attached thereto which make the necessary and appropriate changes in the title of the instrument and in the names of the offense or offenses charged. In case of such conversion, any supporting deposition supporting or accompanying the felony complaint is deemed also to support or accompany the information to which it has been converted;

(b) If the non-felony offense in question is a misdemeanor, and if the factual allegations of the felony complaint together with those of any supporting depositions, though providing reasonable cause to believe that the de-

fendant committed such misdemeanor are not legally sufficient to support such misdemeanor charge, the court may cause such felony complaint to be replaced by or converted to a misdemeanor complaint charging the misdemeanor in question, in the manner prescribed in subparagraphs two and three of paragraph (a) of this subdivision.

(c) An information, a prosecutor's information or a misdemeanor complaint filed pursuant to this section may, pursuant to the ordinary rules of joinder, charge two or more offenses, and it may jointly charge with each offense any two or more defendants originally so charged in the felony complaint;

(d) Upon the filing of an information, a prosecutor's information or a misdemeanor complaint pursuant to this subdivision, the court must dismiss the felony complaint from which such accusatory instrument is derived. It must then arraign the defendant upon the new accusatory instrument and inform him of his rights in connection therewith in the manner provided in section 170.10.

4. Upon making any finding other than that specified in subdivision two, the court must conduct a hearing upon the felony complaint, unless the defendant has waived the same. In the case of such waiver the court must order that the defendant be held for the action of a grand jury.

§ 180.60 Proceedings upon felony complaint; the hearing; conduct thereof

A hearing upon a felony complaint must be conducted as follows:

1. The district attorney must conduct such hearing on behalf of the people.

2. The defendant may as a matter of right be present at such hearing.

3. The court must read to the defendant the felony complaint and any supporting depositions unless the defendant waives such reading.

4. Each witness, whether called by the people or by the defendant, must, unless he would be authorized to give unsworn evidence at a trial, testify under oath. Each witness, including any defendant testifying in his own behalf, may be cross-examined.

5. The people must call and examine witnesses and offer evidence in support of the charge.

6. The defendant may, as a matter of right, testify in his own behalf.

7. Upon request of the defendant, the court may, as a matter of discretion, permit him to call and examine other witnesses or to produce other evidence in his behalf.

8. Upon such a hearing, evidence tending to demonstrate reasonable cause to believe that the defendant committed a felony is admissible even though it consists of hearsay.

9. The court may, upon application of the defendant, exclude the public from the hearing and direct that no disclosure be made of the proceedings.

10. Such hearing should be completed at one session. In the interest of justice, however, it may be adjourned by the court but, in the absence of a showing of good cause therefor, no such adjournment may be for more than one day.

§ 180.70 Proceedings upon felony complaint; disposition of felony complaint after hearing

At the conclusion of a hearing, the court must dispose of the felony complaint as follows:

1. If there is reasonable cause to believe that the defendant committed a felony, the court must, except as provided in subdivision three, order that the defendant be held for the action of a grand jury of the appropriate superior court, and it must promptly transmit to such superior court the order, the felony complaint, the supporting depositions and all other pertinent documents. Until such papers are received by the superior court, the action is deemed to be still pending in the local criminal court.

2. If there is not reasonable cause to believe that the defendant committed a felony but there is reasonable cause to believe that he committed an offense other than a felony, the court may, by means of procedures prescribed in subdivision three of section 180.50, reduce the charge to one for such non-felony offense.

3. If there is reasonable cause to believe that the defendant committed a felony in addition to a non-felony offense, the court may, instead of ordering the defendant held for the action of a grand jury as provided in subdivision one, reduce the charge to one for such non-felony offense as provided in subdivision two,

if (a) it is satisfied that such reduction is in the interest of justice, and (b) the district attorney consents thereto.

4. If there is not reasonable cause to believe that the defendant committed any offense, the court must dismiss the felony complaint and discharge the defendant from custody if he is in custody, or, if he is at liberty on bail, it must exonerate the bail.

§ 180.80 Proceedings upon felony complaint; release of defendant from custody upon failure of timely disposition

Upon application of a defendant against whom a felony complaint has been filed with a local criminal court, and who, either at the time of arraignment thereon or subsequent thereto, has been committed to the custody of the sheriff pending disposition of such felony complaint, and who has been confined in such custody for a period of more than seventy-two hours without either a disposition of the felony complaint or commencement of a hearing thereon, the local criminal court must release him on his own recognizance unless:

1. The failure to dispose of the felony complaint or to commence a hearing thereon during such period of confinement was due to the defendant's request, action or condition, or occurred with his consent; or

2. Prior to the application, an indictment or a direction to file a prosecutor's information charging an offense based upon conduct alleged in the felony complaint was filed by a grand jury; or

3. The court is satisfied that the people have shown good cause why such order of release should not be issued. Such good cause must consist of some compelling fact or circumstance which precluded disposition of the felony complaint within the prescribed period or rendered such action against the interest of justice.

TITLE I—PRELIMINARY PROCEEDINGS IN SUPERIOR COURT

ARTICLE 190—THE GRAND JURY AND ITS PROCEEDINGS

Section

190.05 Grand jury; definition and general functions.
190.10 Grand jury; for what courts drawn.
190.15 Grand jury; duration of term and discharge.
190.20 Grand jury; formation, organization and other matters preliminary to assumption of duties.
190.25 Grand jury; proceedings and operation in general.
190.30 Grand jury; rules of evidence.
190.35 Grand jury; definitions of terms.
190.40 Grand jury; witnesses, compulsion of evidence and immunity.
190.45 Grand jury; waiver of immunity.
190.50 Grand jury; who may call witnesses; defendant as witness.
190.55 Grand jury; matters to be heard and examined; duties and authority of district attorney.
190.60 Grand jury; action to be taken.
190.65 Grand jury; when indictment is authorized.
190.70 Grand jury; direction to file prosecutor's information and related matters.
190.75 Grand jury; dismissal of charge.
190.80 Grand jury; release of defendant upon failure of timely grand jury action.
190.85 Grand jury; grand jury reports.
190.90 Grand jury; appeal from order concerning grand jury reports.

§ 190.05 Grand jury; definition and general functions

A grand jury is a body consisting of not less than sixteen nor more than twenty-three persons, impaneled by a superior court and constituting a part of such court, the functions of which are to hear and examine evidence concerning offenses and concerning misconduct, nonfeasance and neglect in public office, whether criminal or otherwise, and to take action with respect to such evidence as provided in section 190.60.

§ 190.10 Grand jury; for what courts drawn

The appellate division of each judicial department shall adopt rules governing the number and the terms for which grand juries shall be drawn and impaneled by the superior courts within its

department; provided, however, that a grand jury may be drawn and impaneled for any extraordinary term of the supreme court upon the order of a justice assigned to hold such term.

§ 190.15 Grand jury; duration of term and discharge

1. A term of a superior court for which a grand jury has been impaneled remains in existence at least until and including the opening date of the next term of such court for which a grand jury has been designated. Upon such date, or within five days preceding it, the court may, upon declaration of both the grand jury and the district attorney that such grand jury has not yet completed or will be unable to complete certain business before it, extend the term of court and the existence of such grand jury to a specified future date, and may subsequently order further extensions for such purpose.

2. At any time when a grand jury is in recess and no other appropriate grand jury is in existence in the county, the court may, upon application of the district attorney or of a defendant held by a local criminal court for the action of a grand jury, order such grand jury reconvened for the purpose of dealing with a matter requiring grand jury action.

§ 190.20 Grand jury; formation, organization and other matters preliminary to assumption of duties

1. The mode of selecting grand jurors and of drawing and impaneling grand juries is governed by the judiciary law.

2. Neither the grand jury panel nor any individual grand juror may be challenged, but the court may:

(a) At any time before a grand jury is sworn, discharge the panel and summon another panel if it finds that the original panel does not substantially conform to the requirements of the judiciary law; or

(b) At any time after a grand juror is drawn, refuse to swear him, or discharge him after he has been sworn, upon a finding that he is disqualified from service pursuant to the judiciary law, or incapable of performing his duties because of bias or prejudice, or guilty of misconduct in the performance of his duties such as to impair the proper functioning of the grand jury.

3. After a grand jury has been impaneled, the court must appoint one of the grand jurors as foreman and another to act as foreman during any absence or disability of the foreman. At

some time before commencement of their duties, the grand jurors must appoint one of their number as secretary to keep records material to the conduct of the grand jury's business.

4. The grand jurors must be sworn by the court. The oath may be in any form or language which requires the grand jurors to perform their duties faithfully.

5. After a grand jury has been sworn, the court must deliver or cause to be delivered to each grand juror a printed copy of all the provisions of this article, and the court may, in addition, give the grand jurors any oral instructions relating to the proper performance of their duties as it deems necessary or appropriate.

6. If two or more grand juries are impaneled at the same court term, the court may thereafter, for good cause, transfer grand jurors from one panel to another, and any grand juror so transferred is deemed to have been sworn as a member of the panel to which he has been transferred.

§ 190.25 Grand jury; proceedings and operation in general

1. Proceedings of a grand jury are not valid unless at least sixteen of its members are present. The finding of an indictment, a direction to file a prosecutor's information, a decision to submit a grand jury report and every other affirmative official action or decision requires the concurrence of at least twelve members thereof.

2. The foreman or any other grand juror may administer an oath to any witness appearing before the grand jury.

3. During the deliberations and voting of a grand jury, only the grand jurors may be present in the grand jury room. During its other proceedings, the following persons, in addition to witnesses, may, as the occasion requires, also be present:

(a) The district attorney;

(b) A clerk or other public servant authorized to assist the grand jury in the administrative conduct of its proceedings;

(c) A stenographer authorized to record the proceedings of the grand jury;

(d) An interpreter. Upon request of the grand jury, the prosecutor must provide an interpreter to interpret the testimony of any witness who does not speak the English language well enough to be readily understood. Such interpreter must, if he has not previously taken the constitutional oath of office, first take an oath before the grand jury that

he will faithfully interpret the testimony of the witness and that he will keep secret all matters before such grand jury within his knowledge;

(e) A public servant holding a witness in custody. When a person held in official custody is a witness before a grand jury, a public servant assigned to guard him during his grand jury appearance may accompany him in the grand jury room. Such public servant must, if he has not previously taken the constitutional oath of office, first take an oath before the grand jury that he will keep secret all matters before it within his knowledge.

4. Grand jury proceedings are secret, and no grand juror or other person specified in subdivision three may, except in the lawful discharge of his duties or upon written order of the court, disclose the nature or substance of any grand jury testimony, or any decision, result or other matter attending a grand jury proceeding.

5. The grand jury is the exclusive judge of the facts with respect to any matter before it.

6. The legal advisors of the grand jury are the court and the district attorney, and the grand jury may not seek or receive legal advice from any other source. Where necessary or appropriate, the court or the district attorney, or both, must instruct the grand jury concerning the law with respect to its duties or any matter before it, and such instructions must be recorded in the minutes.

§ 190.30 Grand jury; rules of evidence

1. Except as otherwise provided in this section, the provisions of article sixty, governing rules of evidence and related matters with respect to other criminal proceedings, are, where appropriate, applicable to grand jury proceedings.

2. A report or a copy of a report made by a public servant, or by a person employed by a public servant or agency, who is a physicist, chemist, firearms identification expert, examiner of questioned documents, fingerprint technician, or an expert or technician in some comparable scientific or professional field, concerning the results of an examination, comparison or test performed by him in connection with a case which is the subject of a grand jury proceeding, may, when certified by such person as a report made by him or as a true copy thereof, be received in such grand jury proceeding as evidence of the facts stated therein.

3. Wherever it is provided in article sixty that the court in a criminal proceeding must rule upon the competency of a witness to testify or upon the admissibility of evidence, such ruling may, in an equivalent situation in a grand jury proceeding, be made by the district attorney.

4. Wherever it is provided in article sixty that a court presiding at a jury trial must instruct the jury with respect to the significance, legal effect or evaluation of evidence, the district attorney, in an equivalent situation in a grand jury proceeding, may so instruct the grand jury.

§ 190.35 Grand jury; definitions of terms

The term definitions contained in section 50.10 are applicable to sections 190.40, 190.45 and 190.50.

§ 190.40 Grand jury; witnesses, compulsion of evidence and immunity

1. Every witness in a grand jury proceeding must give any evidence legally requested of him, regardless of any protest or belief on his part that it may tend to incriminate him.

2. A witness who gives evidence in a grand jury proceeding receives immunity unless:

(a) He has effectively waived such immunity pursuant to section 190.45; or

(b) Such evidence is not responsive to any inquiry and is gratuitously given or volunteered by the witness with knowledge that it is not responsive.

§ 190.45 Grand jury; waiver of immunity

1. A waiver of immunity is a written instrument signed by a person who is or is about to become a witness in a grand jury proceeding, stipulating that he waives his privilege against self-incrimination and any possible or prospective immunity to which he would otherwise become entitled, pursuant to section 190.40, as a result of giving evidence in such proceeding.

2. A waiver of immunity is not effective unless and until it is sworn to before the grand jury conducting the proceeding in which the subscriber has been called as a witness.

3. A person who is called by the people as a witness in a grand jury proceeding and requested by the district attorney to sign and swear to a waiver of immunity before giving evi-

dence has a right to confer with counsel before deciding whether he will comply with such request, and, if he desires to avail himself of such right, he must be accorded a reasonable time in which to obtain and confer with counsel for such purpose. The district attorney must inform the witness of all such rights before obtaining his signature to such a waiver of immunity. Any waiver obtained, signed or sworn to in violation of the provisions of this subdivision is invalid and ineffective.

4. If a grand jury witness signs and swears to a waiver of immunity upon an express understanding with the district attorney that the interrogation will be limited to certain specified subjects, matters or areas of conduct, and if after the commencement of his testimony he is interrogated concerning another subject, matter or area of conduct not included in the original understanding, he may withdraw or qualify his waiver of immunity accordingly by orally declaring before the grand jury his refusal to testify concerning such other matter unless he is granted immunity with respect thereto. Upon such declaration of withdrawal or qualification, the witness receives immunity with respect to any further testimony which he may give concerning such other matter and the waiver of immunity is to that extent ineffective.

§ 190.50 Grand jury; who may call witnesses; defendant as witness

1. Except as provided in this section, no person has a right to call a witness or appear as a witness in a grand jury proceeding.

2. The people may call as a witness in a grand jury proceeding any person believed by the district attorney to possess relevant information or knowledge.

3. The grand jury may cause to be called as a witness any person believed by it to possess relevant information or knowledge. If the grand jury desires to hear any such witness who was not called by the people, it may direct the district attorney to issue and serve a subpoena upon such witness, and the district attorney must comply with such direction. At any time after such a direction, however, or at any time after the service of a subpoena pursuant to such a direction and before the return date thereof, the people may apply to the court which impaneled the grand jury for an order vacating or modifying such direction or subpoena on the ground that such is in the public interest. Upon such application, the court may in its discretion vacate the

direction or subpoena, attach reasonable conditions thereto, or make other appropriate qualification thereof.

4. Notwithstanding the provisions of subdivision three, the district attorney may demand that any witness thus called at the instance of the grand jury sign a waiver of immunity pursuant to section 190.45 before being sworn, and upon such demand no oath may be administered to such witness unless and until he complies therewith.

5. Although not called as a witness by the people or at the instance of the grand jury, a person has a right to be a witness in a grand jury proceeding under circumstances prescribed in this subdivision:

(a) When a criminal charge against a person is being or is about to be or has been submitted to a grand jury, such person has a right to appear before such grand jury as a witness in his own behalf if, prior to the filing of any indictment or any direction to file a prosecutor's information in the matter, he serves upon the district attorney of the county a written notice making such request and stating an address to which communications may be sent. The district attorney is not obliged to inform such a person that such a grand jury proceeding against him is pending, in progress or about to occur unless such person is a defendant who has been arraigned in a local criminal court upon a currently undisposed of felony complaint charging an offense which is a subject of the prospective or pending grand jury proceeding. In such case, the district attorney must notify the defendant or his attorney of the prospective or pending grand jury proceeding and accord the defendant a reasonable time to exercise his right to appear as a witness therein;

(b) Upon service upon the district attorney of a notice requesting appearance before a grand jury pursuant to paragraph (a), the district attorney must notify the foreman of the grand jury of such request, and must subsequently serve upon the applicant, at the address specified by him, a notice that he will be heard by the grand jury at a given time and place. Upon appearing at such time and place, and upon signing and submitting to the grand jury a waiver of immunity pursuant to section 190.45, such person must be permitted to testify before the grand jury and to give any relevant and competent evidence concerning the case under consideration. Upon giving such evidence, he is subject to examination by the people.

(c) Any indictment or direction to file a prosecutor's information obtained or filed in violation of the provisions of paragraph (a) or (b) is invalid and, upon a motion made pursuant to section 170.50 or section 210.20, must be dismissed; provided that a motion based upon such ground must be made not more than five days after the defendant has been arraigned upon the indictment or, as the case may be, upon the prosecutor's information resulting from the grand jury's direction to file the same. If the contention is not so asserted in timely fashion, it is waived and the indictment or prosecutor's information may not thereafter be challenged on such ground.

6. A defendant or person against whom a criminal charge is being or is about to be brought in a grand jury proceeding may request the grand jury, either orally or in writing, to cause a person designated by him to be called as a witness in such proceeding. The grand jury may as a matter of discretion grant such request and cause such witness to be called pursuant to subdivision three.

§ 190.55 Grand jury; matters to be heard and examined; duties and authority of district attorney

1. A grand jury may hear and examine evidence concerning the alleged commission of any offense prosecutable in the courts of the county, and concerning any misconduct, nonfeasance or neglect in public office by a public servant, whether criminal or otherwise.

2. District attorneys are required or authorized to present evidence to grand juries under the following circumstances:

(a) A district attorney must submit to a grand jury evidence concerning a felony allegedly committed by a defendant who, on the basis of a felony complaint filed with a local criminal court of the county, has been held for the action of a grand jury of such county.

(b) A district attorney must submit to a grand jury evidence concerning a misdemeanor allegedly committed by a defendant who has been charged therewith by a local criminal court accusatory instrument, in any case where a superior court of the county has, pursuant to subdivision one of section 170.25, ordered that such misdemeanor charge be prosecuted by indictment in a superior court.

(c) A district attorney may submit to a grand jury any available evidence concerning an offense prosecutable in the

courts of the county, or concerning misconduct, nonfeasance or neglect in public office by a public servant, whether criminal or otherwise.

§ 190.60 Grand jury; action to be taken

Upon hearing and examining any evidence or matter as prescribed in section 190.55, a grand jury may:

1. Indict a person for an offense, as provided in section 190.65;

2. Direct the district attorney to file a prosecutor's information with a local criminal court, as provided in section 190.70;

3. Dismiss the charge before it, as provided in section 190.75;

4. Submit a grand jury report, as provided in section 190.85.

§ 190.65 Grand jury; when indictment is authorized

1. Subject to the rules prescribing the kinds of offenses which may be charged in an indictment, a grand jury may indict a person for an offense when (a) the evidence before it is legally sufficient to establish that such person committed such offense and (b) competent and admissible evidence before it provides reasonable cause to believe that such person committed such offense.

2. The offense or offenses for which a grand jury may indict a person in any particular case are not limited to that or those which may have been designated, at the commencement of the grand jury proceeding, to be the subject of the inquiry; and even in a case submitted to it upon a court order, pursuant to the provisions of section 170.25, directing that a misdemeanor charge pending in a local criminal court be prosecuted by indictment, the grand jury may indict the defendant for a felony if the evidence so warrants.

3. Upon voting to indict a person, a grand jury must, through its foreman or acting foreman, file an indictment with the court by which it was impaneled.

§ 190.70 Grand jury; direction to file prosecutor's information and related matters

1. Except in a case submitted to it pursuant to the provisions of section 170.25, a grand jury may direct the district attorney to file in a local criminal court a prosecutor's information charging a person with an offense other than a felony when (a) the

evidence before it is legally sufficient to establish that such person committed such offense, and (b) competent and admissible evidence before it provides reasonable cause to believe that such person committed such offense. In such case, the grand jury must, through its foreman or acting foreman, file such direction with the court by which it was impaneled.

2. Such direction must be signed by the foreman or acting foreman. It must contain a plain and concise statement of the conduct constituting the offense to be charged, equivalent in content and precision to the factual statement required to be contained in an indictment pursuant to subdivision seven of section 200.50. Subject to the rules prescribed in sections 200.20 and 200.40 governing joinder in a single indictment of multiple offenses and multiple defendants, such grand jury direction may, where appropriate, specify multiple offenses of less than felony grade and multiple defendants, and may direct that the prospective prosecutor's information charge a single defendant with multiple offenses, or multiple defendants jointly with either a single offense or multiple offenses.

3. Upon the filing of such grand jury direction, the court must, unless such direction is insufficient on its face, issue an order approving such direction and ordering the district attorney to file such a prosecutor's information in a designated local criminal court having trial jurisdiction of the offense or offenses in question.

§ 190.75 Grand jury; dismissal of charge

1. If upon a charge that a designated person committed a crime, either (a) the evidence before the grand jury is not legally sufficient to establish that such person committed such crime or any other offense, or (b) the grand jury is not satisfied that there is reasonable cause to believe that such person committed such crime or any other offense, it must dismiss the charge. In such case, the grand jury must, through its foreman or acting foreman, file its finding of dismissal with the court by which it was impaneled.

2. If the defendant was previously held for the action of the grand jury by a local criminal court, the superior court to which such dismissal is presented must order the defendant released from custody if he is in the custody of the sheriff, or, if he is at liberty on bail, it must exonerate the bail.

3. When a charge has been so dismissed, it may not again be submitted to a grand jury unless the court in its discretion

authorizes or directs the people to resubmit such charge to the same or another grand jury. If in such case the charge is again dismissed, it may not again be submitted to a grand jury.

§ 190.80 Grand jury; release of defendant upon failure of timely grand jury action

Upon application of a defendant who on the basis of a felony complaint has been held by a local criminal court for the action of a grand jury, and who, at the time of such order or subsequent thereto, has been committed to the custody of the sheriff pending such grand jury action, and who has been confined in such custody for a period of more than forty-five days without the occurrence of any grand jury action or disposition pursuant to subdivision one, two or three of section 190.60, the superior court by which such grand jury was or is to be impaneled must release him on his own recognizance unless:

(a) The lack of a grand jury disposition during such period of confinement was due to the defendant's request, action or condition, or occurred with his consent; or

(b) The people have shown good cause why such order of release should not be issued. Such good cause must consist of some compelling fact or circumstance which precluded grand jury action within the prescribed period or rendered the same against the interest of justice.

§ 190.85 Grand jury; grand jury reports

1. The grand jury may submit to the court by which it was impaneled, a report:

(a) Concerning misconduct, non-feasance or neglect in public office by a public servant as the basis for a recommendation of removal or disciplinary action; or

(b) Stating that after investigation of a public servant it finds no misconduct, non-feasance or neglect in office by him provided that such public servant has requested the submission of such report; or

(c) Proposing recommendations for legislative, executive or administrative action in the public interest based upon stated findings.

2. The court to which such report is submitted shall examine it and the minutes of the grand jury and, except as otherwise provided in subdivision four, shall make an order accepting and

filing such report as a public record only if the court is satisfied that it complies with the provisions of subdivision one and that:

(a) The report is based upon facts revealed in the course of an investigation authorized by section 190.55 and is supported by the preponderance of the credible and legally admissible evidence; and

(b) When the report is submitted pursuant to paragraph (a) of subdivision one, that each person named therein was afforded an opportunity to testify before the grand jury prior to the filing of such report, and when the report is submitted pursuant to paragraph (b) or (c) of subdivision one, it is not critical of an identified or identifiable person.

3. The order accepting a report pursuant to paragraph (a) of subdivision one, and the report itself, must be sealed by the court and may not be filed as a public record, or be subject to subpoena or otherwise be made public until at least thirty-one days after a copy of the order and the report are served upon each public servant named therein, or if an appeal is taken pursuant to section 190.90, until the affirmance of the order accepting the report, or until reversal of the order sealing the report, or until dismissal of the appeal of the named public servant by the appellate division, whichever occurs later. Such public servant may file with the clerk of the court an answer to such report, not later than twenty days after service of the order and report upon him. Such an answer shall plainly and concisely state the facts and law constituting the defense of the public servant to the charges in said report, and, except for those parts of the answer which the court may determine to be scandalously or prejudicially and unnecessarily inserted therein, shall become an appendix to the report. Upon the expiration of the time set forth in this subdivision, the district attorney shall deliver a true copy of such report, and the appendix if any, for appropriate action, to each public servant or body having removal or disciplinary authority over each public servant named therein.

4. Upon the submission of a report pursuant to subdivision one, if the court finds that the filing of such report as a public record, may prejudice fair consideration of a pending criminal matter, it must order such report sealed and such report may not be subject to subpoena or public inspection during the pendency of such criminal matter, except upon order of the court.

5. Whenever the court to which a report is submitted pursuant to paragraph (a) of subdivision one is not satisfied that the report complies with the provisions of subdivision two, it may direct that additional testimony be taken before the same

grand jury, or it must make an order sealing such report, and the report may not be filed as a public record, or be subject to subpoena or otherwise be made public.

§ 190.90 Grand jury; appeal from order concerning grand jury reports

1. When a court makes an order accepting a report of a grand jury pursuant to paragraph (a) of subdivision one of section 190.85, any public servant named therein may appeal the order; and when a court makes an order sealing a report of a grand jury pursuant to subdivision five of section 190.85, the district attorney or other attorney designated by the grand jury may appeal the order.

2. When a court makes an order sealing a report of a grand jury pursuant to subdivision five of section 190.85, the district attorney or other attorney designated by the grand jury may, within ten days after service of a copy of the order and report upon each public servant named in the report, appeal the order to the appellate division of the department in which the order was made, by filing in duplicate a notice of appeal from the order with the clerk of the court in which the order was made and by serving a copy of such notice of appeal upon each such public servant. Notwithstanding any contrary provision of section 190.85, a true copy of the report of the grand jury shall be served, together with such notice of appeal, upon each such public servant.

3. The mode of and time for perfecting an appeal pursuant to this section, and the mode of and procedure for the argument thereof, are determined by the rules of the appellate division of the department in which the appeal is brought. Such rules shall prescribe the matters referred to in subdivision one of section 460.70 and in section 460.80, except that such appeal is a preferred cause and the appellate division of each department shall promulgate rules to effectuate such preference.

4. The record and all other presentations on appeal shall remain sealed, except that upon affirmance of the order sealing the report or dismissal of the appeal of the named public servant by the appellate division, the report of the grand jury, with the appendix, if any, shall be filed as a public record as provided in subdivision three of section 190.85.

5. The procedure provided for in this section shall be the exclusive manner of reviewing an order made pursuant to section 190.85 and the appellate division of the supreme court shall be

the sole court having jurisdiction of such an appeal. The order of the appellate division finally determining such appeal shall not be subject to review in any other court or proceeding.

6. The grand jury in an appeal pursuant to this section shall be represented by the district attorney unless the report relates to him or his office, in which event the grand jury may designate another attorney.

ARTICLE 200—INDICTMENT AND RELATED INSTRUMENTS

Section
200.10 Indictment; definition.
200.20 Indictment; what offenses may be charged; joinder of offenses and consolidation of indictments.
200.30 Indictment; duplicitous counts prohibited.
200.40 Indictment; joinder of defendants and consolidation of indictments against different defendants.
200.50 Indictment; form and content.
200.60 Indictment; allegations of previous convictions prohibited.
200.70 Indictment; amendment of.
200.80 Indictment; superseding indictments.
200.90 Indictment; bill of particulars.

§ 200.10 Indictment; definition

An indictment is a written accusation by a grand jury, filed with a superior court, charging a person, or two or more persons jointly, with the commission of a crime, or with the commission of two or more offenses at least one of which is a crime.

§ 200.20 Indictment; what offenses may be charged; joinder of offenses and consolidation of indictments

1. An indictment must charge at least one crime and may, in addition, charge in separate counts one or more other offenses, including petty offenses, provided that all such offenses are joinable pursuant to the principles prescribed in subdivision two.

2. Two offenses are "joinable" when:

(a) They are based upon the same act or upon the same criminal transaction, as that term is defined in subdivision two of section 40.10; or

(b) Even though based upon different criminal transactions, such offenses, or the criminal transactions underlying them, are of such nature that either proof of the first of-

fense would be material and admissible as evidence in chief upon a trial of the second, or proof of the second would be material and admissible as evidence in chief upon a trial of the first; or

(c) Even though based upon different criminal transactions, and even though not joinable pursuant to paragraph (b), such offenses are defined by the same or similar statutory provisions and consequently are the same or similar in law; or

(d) Though not directly joinable with each other pursuant to paragraph (a), (b) or (c), each is so joinable with a third offense contained in the indictment. In such case, each of the three offenses may properly be joined not only with each of the other two but also with any further offense joinable with either of the other two, and the chain of joinder may be further extended accordingly.

3. In any case where two or more offenses or groups of offenses charged in an indictment are based upon different criminal transactions, and where their joinability rests solely upon the fact that such offenses, or as the case may be at least one offense of each group, are the same or similar in law, as prescribed in paragraph (c) of subdivision two, the court, in the interest of justice and for good cause shown, may, upon application of either a defendant or the people, in its discretion order that any one of such offenses or groups of offenses be tried separately from the other or others, or that two or more thereof be tried together but separately from two or more others thereof.

4. When two or more indictments against the same defendant or defendants charge different offenses of a kind that are joinable in a single indictment pursuant to subdivision two, the court in its discretion may, upon application of either the people or a defendant, order that such indictments be consolidated and treated as a single indictment for trial purposes. If such indictments, in addition to charging offenses which are so joinable charge other offenses which are not so joinable, they may nevertheless be consolidated for the limited purpose of jointly trying the joinable offenses. In such case, such indictments remain in existence with respect to any nonjoinable offenses and may be prosecuted accordingly.

5. Upon an application by the defendant for consolidation of indictments pursuant to subdivision four, the court must, unless good cause to the contrary be shown, order such consolidation with respect to any offenses which are, pursuant to para-

graph (a) of subdivision two, of a kind that are joinable in a single indictment by reason of being based upon the same act or criminal transaction.

§ 200.30 Indictment; duplicitous counts prohibited

1. Each count of an indictment may charge one offense only.

2. For purpose of this section, a statutory provision which defines the offense named in the title thereof by providing, in different subdivisions or paragraphs, different ways in which such named offense may be committed, defines a separate offense in each such subdivision or paragraph, and a count of an indictment charging such named offense which, without specifying or clearly indicating the particular subdivision or paragraph of the statutory provision, alleges facts which would support a conviction under more than one such subdivision or paragraph, charges more than one offense.

§ 200.40 Indictment; joinder of defendants and consolidation of indictments against different defendants

1. Two or more defendants may be jointly charged in a single indictment provided that all such defendants are jointly charged with every offense alleged therein. Even in such case, the court, upon motion of a defendant or the people made at any time before trial, may for good cause shown order in its discretion that any defendant be tried separately from the other or from one or more or all of the others.

2. When two or more defendants are charged in separate indictments with the same offense or offenses as that term is defined in section 40.10, the court may, upon application of the people, order that such indictments be consolidated and that such defendants be tried jointly for such offense or offenses. If such indictments, in addition to charging the same offense or offenses against the different defendants, charge other offenses not common to all, the indictments may nevertheless be consolidated for the limited purpose of jointly trying such defendants for an offense or offenses common to all. In such case, such indictments remain in existence with respect to any offenses charged therein which are not the subject of the consolidation, and may be prosecuted accordingly.

§ 200.50 Indictment; form and content

An indictment must contain:

1. The name of the superior court in which it is filed; and

2. The title of the action; and

3. A separate accusation or count addressed to each offense charged, if there be more than one; and

4. A statement in each count that the grand jury accuses the defendant or defendants of a designated offense; and

5. A statement in each count that the offense charged therein was committed in a designated county; and

6. A statement in each count that the offense charged therein was committed on, or on or about, a designated date, or during a designated period of time; and

7. A plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and the defendant's or defendants' commission thereof with sufficient precision to clearly apprise the defendant or defendants of the conduct which is the subject of the accusation; and

8. The signature of the foreman or acting foreman of the grand jury; and

9. The signature of the district attorney.

§ 200.60 Indictment; allegations of previous convictions prohibited

1. When the fact that the defendant has been previously convicted of an offense raises an offense of lower grade to one of higher grade and thereby becomes an element of the latter, an indictment for such higher offense may not allege such previous conviction. If a reference to previous conviction is contained in the statutory name or title of such an offense, such name or title may not be used in the indictment, but an improvised name or title must be used which, by means of the phrase "as a felony" or in some other manner, labels and distinguishes the offense without reference to a previous conviction.

2. An indictment for such an offense must be accompanied by a special information, filed by the district attorney with the court, charging that the defendant was previously convicted of a specified offense. Except as provided in subdivision three, the people may not refer to such special information during the

trial nor adduce any evidence concerning the previous conviction alleged therein.

3. After commencement of the trial and before the close of the people's case, the court, in the absence of the jury, must arraign the defendant upon such special information, and must advise him that he may admit the previous conviction alleged, deny it or remain mute. Depending upon the defendant's response, the trial of the indictment must then proceed as follows:

(a) If the defendant admits the previous conviction, that element of the offense charged in the indictment is deemed established, no evidence in support thereof may be adduced by the people, and the court must submit the case to the jury without reference thereto and as if the fact of such previous conviction were not an element of the offense. The court may not submit to the jury any lesser included offense which is distinguished from the offense charged solely by the fact that a previous conviction is not an element thereof.

(b) If the defendant denies the previous conviction or remains mute, the people may prove that element of the offense charged before the jury as a part of their case.

4. Nothing contained in this section precludes the people from proving a prior conviction before a grand jury or relieves them from the obligation or necessity of so doing in order to submit a legally sufficient case.

§ 200.70 Indictment; amendment of

1. At any time before or during trial, the court may, upon application of the people and with notice to the defendant and opportunity to be heard, order the amendment of an indictment with respect to defects, errors or variances from the proof relating to matters of form, time, place, names of persons and the like, when such an amendment does not change the theory or theories of the prosecution as reflected in the evidence before the grand jury which filed such indictment, or otherwise tend to prejudice the defendant on the merits. Upon permitting such an amendment, the court must, upon application of the defendant, order any adjournment of the proceedings which may, by reason of such amendment, be necessary to accord the defendant adequate opportunity to prepare his defense.

2. An indictment may not be amended in any respect which changes the theory or theories of the prosecution as reflected in

the evidence before the grand jury which filed it; nor may an indictment be amended for the purpose of curing:

(a) A failure thereof to charge or state an offense; or

(b) Legal insufficiency of the factual allegations; or

(c) A misjoinder of offenses; or

(d) A misjoinder of defendants.

§ 200.80 Indictment; superseding indictments

If at any time before entry of a plea of guilty to an indictment or commencement of a trial thereof another indictment is filed in the same court charging the defendant with an offense charged in the first indictment, the first indictment is, with respect to such offense, superseded by the second and, upon the defendant's arraignment upon the second indictment, the count of the first indictment charging such offense must be dismissed by the court. The first indictment is not, however, superseded with respect to any count contained therein which charges an offense not charged in the second indictment.

§ 200.90 Indictment; bill of particulars

1. Upon motion of the defendant, the superior court in which an indictment against him is pending may order the people to file a bill of particulars with the court and to serve a copy thereof upon the defendant.

2. A motion for a bill of particulars must be in writing, must request and specify items of factual information desired by the defendant which pertain to the charge and which are not recited in the indictment, and must allege that the defendant cannot adequately prepare or conduct his defense without such information.

3. If the court is satisfied that any or all of the items of information requested are necessary to enable the defendant adequately to prepare or conduct his defense, it must grant the motion as to every such necessary item and order the people to file and serve a bill of particulars accordingly. Nothing contained in this section, however, authorizes an order for a bill of particulars which requires the people to recite matters of evidence.

4. A motion for a bill of particulars is not timely unless made prior to the commencement of trial. The court may deny a motion upon the ground that it is not timely, but it may, in the interest of justice and for good cause shown, grant such a motion made during trial.

5. Upon an order granting a motion pursuant to this section, the district attorney must file with the court a bill of particulars, reciting every item of information designated in the order, and serve a copy thereof upon the defendant. Pending such filing and service, the proceedings are stayed.

ARTICLE 210—PROCEEDINGS IN SUPERIOR COURT FROM FILING OF INDICTMENT TO PLEA

Section
210.05 Indictment exclusive method of prosecution.
210.10 Requirement of, and methods of securing defendant's appearance for arraignment upon indictment.
210.15 Arraignment upon indictment; defendant's rights, court's instructions and bail matters.
210.20 Motion to dismiss indictment.
210.25 Motion to dismiss indictment; as defective.
210.30 Motion to dismiss indictment on ground of insufficiency of grand jury evidence; motion to inspect grand jury minutes.
210.35 Motion to dismiss indictment; defective grand jury proceeding.
210.40 Motion to dismiss indictment; in furtherance of justice.
210.45 Motion to dismiss indictment; procedure.
210.50 Requirement of plea.

§ 210.05 Indictment exclusive method of prosecution

The only method of prosecuting an offense in a superior court is by an indictment filed therewith by a grand jury.

§ 210.10 Requirement of, and methods of securing, defendant's appearance for arraignment upon indictment

After an indictment has been filed with a superior court, the defendant must be arraigned thereon. He must appear personally at such arraignment, and his appearance may be secured as follows:

1. If the defendant was previously held by a local criminal court for the action of the grand jury which filed the indictment, and if he is confined in the custody of the sheriff pursuant to a previous court order issued in the same criminal action, the superior court must direct the sheriff to produce the defendant for arraignment on a specified date and the sheriff must comply with such direction. The court must give at least two days notice of the time and place of the arraignment to an attorney, if

any, who has previously filed a notice of appearance in behalf of the defendant with such superior court, or if no such notice of appearance has been filed, to an attorney, if any, who filed a notice of appearance in behalf of the defendant with the local criminal court.

2. If the defendant was previously held by a local criminal court for the action of the grand jury which filed the indictment, and if he is at liberty on his own recognizance or on bail pursuant to a previous court order issued in the same criminal action, the superior court must, upon at least two days notice to the defendant and his surety, and to any attorney who would be entitled to notice under circumstances prescribed in subdivision one, direct the defendant to appear before the superior court for arraignment on a specified date. If the defendant fails to appear on such date, the court may issue a bench warrant and, in addition, may forfeit the bail, if any. Upon taking the defendant into custody pursuant to such bench warrant, the executing police officer must without unnecessary delay bring him before such superior court for arraignment.

3. If the defendant has not previously been held by a local criminal court for the action of the grand jury which filed the indictment and the filing of the indictment constituted the commencement of the criminal action, the superior court must order the indictment to be filed as a sealed instrument until the defendant is produced or appears for arraignment, and must issue a superior court warrant of arrest; except that if the indictment does not charge a felony the court may instead authorize the district attorney to direct the defendant to appear for arraignment on a designated date. A superior court warrant of arrest is executable anywhere in the state. Such warrant may be addressed to any police officer whose geographical area of employment embraces either the place where the offense charged was allegedly committed or the locality of the court by which the warrant is issued. It must be executed in the same manner as an ordinary warrant of arrest, as provided in section 120.80, and following the arrest the executing police officer must without unnecessary delay perform all recording, fingerprinting, photographing and other preliminary police duties required in the particular case, and bring the defendant before the superior court.

§ 210.15 Arraignment upon indictment; defendant's rights, court's instructions and bail matters

1. Upon the defendant's arraignment before a superior court upon an indictment, the court must immediately inform him, or

cause him to be informed in its presence, of the charge or charges against him, and must cause him to be furnished with a copy of the indictment.

2. The defendant has a right to the aid of counsel at the arraignment and at every subsequent stage of the action, and, if he appears upon such arraignment without counsel, has the following rights:

(a) To an adjournment for the purpose of obtaining counsel; and

(b) To communicate, free of charge, by letter or by telephone, for the purposes of obtaining counsel and informing a relative or friend that he has been charged with an offense; and

(c) To have counsel assigned by the court in any case where he is financially unable to obtain the same.

3. The court must inform the defendant of all rights specified in subdivision two. The court must accord the defendant opportunity to exercise such rights and must itself take such affirmative action as is necessary to effectuate them.

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

5. Upon the arraignment, the court, unless it intends to make a final disposition of the action immediately thereafter, must, as provided in section 530.40, issue a securing order, releasing the defendant on his own recognizance or fixing bail or committing him to the custody of the sheriff for his future appearance in such action.

§ 210.20 Motion to dismiss indictment

1. After arraignment upon an indictment, the superior court may, upon motion of the defendant, dismiss such indictment or any count thereof upon the ground that:

(a) Such indictment or count is defective, within the meaning of section 210.25; or

(b) The evidence before the grand jury was not legally sufficient to establish the offense charged or any lesser included offense; or

(c) The grand jury proceeding was defective, within the meaning of section 210.35; or

(d) The defendant has immunity with respect to the offense charged, pursuant to section 50.20 or 190.40; or

(e) The prosecution is barred by reason of a previous prosecution, pursuant to section 40.20; or

(f) The prosecution is untimely, pursuant to section 30.-10; or

(g) The defendant has been denied the right to a speedy trial; or

(h) There exists some other jurisdictional or legal impediment to conviction of the defendant for the offense charged; or

(i) Dismissal is required in the interest of justice, pursuant to section 210.40.

2. A motion pursuant to this section should be made prior to entry of a plea of guilty or commencement of trial following a plea of not guilty. A motion made thereafter may be summarily denied, and must be summarily denied if based upon a ground prescribed in paragraph (b) or (i) of subdivision one. If it is based upon any other ground, the court, in the interest of justice and for good cause shown, may, in its discretion, entertain and dispose of the motion on the merits at any time before sentence.

3. Upon the motion, a defendant who is in a position adequately to raise more than one ground in support thereof should raise every such ground upon which he intends to challenge the indictment. A subsequent motion based upon any such ground not so raised may be summarily denied, although the court, in the interest of justice and for good cause shown, may in its discretion entertain and dispose of such a motion on the merits notwithstanding.

4. Upon dismissing an indictment or a count thereof upon any of the grounds specified in paragraphs (a), (b), (c) and (i) of subdivision one, the court may, upon application of the people, in its discretion authorize the people to submit the charge or charges to the same or another grand jury. When the dismissal is based upon some other ground, such authorization may not be granted. In the absence of authorization to resubmit, the order of dismissal constitutes a bar to any further prosecution of

such charge or charges, by indictment or otherwise, in any criminal court within the county.

§ 210.25 Motion to dismiss indictment; as defective

An indictment or a count thereof is defective within the meaning of paragraph (a) of subdivision one of section 210.20 when:

1. It does not substantially conform to the requirements stated in article two hundred; provided that an indictment may not be dismissed as defective, but must instead be amended, where the defect or irregularity is of a kind that may be cured by amendment, pursuant to section 200.70, and where the people move to so amend; or

2. The allegations demonstrate that the court does not have jurisdiction of the offense charged; or

3. The statute defining the offense charged is unconstitutional or otherwise invalid.

§ 210.30 Motion to dismiss indictment on grounds of insufficiency of grand jury evidence; motion to inspect grand jury minutes

1. A motion to dismiss an indictment or a count thereof, based upon the ground that the evidence before the grand jury was not legally sufficient to establish the commission by the defendant of the offense charged or any lesser included offense, must be preceded or accompanied by a motion to inspect the grand jury minutes, as prescribed in subdivision two.

2. A motion to inspect grand jury minutes is a motion by a defendant requesting the court to examine the stenographic minutes of a grand jury proceeding resulting in an indictment for the purpose of determining whether the evidence before the grand jury was legally sufficient to support the charges or a charge contained in such indictment. Such motion must be in writing and the moving papers must allege that there is reasonable cause to believe that the grand jury evidence was not legally sufficient to support a specified count or counts of the indictment, and must contain sworn allegations of fact supporting such claim. Such allegations of fact may be based either upon personal knowledge of the affiant or affiants or upon information and belief, provided that in the latter event the sources of such information and the grounds of such belief must be stated.

3. If the court determines that there is reasonable cause to believe that the grand jury evidence may not have been legally

sufficient, it must grant the motion to inspect the grand jury minutes. It must then proceed to examine the minutes and to determine the motion to dismiss the indictment.

4. If the court determines that there is not reasonable cause to believe that the evidence before the grand jury may have been legally insufficient, it may in its discretion either (a) deny both the motion to inspect and the motion to dismiss, or (b) grant the motion to inspect notwithstanding and proceed to examine the minutes and to determine the motion to dismiss.

5. In any case, the court must place on the record its ruling upon the motion to inspect.

6. The validity of an order denying any motion made pursuant to this section is not reviewable upon an appeal from an ensuing judgment of conviction based upon legally sufficient trial evidence.

§ 210.35 Motion to dismiss indictment; defective grand jury proceeding

A grand jury proceeding is defective within the meaning of paragraph (c) of subdivision one of section 210.20 when:

1. The grand jury was illegally constituted; or

2. The proceeding is conducted before fewer than sixteen grand jurors; or

3. Fewer than twelve grand jurors concur in the finding of the indictment; or

4. The defendant is not accorded an opportunity to appear and testify before the grand jury in accordance with the provisions of section 190.50; or

5. The proceeding otherwise fails to conform to the requirements of article one hundred ninety to such degree that the integrity thereof is impaired and prejudice to the defendant may result.

§ 210.40 Motion to dismiss indictment; in furtherance of justice

1. An indictment or any count thereof may be dismissed in furtherance of justice, as provided in paragraph (i) of subdivision one of section 210.20, when, even though there may be no basis for dismissal as a matter of law upon any ground specified in paragraphs (a) through (h) of said subdivision one of section 210.20, such dismissal is required as a matter of judicial

discretion by the existence of some compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant upon such indictment or count would constitute or result in injustice.

2. An order dismissing an indictment in the interest of justice may be issued upon motion of the people or of the court itself as well as upon that of the defendant. Upon issuing such an order, the court must set forth its reasons therefor upon the record.

§ 210.45 Motion to dismiss indictment; procedure

1. A motion to dismiss an indictment pursuant to section 210.20 must be made in writing and upon reasonable notice to the people. If the motion is based upon the existence or occurrence of facts, the motion papers must contain sworn allegations thereof, whether by the defendant or by another person or persons. Such sworn allegations may be based upon personal knowledge of the affiant or upon information and belief, provided that in the latter event the affiant must state the sources of such information and the grounds of such belief. The defendant may further submit documentary evidence supporting or tending to support the allegations of the moving papers.

2. The people may file with the court, and in such case must serve a copy thereof upon the defendant or his counsel, an answer denying or admitting any or all of the allegations of the moving papers, and may further submit documentary evidence refuting or tending to refute such allegations.

3. After all papers of both parties have been filed, and after all documentary evidence, if any, has been submitted, the court must consider the same for the purpose of determining whether the motion is determinable without a hearing to resolve questions of fact.

4. The court must grant the motion without conducting a hearing if:

(a) The moving papers allege a ground constituting legal basis for the motion pursuant to subdivision one of section 210.20; and

(b) Such ground, if based upon the existence or occurrence of facts, is supported by sworn allegations of all facts essential to support the motion; and

(c) The sworn allegations of fact essential to support the motion are either conceded by the people to be true or

are conclusively substantiated by unquestionable documentary proof.

5. The court may deny the motion without conducting a hearing if:

(a) The moving papers do not allege any ground constituting legal basis for the motion pursuant to subdivision one of section 210.20; or

(b) The motion is based upon the existence or occurrence of facts, and the moving papers do not contain sworn allegations supporting all the essential facts; or

(c) An allegation of fact essential to support the motion is conclusively refuted by unquestionable documentary proof.

6. If the court does not determine the motion pursuant to subdivision four or five, must conduct a hearing and make findings of fact essential to the determination thereof. The defendant has a right to be present in person at such hearing but may waive such right.

7. Upon such a hearing, the defendant has the burden of proving by a preponderance of the evidence every fact essential to support the motion.

8. When the court dismisses the entire indictment without authorizing resubmission of the charge or charges to a grand jury, it must order that the defendant be discharged from custody if he is in the custody of the sheriff, or if he is at liberty on bail it must exonerate the bail.

9. When the court dismisses the entire indictment but authorizes resubmission of the charge or charges to a grand jury, such authorization is, for purposes of this subdivision, deemed to constitute an order holding the defendant for the action of a grand jury with respect to such charge or charges. Such order must be accompanied by a securing order either releasing the defendant on his own recognizance or fixing bail or committing him to the custody of the sheriff pending resubmission of the case to the grand jury and the grand jury's disposition thereof. Such securing order remains in effect until the first to occur of any of the following:

(a) A statement to the court by the people that they do not intend to resubmit the case to a grand jury;

(b) Arraignment of the defendant upon an indictment or prosecutor's information filed as a result of resubmis-

sion of the case to a grand jury. Upon such arraignment, the arraigning court must issue a new securing order;

(c) The filing with the court of a grand jury dismissal of the case following resubmission thereof;

(d) The expiration of a period of forty-five days from the date of issuance of the order; provided that such period may, for good cause shown, be extended by the court to a designated subsequent date if such be necessary to accord the people reasonable opportunity to resubmit the case to a grand jury.

Upon the termination of the effectiveness of the securing order pursuant to paragraph (a), (c) or (d), the court must immediately order that the defendant be discharged from custody if he is in the custody of the sheriff, or if he is at liberty on bail it must exonerate the bail. Although expiration of the period of time specified in paragraph (d) without any resubmission or grand jury disposition of the case terminates the effectiveness of the securing order, it does not terminate the effectiveness of the order authorizing resubmission.

§ 210.50 Requirement of plea

Unless an indictment is dismissed or the criminal action thereon terminated or abated pursuant to the provisions of this article or some other provision of law, the defendant must be required to enter a plea thereto.

TITLE J—PROSECUTION OF INDICTMENTS IN SUPERIOR COURTS—PLEA TO SENTENCE

ARTICLE 220—THE PLEA

Section
220.10 Plea; kinds of pleas.
220.20 Plea; meaning of lesser included offense for plea purposes.
220.30 Plea; plea of guilty to part of indictment; plea covering other indictments.
220.40 Plea; plea of not guilty; meaning.
220.50 Plea; entry of plea.
220.60 Plea; change of plea.

§ 220.10 Plea; kinds of pleas

The only kinds of pleas which may be entered to an indictment are those specified in this section:

1. The defendant may as a matter of right enter a plea of "not guilty" to the indictment.

2. Except as provided in subdivision three, the defendant may as a matter of right enter a plea of "guilty" to the entire indictment.

3. When a defendant desires to enter a plea of guilty to an indictment charging the crime of murder as defined in subdivision one or three of section 125.25 of the penal law, the court must determine, in the manner provided in subdivision three of section 320.10 of this chapter, whether a possibility exists that the defendant, following a verdict of guilty of murder after trial, could ultimately be sentenced to death pursuant to the provisions of sections 125.30 and 125.35 of the penal law. If the court finds that such a possibility does not exist, the defendant may as a matter of right enter a plea of guilty to the indictment. If the court finds that such a possibility does exist, the defendant may enter a plea of guilty to the indictment only with both the permission of the court and the consent of the people.

4. Where the indictment charges but one crime, the defendant may, with both the permission of the court and the consent of the people, enter a plea of guilty of a lesser included offense.

5. Where the indictment charges two or more offenses in separate counts, the defendant may, with both the permission of the court and the consent of the people, enter a plea of:

(a) Guilty of one or more but not all of the offenses charged; or

(b) Guilty of a lesser included offense with respect to any or all of the offenses charged; or

(c) Guilty of any combination of offenses charged and lesser offenses included within other offenses charged.

§ 220.20 Plea; meaning of lesser included offense for plea purposes

1. A "lesser included offense," within the meaning of subdivisions four and five of section 220.10 relating to the entry of a plea of guilty to an offense of lesser grade than one charged in a count of an indictment, means not only a "lesser included offense" as that term is defined in subdivision thirty-seven of section 1.20; but also one which is deemed to be such pursuant to the following rules:

(a) Where the only culpable mental state required for the crime charged is that the proscribed conduct be performed intentionally, any lesser offense consisting of reckless or criminally negligent, instead of intentional, performance of the same conduct is deemed to constitute a lesser included offense;

(b) Where the only culpable mental state required for the crime charged is that the proscribed conduct be performed recklessly, any lesser offense consisting of criminally negligent, instead of reckless, performance of the same conduct is deemed to constitute a lesser included offense;

(c) Where according to the allegations of a count a defendant's participation in the crime charged consisted in whole or in part of solicitation of another person to engage in the proscribed conduct, the offense of criminal solicitation, in any appropriate degree, is, with respect to such defendant, deemed to constitute a lesser included offense;

(d) Where according to the allegations of a count a defendant's participation in the crime charged consisted in whole or in part of conspiratorial agreement or conduct with another person to engage in the proscribed conduct, the crime of conspiracy, in any appropriate degree, is, with

respect to such defendant, deemed to constitute a lesser included offense;

(e) Where according to the allegations of a count charging a felony a defendant's participation in such felony consisted in whole or in part of providing another person with means or opportunity for engaging in the proscribed conduct, the crime of criminal facilitation, in any appropriate degree, is, with respect to such defendant, deemed to constitute a lesser included offense;

(f) Where the crime charged is assault or attempted assault, in any degree, allegedly committed by intentionally causing or attempting to cause physical injury to a person by the immediate use of physical force against him, or where the crime charged is menacing, as defined in section 120.15 of the penal law, the offense of harassment, as defined in subdivision one of section 240.25 of the penal law, is deemed to constitute a lesser included offense;

(g) Where the crime charged is murder as defined in subdivision three of section 125.25 of the penal law, allegedly committed in the course of the commission or attempted commission of a designated one of the underlying felonies enumerated in said subdivision, or during immediate flight therefrom, such designated underlying felony or attempted felony is deemed to constitute a lesser included offense. If such designated underlying felony is alleged to be robbery, burglary, kidnapping, or arson, without specification of the degree thereof, or an attempt to commit the same, a plea of guilty may be entered to the lowest degree thereof only, or as the case may be to attempted commission of such felony in its lowest degree, unless the allegations of the count clearly indicate the existence of all the elements of a higher degree;

(h) Where the crime charged is criminally selling a dangerous drug, the crimes of criminally possessing a dangerous drug in the fourth degree, as defined in section 220.05 of the penal law, and criminally possessing a dangerous drug in the third degree, as defined in section 220.10 of the penal law, are deemed to constitute lesser included offenses; and if the drug sold is alleged to be a narcotic drug, the crime of criminally possessing a dangerous drug in the second degree, as defined in subdivision one of section 220.15 of the penal law, is also deemed to constitute a lesser included offense.

2. An offense is deemed to be a lesser included offense with respect to a crime charged in an indictment, pursuant to the provisions of subdivision one, only for purposes of conviction upon a plea of guilty and not for purposes of conviction by verdict. For the latter purpose, an offense constitutes a lesser included one only when it conforms to the definition of that term contained in subdivision thirty-seven of section 1.20.

§ 220.30 Plea; plea of guilty to part of indictment; plea covering other indictments

1. A plea of guilty not embracing the entire indictment, entered pursuant to the provisions of subdivision four or five of section 220.10, is a "plea of guilty to part of the indictment."

2. The entry and acceptance of a plea of guilty to part of the indictment constitutes a disposition of the entire indictment and a dismissal of every count to which the defendant did not plead guilty.

3. A plea of guilty, whether to be the entire indictment or to part of the indictment, may, with both the permission of the court and the consent of the people, be entered and accepted upon the condition that it constitutes a complete disposition and dismissal of one or more other indictments against the defendant then pending in the same court.

§ 220.40 Plea; plea of not guilty; meaning

A plea of not guilty constitutes a denial of every allegation of the indictment.

§ 220.50 Plea; entry of plea

1. A plea to an indictment, other than one against a corporation, must be entered orally by the defendant in person; except that a plea to an indictment which does not charge a felony may, with the permission of the court, be entered by counsel upon submission by him of written authorization of the defendant.

2. A plea to an indictment against a corporation must be entered by counsel.

3. If a defendant who is required to enter a plea to an indictment refuses to do so or remains mute, the court must enter a plea of not guilty to the indictment in his behalf.

§ 220.60 Plea; change of plea

1. Except as provided in subdivision two, a defendant who has entered a plea of not guilty to an indictment may as a matter of right withdraw such plea at any time before rendition of a verdict and enter a plea of guilty to the entire indictment.

2. A defendant who has entered a plea of not guilty to an indictment charging the crime of murder as defined in subdivision one or three of section 125.25 of the penal law may, before the rendition of a verdict, withdraw such plea and enter a plea of guilty to the indictment only under circumstances prescribed in subdivision three of section 220.10.

3. A defendant who has entered a plea of not guilty to an indictment may, with both the permission of the court and the consent of the people, withdraw such plea at any time before the rendition of a verdict and enter a plea of guilty to part of the indictment pursuant to subdivision four or five of section 220.10.

4. At any time before the imposition of sentence, the court in its discretion may permit a defendant who has entered a plea of guilty to the entire indictment or to part of the indictment to withdraw such plea, and in such event the entire indictment, as it existed at the time of the plea of guilty, is restored.

ARTICLE 230—REMOVAL OF ACTION

Section

230.10 Removal of action; from supreme court to county court and from county court to supreme court; at instance of court.

230.20 Removal of action; removal from county court to supreme court and change of venue; upon motion of party.

230.30 Removal of action; stay of trial pending motion therefor.

230.40 Removal of action; determinations and rulings before and after removal; by which courts made.

§ 230.10 Removal of action; from supreme court to county court and from county court to supreme court; at instance of court

Upon order of an appropriate court or judge, made at its or his own instance pursuant to rules established by the appellate division of the appropriate department, (a) an indictment filed with the supreme court at a term held in a particular county

outside of New York City may, prior to entry of a plea of guilty thereto or commencement of a trial thereof, be removed to the county court of such county, and (b) an indictment filed in a county court may similarly be removed to the supreme court at a term held or to be held in the same county. Each of the appellate divisions of the second, third and fourth departments may establish rules authorizing such removals with respect to the superior courts within its department, and prescribing the courts or judges who may order such removals and other procedural matters involved therein.

§ 230.20 Removal of action; removal from county court to supreme court and change of venue; upon motion of party

1. At any time after a plea of not guilty is entered in a county court to an indictment pending therein, and before trial of such indictment, the appellate division of the department embracing such county, upon motion of either the defendant or the people, may, for good cause shown, order that the indictment and action be removed from such county court to the supreme court at a term held or to be held in the same county.

2. At any time after a plea of not guilty is entered in a superior court to an indictment pending therein, and before trial of such indictment, the appellate division of the department embracing the county in which such superior court is located may, upon motion of either the defendant or the people for a change of venue, demonstrating reasonable cause to believe that a fair and impartial trial cannot be had in such county, order that the indictment and action be removed from such superior court to a designated superior court of or located in another county. Such order must, if the defendant is in custody at the time, include a provision for transfer of custody by the sheriff or other appropriate public servant of the county of confinement to the sheriff or other appropriate public servant of the county to which the action has been removed. If the order is issued upon motion of the people, the appellate division may impose such conditions as it deems equitable and appropriate to insure that the removal does not subject the defendant to an unreasonable burden in making his defense. Any additional cost to the people incurred in complying with the order must be borne by the county from which the action has been removed.

3. Any motion made pursuant to this section must be based upon papers stating the grounds therefor, and must be made

upon five days notice thereof together with service of the moving papers upon, as the case may be, (a) the district attorney or (b) either the defendant or his counsel. In any case, the motion must be made returnable either during the appellate division term during which such moving papers are served or during the next term thereof.

4. If the appellate division grants the motion and orders a removal of the action, a certified copy of such order must be filed with the clerk of the superior court in which the indictment is pending. Such clerk must thereupon transmit such instrument, together with the pertinent papers and proceedings of the action, including all undertakings for appearances of the defendant and of the witnesses, or a certified copy or copies of the same, to the term of the superior court to which the action has been removed. Such latter court must then proceed to conduct the action to judgment.

§ 230.30 Removal of action; stay of trial pending motion therefor

1. At any time when a timely motion for removal of an action from the county court to the supreme court or for a change of venue may be made pursuant to section 230.20, a justice holding a term of the supreme court in the district in which the indictment is pending, or a justice of the appellate division of the department in which the indictment is pending, upon application of either the defendant or the people, may, in his discretion and for good cause shown, order that the trial of such indictment be stayed for a designated period, not to exceed thirty days from the issuance of such order, to allow the applicant party to make a motion in the appropriate court for removal of the action from a county court to the supreme court or for a change of venue.

2. Such an order may be issued only upon an application made in writing and after reasonable notice and opportunity to be heard has been accorded the other party.

3. Upon issuing the order, the supreme court justice or appellate division justice must cause the order to be filed with the clerk of the court in which the indictment is pending. Thereafter, no further proceedings may be had in such court until a motion for removal or change of venue, as the case may be, if made within the designated period, has been determined, or until such designated period has expired without any such motion having been made.

4. When such an application for a stay has been made to and denied by a justice of the supreme court or a justice of the appellate division, a second such application may not be made to any other such justice.

§ 230.40 Removal of action; determinations and rulings before and after removal; by which courts made

Upon any removal of an indictment and action from one superior court to another pursuant to the provisions of this article, determinations and rulings with respect to the action made before such removal are not thereby rendered invalid. All subsequent determinations and rulings must be made by the court to which the action is removed; and such latter court is deemed to have control of the grand jury minutes underlying the indictment for the purpose of determining post-removal motions addressed to the legal sufficiency of the grand jury evidence or the validity of the grand jury proceeding.

ARTICLE 240—DISCOVERY

Section

240.10 Discovery; definitions of terms.
240.20 Discovery; when authorized.
240.30 Discovery; when motion made.
240.40 Discovery; continuing duty to disclose; failure to comply.

§ 240.10 Discovery; definitions of terms

As used in this article, the following terms have the following meanings:

1. "Order of discovery" means an order of a court in which a criminal action is pending, issued upon motion of a party thereto, directing the adverse party to permit such moving party to inspect property and to copy or photograph it.

2. "Property" means any tangible personal or real property, including books, records and papers.

3. "Exempt property" means (a) reports, memoranda or other internal documents or work papers made by district attorneys, police officers or other law enforcement agents, or by a defendant or his attorneys or agents, in connection with the investigation, prosecution or defense of a criminal action, and (b) records of statements made to such parties, attorneys or agents by witnesses or prospective witnesses in the case.

§ 240.20 Discovery; when authorized

Upon motion of a defendant against whom an indictment is pending, the court, under circumstances prescribed in this section, must or may issue an order of discovery:

1. Such discovery must be ordered with respect to property consisting of:

(a) A record of testimony given by such defendant before the grand jury which filed the indictment; or

(b) Written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the district attorney, the existence of which is known, or by the exercise of due diligence should become known, to such district attorney.

2. Subject to the provisions of subdivisions four and five, such discovery may be ordered with respect to property consisting of reports and documents, or copies or portions thereof, concerning physical or mental examinations or scientific tests and experiments made in connection with the case which are within the possession, custody or control of the district attorney, the existence of which is known, or by the exercise of due diligence should become known, to such district attorney.

3. Subject to the provisions of subdivisions four and five, such discovery may be ordered with respect to any other property specifically designated by the defendant, except exempt property, which is within the possession, custody or control of the district attorney upon a showing by the defendant that (a) discovery with respect to such property is material to the preparation of his defense, and (b) the request is reasonable.

4. Upon granting a defense motion for discovery with respect to property of a kind specified in subdivisions two and three, the court may, upon motion of the people showing such to be material to the preparation of their case and that the request is reasonable, condition its order of discovery by further directing discovery by the people of property, other than exempt property, of the same kind or character as that authorized to be inspected by the defendant, which is within the possession, custody or control of the defendant and which he intends or is likely to produce at the trial.

5. Upon a motion for discovery, whether made by a defendant or made by the people pursuant to subdivision four, the respondent party must be accorded an opportunity to be heard in opposition to the motion. At any time after issuance of an order of discovery and before complete compliance therewith, the

court may, upon a sufficient showing by the party ordered to permit inspection, vacate, restrict, qualify or defer the order of discovery or make any other order which is appropriate. Upon application of the people, the court may permit the people to make a showing in opposition to a motion for discovery, or in support of an application to restrict, qualify or defer such order, wholly or partly in the form of a written statement to be inspected by the court *in camera*. In such case, such statement must be sealed and preserved in the records of the court. Upon an appeal from an ensuing judgment of conviction in the action, such statement constitutes a part of the record to the extent that it must be made available to the appellate court for inspection thereby.

§ 240.30 Discovery; when motion made

A motion for discovery by a defendant against whom an indictment is pending must be made with due diligence prior to the commencement of trial, and if not so made may be summarily denied. In the interest of justice and for good cause shown, however, the court may in its discretion entertain and determine such a motion at any time before trial or at any time during trial prior to the conclusion of the evidence.

§ 240.40 Discovery; continuing duty to disclose; failure to comply

If after complying with an order of discovery a party finds, either before or during trial, additional property which is subject to or covered by such order, he must promptly notify the other party or the latter's attorney or the court of the existence thereof. Upon being apprised of any breach of such duty, the court may order the violating party to permit inspection of the subsequently discovered property, or grant an adjournment, or refuse to receive such property in evidence, or take any other appropriate action.

ARTICLE 250—PRE-TRIAL NOTICES OF DEFENSES

Section

250.10 Notice of defense of mental disease or defect.
250.20 Notice of alibi.

§ 250.10 Notice of defense of mental disease or defect

Evidence of mental disease or defect of the defendant excluding criminal responsibility pursuant to section 30.05 of the penal

law is not admissible upon a trial unless the defendant serves upon the people and files with the court a written notice of his intention to rely upon such defense. Such notice must be served and filed before trial and not more than thirty days after entry of the plea of not guilty to the indictment. In the interest of justice and for good cause shown, however, the court may permit such service and filing to be made at any later time prior to the close of the evidence.

§ 250.20 Notice of alibi

1. At any time before trial, the people may serve upon the defendant or his counsel, and file a copy thereof with the court, a demand that if the defendant intends to offer a trial defense that at the time of the commission of the crime charged he was at some place or places other than the scene of the crime, and to call witnesses in support of such defense, he must, within four days of service of such demand, serve upon the people, and file a copy thereof with the court, a "notice of alibi," reciting (a) the place or places where the defendant claims to have been at the time in question, and (b) the names, the residential addresses, the places of employment and the addresses thereof of every such alibi witness upon whom he intends to rely.

2. If at the trial the defendant calls such an alibi witness without having served the demanded notice of alibi, or if having served such a notice he calls a witness not specified therein, the court may exclude any testimony of such witness relating to the alibi defense. The court may in its discretion receive such testimony, but before doing so, it must, upon application of the people, grant an adjournment not in excess of three days.

ARTICLE 260—JURY TRIAL—GENERALLY

Section
260.10 Jury trial; requirement thereof.
260.20 Jury trial; defendant's presence at trial.
260.30 Jury trial; in what order to proceed.

§ 260.10 Jury trial; requirement thereof

Except as otherwise provided in section 320.10, every trial of an indictment must be a jury trial.

§ 260.20 Jury trial; defendant's presence at trial

A defendant must be personally present during the trial of an indictment.

§ 260.30 Jury trial; in what order to proceed

The order of a jury trial, in general, is as follows:

1. The jury must be selected and sworn.

2. The court must deliver preliminary instructions to the jury.

3. The people must deliver an opening address to the jury.

4. The defendant may deliver an opening address to the jury.

5. The people must offer evidence in support of the indictment.

6. The defendant may offer evidence in his defense.

7. The people may offer evidence in rebuttal of the defense evidence, and the defendant may then offer evidence in rebuttal of the people's rebuttal evidence. The court may in its discretion permit the parties to offer further rebuttal or surrebuttal evidence in this pattern. In the interest of justice, the court may permit either party to offer evidence upon rebuttal which is not technically of a rebuttal nature but more properly a part of the offering party's original case.

8. At the conclusion of the evidence, the defendant may deliver a summation to the jury.

9. The people may then deliver a summation to the jury.

10. The court must then deliver a charge to the jury.

11. The jury must then retire to deliberate and, if possible, render a verdict.

ARTICLE 270—JURY TRIAL—FORMATION AND CONDUCT OF JURY

Section
270.05 Trial jury; formation in general.
270.10 Trial jury; challenge to the panel.
270.15 Trial jury; examination of prospective jurors; challenges generally.
270.20 Trial jury; challenge for cause of an individual juror.
270.25 Trial jury; peremptory challenge of an individual juror.
270.30 Trial jury; alternate jurors.
270.35 Trial jury; discharge of juror; replacement by alternate juror.
270.40 Trial jury; preliminary instructions by court.
270.45 Trial jury; when separation permitted.
270.50 Trial jury; viewing of premises.

§ 270.05 Trial jury; formation in general

1. A trial jury consists of twelve jurors, but "alternate jurors" may be selected and sworn pursuant to section 270.30.

2. The panel from which the jury is drawn is formed and selected as prescribed in the judiciary law. The first twelve members of the panel returned for the term who appear as their names are drawn and called, and who are not excluded as prescribed by this article, must be sworn and thereupon constitute the trial jury.

§ 270.10 Trial jury; challenge to the panel

1. A challenge to the panel is an objection made to the entire panel of prospective trial jurors returned for the term and may be taken to such panel or to any additional panel that may be ordered by the court. Such a challenge may be made only by the defendant and only on the ground that there has been such a departure from the requirements of the judiciary law in the drawing or return of the panel as to result in substantial prejudice to the defendant.

2. A challenge to the panel must be made before the selection of the jury commences, and, if it is not, such challenge is deemed to have been waived. Such challenge must be made in writing setting forth the facts constituting the ground of challenge. If such facts are denied by the people, witnesses may be called and examined by either party. All issues of fact and law arising on the challenge must be tried and determined by the court. If a challenge to the panel is allowed, the court must discharge that

panel and order another panel of prospective trial jurors returned for the term.

§ 270.15 Trial jury; examination of prospective jurors; challenges generally

1. If no challenge to the panel is made as prescribed by section 270.10, or if such challenge is made and disallowed, the court must direct that the names of twelve members of the panel be drawn and called as prescribed by the judiciary law. Such persons must take their places in the jury box and must be immediately sworn to answer truthfully questions asked them relative to their qualifications to serve as jurors in the action. The court must permit both parties, commencing with the people, to examine the prospective jurors, individually or collectively, regarding their qualifications to serve as jurors. The scope of the examination is within the discretion of the court, and the court may disallow statements or questions by either party that are irrelevant to the examination or repetitious.

2. Upon the completion of such examination by both parties, each, commencing with the people, may challenge a prospective juror for cause, as prescribed by section 270.20. If such challenge is allowed, the prospective juror must be excluded from service. After both parties have had an opportunity to challenge for cause, the court must permit them to peremptorily challenge any remaining prospective juror, as prescribed by section 270.25, and such juror must be excluded from service. The people must exercise their peremptory challenges first and may not, after the defendant has exercised his peremptory challenges, make such a challenge to any remaining prospective juror who is then in the jury box. The prospective jurors who are not excluded from service must retain their place in the jury box and must be immediately sworn as trial jurors. They must be sworn to try the action in a just and impartial manner, to the best of their judgment, and to render a verdict according to the law and the evidence.

3. The court must thereupon direct that the persons excluded be replaced in the jury box by an equal number from the panel. The process of jury selection as prescribed herein shall continue until twelve persons are selected and sworn as trial jurors. The juror whose name was first drawn and called must be designated by the court as the foreman, and no special oath need be administered to him. If before twelve jurors are sworn, a juror already sworn becomes unable to serve by reason of illness or other incapacity, the court must discharge him and the

selection of the trial jury must be completed in the manner prescribed in this section.

4. A challenge for cause of a prospective juror which is not made before he is sworn as a trial juror shall be deemed to have been waived, except that such a challenge based upon a ground not known to the challenging party at that time may be made at any time before a witness is sworn at the trial. If such challenge is allowed by the court, the juror shall be discharged and the selection of the trial jury shall be completed in the manner prescribed in this section, except that if alternate jurors have been sworn, the alternate juror whose name was first drawn and called shall take the place of the juror so discharged.

§ 270.20 Trial jury; challenge for cause of an individual juror

1. A challenge for cause is an objection to a prospective juror and may be made only on the ground that:

(a) He does not have the qualifications required by the judiciary law; or

(b) He has a state of mind that is likely to preclude him from rendering an impartial verdict based upon the evidence adduced at the trial; or

(c) He is related within the sixth degree by consanguinity or affinity to the defendant, or to the person allegedly injured by the crime charged, or to a prospective witness at the trial, or to counsel for the people or for the defendant; or that he is or was a party adverse to any such person in a civil action; or that he has complained against or been accused by any such person in a criminal action; or that he bears some other relationship to any such person of such nature that it is likely to preclude him from rendering an impartial verdict; or

(d) He was a witness at the preliminary examination or before the grand jury or is to be a witness at the trial; or

(e) He served on the grand jury which found the indictment in issue or served on a trial jury in a prior civil or criminal action involving the same conduct charged in such indictment; or

(f) There is a possibility that the crime charged may be punishable by death and the prospective juror entertains such conscientious opinions either against or in favor of the death penalty as to preclude him from rendering an im-

partial verdict or from properly exercising the discretion conferred upon him by law in the setting of the penalty upon a proceeding conducted pursuant to 125.35 of the penal law.

2. All issues of fact or law arising on the challenge must be tried and determined by the court. If the challenge is allowed, the court must exclude the person challenged from service. An erroneous ruling by the court allowing a challenge for cause by the people does not constitute reversible error unless the people have exhausted their peremptory challenges at the time or exhaust them before the selection of the jury is complete. An erroneous ruling by the court denying a challenge for cause by the defendant does not constitute reversible error unless the defendant has exhausted his peremptory challenges at the time or, if he has not, he peremptorily challenges such prospective juror and his peremptory challenges are exhausted before the selection of the jury is complete.

§ 270.25 Trial jury; peremptory challenge of an individual juror

1. A peremptory challenge is an objection to a prospective juror for which no reason need be assigned. Upon any peremptory challenge, the court must exclude the person challenged from service.

2. Each party must be allowed the following number of peremptory challenges:

(a) Twenty for the regular jurors if the highest crime charged is a class A felony, and two for each alternate juror to be selected.

(b) Fifteen for the regular jurors if the highest crime charged is a class B or class C felony, and two for each alternate juror to be selected.

(c) Ten for the regular jurors in all other cases, and two for each alternate juror to be selected.

3. When two or more defendants are tried jointly, the number of peremptory challenges prescribed in subdivision two is not multiplied by the number of defendants, but such defendants are to be treated as a single party. In any such case, a peremptory challenge by one or more defendants must be allowed if a majority of the defendants join in such challenge. Otherwise, it must be disallowed.

§ 270.30 Trial jury; alternate jurors

Immediately after the last trial juror is sworn, the court may in its discretion direct the selection of one or more, but not more than four additional jurors to be known as "alternate jurors." Alternate jurors must be drawn in the same manner, must have the same qualifications, must be subject to the same examination and challenges for cause and must take the same oath as the regular jurors. After the jury has retired to deliberate, the court must direct the alternate jurors not to discuss the case and must further direct that they be kept separate and apart from the regular jurors.

§ 270.35 Trial jury; discharge of juror; replacement by alternate juror

1. If at any time after the trial jury has been sworn and before the rendition of its verdict, a juror is unable to continue serving by reason of illness or other incapacity, or for any other reason is unavailable for continued service, the court must discharge such juror. If an alternate juror or jurors are available for service, the court must order that the discharged juror be replaced by the alternate juror whose name was first drawn and called, provided, however, that if the trial jury has retired to deliberate, the defendant must consent to such replacement. Such consent must be in writing and must be signed by the defendant in person in open court in the presence of the court. If no alternate juror is available, the court must declare a mistrial pursuant to subdivision three of section 280.10.

2. If at any time after the trial jury has been sworn and before its rendition of a verdict the court is satisfied, from facts unknown at the time of the selection of the jury, that a juror is grossly unqualified to serve in the case, or that a juror has engaged in misconduct of a substantial nature but not of a kind to require the declaration of a mistrial pursuant to subdivisions one and two of section 280.10, the court may, if an alternate juror or jurors are available for service, discharge such trial juror and order that he be replaced by the alternate juror whose name was first drawn and called. If no alternate juror is available, such trial juror may not be discharged, and the trial must proceed.

§ 270.40 Trial jury; preliminary instructions by court

After the jury has been sworn and before the people's opening address, the court must instruct the jury generally concerning

its basic functions, duties and conduct. Such instructions must include, among other matters, admonitions that the jurors may not converse among themselves or with anyone else upon any subject connected with the trial; that they may not read or listen to any accounts or discussions of the case reported by newspapers or other news media; that they may not visit or view the premises or place where the offense or offenses charged were allegedly committed or any other premises or place involved in the case; and that they must promptly report to the court any incident within their knowledge involving an attempt by any person improperly to influence any member of the jury.

§ 270.45 Trial jury; when separation permitted

During the period extending from the time the jurors are sworn to the time they retire to deliberate upon their verdict, the court may in its discretion either permit them to separate during recesses and adjournments or direct that they be continuously kept together during such periods under the supervision of an appropriate public servant or servants. In the latter case, such public servant or servants may not speak to or communicate with any juror concerning any subject connected with the trial nor permit any other person to do so, and must return the jury to the court room at the next designated trial session.

§ 270.50 Trial jury; viewing of premises

1. When the court is of the opinion that a viewing or observation by the jury of the premises or place where an offense on trial was allegedly committed, or of any other premises or place involved in the case, will be helpful to the jury in determining any material factual issue, it may in its discretion, at any time before the commencement of the summations, order that the jury be conducted to such premises or place for such purpose in accordance with the provisions of this section.

2. In such case, the jury must be kept together throughout under the supervision of an appropriate public servant or servants appointed by the court, and the court itself must be present throughout. The prosecutor, the defendant and counsel for the defendant may as a matter of right be present throughout, but such right may be waived.

3. The purpose of such an inspection is solely to permit visual observation by the jury of the premises or place in ques-

tion, and neither the court, the parties, counsel nor the jurors may engage in discussion or argumentation concerning the significance or implications of anything under observation or concerning any issue in the case.

ARTICLE 280—JURY TRIAL—MOTION FOR A MISTRIAL

Section
280.10 Motion for mistrial.
280.20 Motion for mistrial; status of indictment upon new trial.

§ 280.10 Motion for mistrial

At any time during the trial, the court must declare a mistrial and order a new trial of the indictment under the following circumstances:

1. Upon motion of the defendant, when there occurs during the trial an error or legal defect in the proceedings, or conduct inside or outside the courtroom, which is prejudicial to the defendant and deprives him of a fair trial. When such an error, defect or conduct occurs during a joint trial of two or more defendants and a mistrial motion is made by one or more but not by all, the court must declare a mistrial only as to the defendant or defendants making or joining in the motion, and the trial of the other defendant or defendants must proceed;

2. Upon motion of the people, when there occurs during the trial, either inside or outside the courtroom, gross misconduct by the defendant or some person acting on his behalf, or by a juror, resulting in substantial and irreparable prejudice to the people's case. When such misconduct occurs during a joint trial of two or more defendants, and when the court is satisfied that it did not result in substantial prejudice to the people's case as against a particular defendant and that such defendant was in no way responsible for the misconduct, it may not declare a mistrial with respect to such defendant but must proceed with the trial as to him;

3. Upon motion of either party or upon the court's own motion, when it is physically impossible to proceed with the trial in conformity with law.

§ 280.20 Motion for mistrial; status of indictment upon new trial

Upon a new trial resulting from an order declaring a mistrial, the indictment is deemed to contain all the counts which it contained at the time the previous trial was commenced, regardless of whether any count was thereafter dismissed by the court prior to the mistrial order.

ARTICLE 290—JURY TRIAL—TRIAL ORDER OF DISMISSAL

Section

290.10 Trial order of dismissal.

§ 290.10 Trial order of dismissal

1. At the conclusion of the people's case or at the conclusion of all the evidence, the court may, except as provided in subdivision two, upon motion of the defendant, issue a "trial order of dismissal," dismissing any count of an indictment upon the ground that the trial evidence is not legally sufficient to establish the offense charged therein or any lesser included offense.

2. Despite the lack of legally sufficient trial evidence in support of a count of an indictment as described in subdivision one, issuance of a trial order of dismissal is not authorized and constitutes error when the trial evidence would have been legally sufficient had the court not erroneously excluded admissible evidence offered by the people.

3. When the court excludes trial evidence offered by the people under such circumstances that the substance or content thereof does not appear in the record, the people may, in anticipation of a possible subsequent trial order of dismissal emanating from the allegedly improper exclusion and erroneously issued in violation of subdivision two, and in anticipation of a possible appeal therefrom pursuant to subdivision two of section 450.20, place upon the record, out of the presence of the jury, an "offer of proof" summarizing the substance or content of such excluded evidence. Upon the subsquent issuance of a trial order of dismissal and an appeal therefrom, such offer of proof constitutes a part of the record on appeal and has the effect and significance prescribed in subdivision two of section 450.40. In the absence of such an order and an appeal therefrom, such offer of proof is not deemed a part of the record and

does not constitute such for purposes of an ensuing appeal by the defendant from a judgment of conviction.

4. Upon issuing a trial order of dismissal which dismisses the entire indictment, the court must immediately discharge the defendant from custody if he is in custody of the sheriff, or, if he is at liberty on bail, it must exonerate the bail.

ARTICLE 300—JURY TRIAL—COURT'S CHARGE AND INSTRUCTIONS TO JURY

Section
300.10 Court's charge; in general.
300.20 Court's charge; accomplice testimony.
300.30 Court's charge; submission of indictment to jury; definitions of terms.
300.40 Court's charge; submission of indictment to jury; counts to be submitted.
300.50 Court's charge; submission of lesser included offenses.

§ 300.10 Court's charge; in general

1. At the conclusion of the summations, the court must deliver a charge to the jury.

2. In its charge, the court must state the fundamental legal principles applicable to criminal cases in general. Such principles include, but are not limited to, the presumption of the defendant's innocence, the requirement that guilt be proved beyond a reasonable doubt and that the jury may not, in determining the issue of guilt or innocence, consider or speculate concerning matters relating to sentence or punishment. Upon request of a defendant who did not testify in his own behalf, but not otherwise, the court must state that the fact that he did not testify is not a factor from which any inference unfavorable to the defendant may be drawn. The court must also state the material legal principles applicable to the particular case, and, so far as practicable, explain the application of the law to the facts, but it need not marshal or refer to the evidence to any greater extent than is necessary for such explanation.

3. The court must specifically designate and submit, in accordance with the provisions of sections 300.30 and 300.40, those counts and offenses contained and charged in the indictment which the jury are to consider. Such determination must be made, and the parties informed thereof, prior to the summations. In its charge, the court must define each offense so submitted and, except as otherwise expressly provided, it must

instruct the jury to render a verdict separately and specifically upon each count submitted to it, and with respect to each defendant if there be more than one, and must require that the verdict upon each such count be one of the following:

(a) "Guilty" of the offense submitted, if there be but one; or

(b) Where appropriate, "guilty" of a specified one of two or more offenses submitted under the same count in the alternative pursuant to section 300.40; or

(c) "Not guilty"; or

(d) Where appropriate, "not guilty by reason of mental disease or defect."

4. Both before and after the court's charge, the parties may submit requests to charge, either orally or in writing, and the court must rule promptly upon each request. A failure to rule upon a request is deemed a denial thereof.

§ 300.20 Court's charge; accomplice testimony

1. Before delivering its charge, the court must determine whether any witness therein who gave testimony unfavorable to a defendant is an accomplice, as that term is defined in subdivisions two and three. Upon determining that a witness is an accomplice, the court must so instruct the jury, and it must further instruct that accomplice testimony in general is inherently suspect owing to possible motives of self interest on the part of such witnesses, and that the jury must scrutinize and weigh such testimony with care and caution.

2. An "accomplice" means a witness in a criminal action who, according to evidence adduced in such action, has himself committed:

(a) The offense charged; or

(b) An offense based upon the same or some of the same facts or conduct which constitute the offense charged.

3. A witness who is an accomplice as defined in subdivision two is no less such because a prosecution or conviction of himself would be barred or precluded by some defense or exemption, such as infancy, immunity or previous prosecution, amounting to a collateral impediment to such a prosecution or conviction, not affecting the conclusion that such witness engaged in the conduct constituting the offense with the mental state required for the commission thereof.

§ 300.30 Court's charge; submission of indictment to jury; definitions of terms

The following definitions are applicable to this article:

1. "Submission of a count" of an indictment means submission of the offense charged therein, or of a lesser included offense, or submission in the alternative of both the offense charged and a lesser included offense or offenses. When the court "submits a count," it must, at the least, submit the offense charged therein if such is supported by legally sufficient trial evidence, or if it is not, the greatest lesser included offense which is supported by legally sufficient trial evidence.

2. "Consecutive counts" means two or more counts of an indictment upon which consecutive sentences may be imposed in case of conviction thereon.

3. "Concurrent counts" means two or more counts of an indictment upon which concurrent sentences only may be imposed in case of conviction thereon.

4. "Inclusory concurrent counts." Concurrent counts are "inclusory" when the offense charged in one is greater than any of those charged in the others and when the latter are all lesser offenses included within the greater. All other kinds of concurrent counts are "non-inclusory."

5. "Inconsistent counts." Two counts are "inconsistent" when guilt of the offense charged in one necessarily negates guilt of the offense charged in the other.

§ 300.40 Court's charge; submission of indictment to jury; counts to be submitted

The court may submit to the jury only those counts of an indictment remaining therein at the time of its charge which are supported by legally sufficient trial evidence, and every count not so supported should be dismissed by a trial order of dismissal. The court's determination as to which of the sufficient counts are to be submitted must be in accordance with the following rules:

1. If the indictment contains but one count, the court must submit such count.

2. If a multiple count indictment contains consecutive counts only, the court must submit every count thereof.

3. If a multiple count indictment contains concurrent counts only, the court must submit at least one such count, and may submit more than one as follows:

(a) With respect to non-inclusory concurrent counts, the court may in its discretion submit one or more or all thereof;

(b) With respect to inclusory concurrent counts, the court must submit the greatest or inclusive count and may or must, under circumstances prescribed in section 300.50, also submit, but in the alternative only, one or more of the lesser included counts. A verdict of guilty upon the greatest count submitted is deemed a dismissal of every lesser count submitted, but not an acquittal thereon. A verdict of guilty upon a lesser count is deemed an acquittal upon every greater count submitted.

4. If a multiple count indictment contains two or more groups of counts, with the counts within each group being concurrent as to each other but consecutive as to those of the other group or groups, the court must submit at least one count of each group, in the manner prescribed in subdivision three. If an indictment contains one or more of such groups of concurrent counts, and also one or more other counts each of which is consecutive as to every other count of the indictment, the court must submit each individual consecutive count and at least one count of each group of concurrent counts.

5. If an indictment contains two inconsistent counts, the court must submit at least one thereof. If a verdict of guilty upon either would be supported by legally sufficient trial evidence, the court may submit both counts in the alternative and authorize the jury to convict upon one or the other depending upon its findings of fact. In such case, the court must direct the jury that if it renders a verdict of guilty upon one such count it must render a verdict of not guilty upon the other. If the court is satisfied that a conviction upon one such count, though supported by legally sufficient trial evidence, would be against the weight of the evidence while a conviction upon the other would not, it may in its discretion submit the latter count only.

6. Notwithstanding any other provision of this section, the court is not required to submit any particular count to the jury when:

(a) The people consent that it not be submitted; except that nothing contained in this paragraph limits the right accorded a defendant by section 300.50 to the submission, in certain situations, of counts charging lesser included offenses; or

(b) The number of counts or the complexity of the indictment requires selectivity of counts by the court in order to avoid placing an unduly heavy burden upon the jury in its consideration of the case. In such case, the court may submit to the jury a portion of the counts which are representative of the people's case.

7. Every count not submitted to the jury is deemed to have been dismissed by the court. Where the court, over objection of the people, refuses to submit a count which is consecutive as to every count actually submitted, such count is deemed to have been dismissed by a trial order of dismissal even though no such order was expressly made by the court.

§ 300.50 Court's charge; submission of lesser included offenses

1. In submitting a count of an indictment to the jury, the court in its discretion may, in addition to submitting the greatest offense which it is required to submit, submit in the alternative any lesser included offense if here is a reasonable view of the evidence which would support a finding that the defendant committed such lesser offense but did not commit the greater. If there is no reasonable view of the evidence which would support such a finding, the court may not submit such lesser offense. Any error respecting such submission, however, is waived by the defendant unless he objects thereto before the jury retires to deliberate.

2. If the court is authorized by subdivision one to submit a lesser included offense and is requested by either party to do so, it must do so. In the absence of such a request, the court's failure to submit such offense does not constitute error.

3. The principles prescribed in subdivisions one and two apply equally where the lesser included offense is specifically charged in another count of the indictment.

4. Whenever the court submits two or more offenses in the alternative pursuant to this section, it must instruct the jury that it may render a verdict of guilty with respect to any one of such offenses, depending upon its findings of fact, but that it may not render a verdict of guilty with respect to more than one. A verdict of guilty of any such offense is not deemed an acquittal of any lesser offense submitted, but is deemed an acquittal of every greater offense submitted.

ARTICLE 310—JURY TRIAL—DELIBERATION AND VERDICT OF JURY

Section

310.10 Jury deliberation; requirement of; where conducted.
310.20 Jury deliberation; use of exhibits and other material.
310.30 Jury deliberation; request for information.
310.40 Verdict; rendition thereof.
310.50 Verdict; form; reconsideration of defective verdict.
310.60 Discharge of jury rendition of verdict and effect thereof.
310.70 Rendition of partial verdict and effect thereof.
310.80 Recording and checking of verdict and polling of jury.

§ 310.10 Jury deliberation; requirement of; where conducted

Following the court's charge, the jury must retire to deliberate upon its verdict in a place outside the courtroom. It must be provided with suitable accommodations therefor and must be continuously kept together under the supervision of an appropriate public servant or servants. Except when so authorized by the court or when performing administerial duties with respect to the jurors, such public servant or servants may not speak to or communicate with them or permit any other person to do so.

§ 310.20 Jury deliberation; use of exhibits and other material

Upon retiring to deliberate, the jurors may take with them:

1. Any exhibits received in evidence at the trial which the court, after according the parties an opportunity to be heard upon the matter, in its discretion permits them to take; and

2. A written list prepared by the court containing the offenses submitted to the jury by the court in its charge and the possible verdicts thereon.

§ 310.30 Jury deliberation; request for information

At any time during its deliberation, the jury may request the court for further instruction or information with respect to the law, with respect to the content or substance of any trial evidence, or with respect to any other matter pertinent to the jury's consideration of the case. Upon such a request, the court must direct that the jury be returned to the court room and, after notice to both the people and counsel for the defendant, and in the pres-

ence of the defendant, give such requested information or instruction as the court deems proper.

§ 310.40 Verdict; rendition thereof

1. The verdict must be rendered and announced by the foreman of the jury in the courtroom in the presence of both the court and the defendant. The prosecutor may as a matter of right be present but may waive such right.

2. Before rendering and announcing the verdict, the foreman of the jury must be asked whether the jury has agreed upon a verdict and must answer in the affirmative.

§ 310.50 Verdict; form; reconsideration of defective verdict

1. The form of the verdict must be in accordance with the court's instructions, as prescribed in article three hundred.

2. If the jury renders a verdict which in form is not in accordance with the court's instructions or which is otherwise legally defective, the court must explain the defect or error and must direct the jury to reconsider such verdict, to resume its deliberation for such purpose, and to render a proper verdict. If the jury persists in rendering a defective or improper verdict, the court may in its discretion either order that the verdict in its entirety as to any defendant be recorded as an acquittal, or discharge the jury and authorize the people to retry the indictment or a specified count or counts thereof as to such defendant: provided that if it is clear that the jury intended to find a defendant not guilty upon any particular count, the court must order that the verdict be recorded as an acquittal of such defendant upon such count.

3. If the court accepts a verdict which is defective or incomplete by reason of the jury's failure to render a verdict upon every count upon which it was instructed to do so, such verdict is deemed to constitute an acquittal upon every such count improperly ignored in the verdict.

§ 310.60 Discharge of jury before rendition of verdict and effect thereof

1. A deliberating jury may be discharged by the court without having rendered a verdict only when:

(a) The jury has deliberated for an extensive period of time without agreeing upon a verdict with respect to any of

the charges submitted and the court is satisfied that any such agreement is unlikely within a reasonable time; or

(b) The court, the defendant and the people all consent to such discharge; or

(c) A mistrial is declared pursuant to section 280.10.

2. When the jury is so discharged, the defendant or defendants may be retried upon the indictment. Upon such retrial, the indictment is deemed to contain all the counts which it contained at the time the previous trial was commenced, regardless of whether any count was dismissed by the court in the course of such trial.

§ 310.70 Rendition of partial verdict and effect thereof

1. If a deliberating jury declares that it has reached a verdict with respect to one or more but not all of the charges submitted to it, or with respect to one or more but not all of the defendants, the court must proceed as follows:

(a) If the possibility of ultimate agreement with respect to the other charges or defendants is so small and the circumstances are such that if they were the only matters under consideration the court would be authorized to discharge the jury pursuant to paragraph (a) of subdivision one of section 310.60, the court must terminate the deliberation and order the jury to render a partial verdict with respect to those counts and defendants upon which or with respect to whom it has reached a verdict;

(b) If the court is satisfied that there is a reasonable possibility of ultimate agreement upon any of the unresolved charges with respect to any defendant, it may either:

(i) Order the jury to render its verdict with respect to those charges and defendants upon which or with respect to whom it has reached agreement and resume its deliberation upon the remainder; or

(ii) Refuse to accept a partial verdict at the time and order the jury to resume its deliberation upon the entire case.

2. Upon the rendition of a partial verdict pursuant to subdivision one, a defendant may be retried upon an unresolved count of an indictment when such unresolved count is consecutive, as that term is defined in subdivision two of section 300.30, as to every count upon which the jury did render a verdict, whether of guilty or not guilty.

§ 310.80 Recording and checking of verdict and polling of jury

After a verdict has been rendered, it must be recorded on the minutes and read to the jury, and the jurors must be collectively asked whether such is their verdict. Even though no juror makes any declaration in the negative, the jury must, if either party makes such an application, be polled and each juror separately asked whether the verdict announced by the foreman is in all respects his verdict. If upon either the collective or the separate inquiry any juror answers in the negative, the court must refuse to accept the verdict and must direct the jury to resume its deliberation. If no disagreement is expressed, the jury must be discharged from the case, except as otherwise provided in sections 125.30 and 125.35 of the penal law.

ARTICLE 320—WAIVER OF JURY TRIAL AND CONDUCT OF NON-JURY TRIAL

Section

320.10 Non-jury trial; when authorized.
320.20 Non-jury trial; nature and conduct thereof.

§ 320.10 Non-jury trial; when authorized

1. Except where the indictment charges a crime for which a sentence of death may be imposed upon conviction, the defendant, subject to the provisions of subdivision two, may at any time before trial waive a jury trial and consent to a trial without a jury in the superior court in which the indictment is pending.

2. Such waiver must be in writing and must be signed by the defendant in person in open court in the presence of the court, and with the approval of the court. The court must approve the execution and submission of such waiver unless it determines that it is tendered as a stratagem to procure an otherwise impermissible procedural advantage or that the defendant is not fully aware of the consequences of the choice he is making. If the court disapproves the waiver, it must state upon the record its reasons for such disapproval.

3. An indictment "charges a crime for which a sentence of death may be imposed," within the meaning of subdivision one, when:

(a) It charges the defendant with murder as defined in subdivision one or three of section 125.25 of the penal law; and

(b) There is some possibility that either (i) the victim of the alleged crime was a peace officer who was killed in the course of performing his official duties, or (ii) the defendant was at the time of the commission of the alleged crime confined in a state prison or otherwise in custody under a sentence specified in sub-paragraph (ii) of paragraph (a) of subdivision one of section 125.30 of the penal law; and

(c) There is some possibility that the defendant was more than eighteen years old at the time of the commission of the alleged crime.

In determining whether there is some possibility of the existence of the factors specified in this subdivision so as to preclude a waiver of a jury trial, the court must, if the allegations of the indictment are not conclusive of the matter, examine the minutes of the grand jury proceeding underlying the indictment and conduct any further inquiry which may be necessary to acquire the information essential to such determination.

§ 320.20 Non-jury trial; nature and conduct thereof

1. A non-jury trial of an indictment must be conducted by one judge of the superior court in which the indictment is pending.

2. The court, in addition to determining all questions of law, is the exclusive trier of all issues of fact and must render a verdict.

3. The order of the trial must be as follows:

(a) The court may in its discretion permit the parties to deliver opening addresses. If the court grants such permission to one party it must grant it to the other also. If both parties deliver opening addresses, the people's address must be delivered first.

(b) The order in which evidence must or may be offered by the respective parties is the same as that applicable to a jury trial of an indictment as prescribed in subdivisions five, six and seven of section 260.30.

(c) The court may in its discretion permit the parties to deliver summations. If the court grants permission to one party, it must grant it to the other also. If both parties deliver summations, the defendant's summation must be delivered first.

(d) The court must then consider the case and render a verdict.

4. The provisions governing motion practice and general procedure with respect to a jury trial are, wherever appropriate, applicable to a non-jury trial.

5. Before considering a multiple count indictment for the purpose of rendering a verdict thereon, and before the summations if there be any, the court must designate and state upon the record the counts upon which it will render a verdict and the particular defendant or defendants, if there be more than one, with respect to whom it will render a verdict upon any particular count. In determining what counts, offenses and defendants must be considered by it and covered by its verdict, and the form of the verdict in general, the court must be governed, so far as appropriate and practicable, by the provisions of article three hundred governing the court's submission of counts and offenses to a jury upon a jury trial.

ARTICLE 330—PROCEEDINGS FROM VERDICT TO SENTENCE

Section
330.10 Disposition of defendant after verdict of acquittal.
330.20 Commitment, confinement and release of defendant acquitted on ground of mental disease or defect.
330.30 Motion to set aside verdict; grounds for.
330.40 Motion to set aside verdict; procedure.
330.50 Motion to set aside verdict; order granting motion.

§ 330.10 Disposition of defendant after verdict of acquittal

1. Upon a verdict of complete acquittal, the court must immediately discharge the defendant if he is in the custody of the sheriff, or, if he is at liberty on bail, it must exonerate the bail.

2. Upon a verdict of acquittal by reason of mental disease or defect, the court must commit the defendant to the custody of the commissioner of mental hygiene, pursuant to section 330.20.

§ 330.20 Commitment, confinement and release of defendant acquitted on ground of mental disease or defect

1. Upon rendition of a verdict of acquittal by reason of mental disease or defect, 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. The court must direct the sheriff to tempo-

rarily hold the defendant pending designation of an appropriate institution in which the defendant must be placed, and when notified by the commissioner of mental hygiene of the designated institution, the sheriff must forthwith cause the defendant to be delivered to the head of such institution. Such defendant is entitled to the assistance of the mental health information service.

2. If the commissioner of mental hygiene is of the opinion that a person committed to his custody, pursuant to subdivision one of this section, may be discharged or released on condition without danger to himself or to others, he must make application for the discharge or release of such person in a report to the court by which such person was committed and must transmit a copy of such application and report to the district attorney of the county from which the defendant was committed. The court may then appoint up to two qualified psychiatrists to examine such person, to report within sixty days, or such longer period as the court determines to be necessary for the purpose, their opinion as to his mental condition. To facilitate such examination and the proceedings thereon, the court may cause such person to be confined in any institution located near the place where the court sits, which may hereafter be designated by the commissioner of mental hygiene as suitable for the temporary detention of irresponsible persons.

3. If the court is satisfied that the committed person may be discharged or released on condition without danger to himself or others, the court must order his discharge, or his release on such conditions as the court determines to be necessary. If the court is not so satisfied, it must promptly order a hearing to determine whether such person may safely be discharged or released. Any such hearing shall be deemed a civil proceeding. The committed person may offer the testimony of any qualified psychiatrist at such a hearing. After such a hearing, the committed person must be discharged, released on such conditions as the court determines to be necessary, or recommitted to the commissioner of mental hygiene. The commissioner of mental hygiene must make suitable provision for the care and supervision by the department of mental hygiene of persons released conditionally under this section.

4. If within five years after the conditional release of a committed person, the court shall determine, after a hearing, that for the safety of such person or the safety of others his conditional release should be revoked, the court must forthwith order him recommitted to the commissioner of mental hygiene subject

to discharge or release only in accordance with the procedure set forth in subdivisions two, three and five of this section.

5. A committed person may make application for his discharge or release to the court by which he was committed, and if, after receiving a report of the commissioner of mental hygiene, the court considers that there may be merit in the application, the court must follow the procedure prescribed in subdivisions two and three of this section.

6. A defendant committed to the custody of the commissioner of mental hygiene pursuant to the provisions of this section may at any time during the period of his commitment be transferred to an appropriate institution in the state department of mental hygiene. If the commissioner is of the opinion that the defendant is dangerously mentally ill, he may transfer him to an appropriate institution operated by the department of correction in the manner prescribed by section eighty-five or one hundred thirty-five of the mental hygiene law.

§ 330.30 Motion to set aside verdict; grounds for

At any time after rendition of a verdict of guilty and before sentence, the court may, upon motion of the defendant, set aside or modify the verdict or any part thereof upon the following grounds:

1. Any ground appearing in the record which, if raised upon an appeal from a prospective judgment of conviction, would require a reversal or modification of the judgment as a matter of law by an appellate court.

2. That during the trial there occurred, out of the presence of the court, improper conduct by a juror, or improper conduct by another person in relation to a juror, which may have affected a substantial right of the defendant and which was not known to the defendant prior to the rendition of the verdict; or

3. That new evidence has been discovered since the trial which could not have been produced by the defendant at the trial even with due diligence on his part and which is of such character as to create a probability that had such evidence been received at the trial the verdict would have been more favorable to the defendant.

§ 330.40 Motion to set aside verdict; procedure

1. A motion to set aside a verdict based upon a ground specified in subdivision one of section 330.30 need not be in writing,

but the people must be given reasonable notice thereof and an opportunity to appear in opposition thereto.

2. A motion to set aside a verdict based upon a ground specified in subdivisions two and three of section 330.30 must be made and determined as follows:

(a) The motion must be in writing and upon reasonable notice to the people. The moving papers must contain sworn allegations, whether by the defendant or by another person or persons, of the occurrence or existence of all facts essential to support the motion. Such sworn allegations may be based upon personal knowledge of the affiant or upon information and belief, provided that in the latter event the affiant must state the sources of such information and the grounds of such belief;

(b) The people may file with the court, and in such case must serve a copy thereof upon the defendant or his counsel, an answer denying or admitting any or all of the allegations of the moving papers;

(c) After all papers of both parties have been filed, the court must consider the same and, if the motion is determinable pursuant to paragraphs (d) or (e), must or may, as therein provided, determine the motion without holding a hearing to resolve questions of fact;

(d) The court must grant the motion if:

(i) The moving papers allege a ground constituting legal basis for the motion; and

(ii) Such papers contain sworn allegations of all facts essential to support such ground; and

(iii) All the essential facts are conceded by the people to be true.

(e) The court may deny the motion if:

(i) The moving papers do not allege any ground constituting legal basis for the motion; or

(ii) The moving papers do not contain sworn allegations of all facts essential to support the motion.

(f) If the court does not determine the motion pursuant to paragraphs (d) or (e), it must conduct a hearing and make findings of fact essential to the determination thereof;

(g) Upon such a hearing, the defendant has the burden of proving by a preponderance of the evidence every fact essential to support the motion.

§ 330.50 Motion to set aside verdict; order granting motion

1. Upon setting aside or modifying a verdict or a part thereof upon a ground specified in subdivision one of section 330.30, the court must take the same action as the appropriate appellate court would be required to take upon reversing or modifying a judgment upon the particular ground in issue.

2. Upon setting aside a verdict upon a ground specified in subdivision two of section 330.30, the court must order a new trial.

3. Upon setting aside a verdict upon a ground specified in subdivision three of section 330.30, the court must, except as otherwise provided in this subdivision, order a new trial. If a verdict is set aside upon the ground that had the newly discovered evidence in question been received at the trial the verdict probably would have been more favorable to the defendant in that the conviction probably would have been for a lesser offense than the one contained in the verdict, the court may either (a) set aside such verdict or (b) with the consent of the people modify such verdict by reducing it to one of conviction for such lesser offense.

4. Upon a new trial resulting from an order setting aside a verdict, the indictment is deemed to contain all the counts and to charge all the offenses which it contained and charged at the time the previous trial was commenced, regardless of whether any count was dismissed by the court in the course of such trial, except those upon or of which the defendant was acquitted or is deemed to have been acquitted.

TITLE K—PROSECUTION OF INFORMATIONS IN LOCAL CRIMINAL COURTS—PLEA TO SENTENCE

ARTICLE 340—PRE-TRIAL PROCEEDINGS

Section

340.10 Definitions of terms.
340.20 The plea.
340.30 Pre-trial discovery and notices of defenses.
340.40 Modes of trial.
340.50 Defendant's presence at trial.

§ 340.10 Definitions of terms

The following definitions are applicable to this title:

1. "Information," in addition to its meaning as defined in subdivision one of section 100.10, includes (a) a simplified traffic information and (b) a prosecutor's information and (c) a misdemeanor complaint upon which the defendant, by a waiver executed pursuant to subdivision three of section 170.-65, has consented to be prosecuted.

2. "Single judge trial" means a trial in a local criminal court conducted by one judge sitting without a jury.

3. "Three-judge trial" means a trial in the New York City criminal court conducted by a panel of three judges sitting without a jury.

4. "Jury trial" means a trial in a local criminal court other than the New York City criminal court conducted by one judge sitting with a jury.

§ 340.20 The plea

1. Except as provided in subdivisions two and three, the provisions of article two hundred twenty, governing the kinds of pleas to indictments which may be entered and related matters, are, to the extent that they can be so applied, applicable to pleas to informations, and changes of pleas thereto, in local criminal courts.

2. A plea to an information, other than one against a corporation, must be entered in the following manner:

(a) Subject to the provisions of paragraph (b), a plea to an information must be entered orally by the defendant in

person unless the court permits entry thereof by counsel upon submission by him of written authorization of the defendant.

(b) If the only offense or offenses charged are traffic infractions, the procedure provided in sections eighteen hundred five and eighteen hundred six of the vehicle and traffic law, relating to pleas in such cases, is, when appropriate, applicable and controlling.

3. A plea to an information against a corporation must be entered by counsel.

§ 340.30 Pre-trial discovery and notices of defenses

The provisions of article two hundred forty, concerning pre-trial discovery by a defendant under indictment in a superior court, and article two hundred fifty, concerning pre-trial notice to the people by a defendant under indictment in a superior court who intends to advance a trial defense of mental disease or defect or of alibi, apply to a prosecution of an information in a local criminal court.

§ 340.40 Modes of trial

1. Except as otherwise provided in this section, a trial of an information in a local criminal court must be a single judge trial.

2. In any local criminal court other than the New York City criminal court, a defendant who has entered a plea of not guilty to an information which charges a misdemeanor must, upon timely request pursuant to subdivision six, be accorded a jury trial, conducted pursuant to article three hundred sixty.

3. After a defendant has entered a plea of not guilty in the New York City criminal court to an information which charges a misdemeanor, other than one defined in article two hundred twenty-five of the penal law or in the multiple dwelling law, either party must, upon timely request pursuant to subdivision six, be accorded a three-judge trial, conducted pursuant to section 350.20. Nothing contained in this subdivision precludes the establishment of court rules relating to what judges or panels of the New York City criminal court may conduct or dispose of pre-trial proceedings or motions in a case in which a three-judge trial has been ordered, or what judges or panels of the court may impose sentence or conduct other post-trial proceedings in such a case.

4. A defendant is entitled to a jury trial or a three-judge trial, as the case may be, pursuant to subdivisions two and three, of an information which charges a misdemeanor even though such information also charges a petty offense. In such case, the defendant is not entitled to such a trial upon the misdemeanor alone and a separate single judge trial upon the petty offense, and the court may not order separate trials. The same principles apply where a three-judge trial of such an information in the New York City criminal court is requested by the people, pursuant to subdivision three, and in such case separate trials of the misdemeanor and the petty offense may not be ordered even though both the people and the defendant so request.

5. When two or more defendants are jointly charged in a single information with a misdemeanor for which a jury trial or a three-judge trial is authorized, and when one defendant makes a timely request for such a trial and the other or others do not, the court may in its discretion either (a) order a jury trial or a three-judge trial, as the case may be, of all the defendants jointly, or (b) order such a trial of the defendant or defendants who request the same and a separate single judge trial of those who do not. When, however, the people make a timely request for a three-judge trial of such an information in the New York City criminal court, such court must order such a trial of all the defendants jointly regardless of a request by any defendant for a separate single judge trial. Nothing contained in this subdivision affects the court's power to order separate single judge trials, jury trials or three-judge trials of different defendants pursuant to the ordinary rules of severance prescribed in section 200.40.

6. Any request for a jury trial or a three-judge trial pursuant to this section, whether by a defendant or by the people, must be made at the time of entry of the plea of not guilty to the information; except that the court, for good cause shown, may in its discretion grant such a request made after the entry of such plea but before commencement of a single-judge trial.

§ 340.50 Defendant's presence at trial

1. Except as provided in subdivision two, a defendant must be personally present during the trial.

2. On motion of a defendant represented by counsel, the court may, in the absence of an objection by the people, issue an order dispensing with the requirement that the defendant be personally present at trial. Such an order may be made only

upon the filing of a written and subscribed statement by the defendant declaring that he waives his right to be personally present at the trial and authorizing his attorney to conduct his defense.

ARTICLE 350—NON-JURY TRIALS

Section

350.10 Conduct of single judge trial.
350.20 Conduct of three-judge trial.

§ 350.10 Conduct of single judge trial

1. A single judge trial of an information in a local criminal court must be conducted pursuant to this section.

2. The court, in addition to determining all questions of law, is the exclusive trier of all issues of fact and must render a verdict.

3. The order of the trial must be as follows:

(a) The court may in its discretion permit the parties to deliver opening addresses. If the court grants such permission to one party, it must grant it to the other also. If both parties deliver opening addresses, the people's address must be delivered first.

(b) The order in which evidence must or may be offered by the respective parties is the same as that applicable to a jury trial of an indictment as prescribed in subdivisions five, six and seven of section 260.30.

(c) The court may in its discretion permit the parties to deliver summations. If the court grants such permission to one party, it must grant permission to the other also. If both parties deliver summations, the defendant's summation must be delivered first.

(d) The court must then consider the case and render a verdict.

4. The provisions governing motion practice and general procedure with respect to a jury trial of an indictment are, wherever appropriate, applicable to a non-jury trial of an information.

5. If the information contains more than one count, the court must render a verdict upon each count not previously dismissed or must otherwise state upon the record its disposition of each such count. A verdict which does not so dispose of

each count constitutes a verdict of not guilty with respect to each undisposed of count.

6. In rendering a verdict of guilty upon a count charging a misdemeanor, the court may find the defendant guilty of such misdemeanor if it is established by legally sufficient trial evidence, or guilty of any lesser included offense which is established by legally sufficient trial evidence.

§ 350.20 Conduct of three-judge trial

1. The provisions of section 350.10, governing the conduct of a single judge trial in a local criminal court, are applicable to the conduct of a three-judge trial in the New York City criminal court.

2. The verdict and every other order, ruling and determination made by the court during or as a part of a three-judge trial must be concurred in by at least two of the three judges of the panel.

ARTICLE 360—JURY TRIAL

Section
360.05 Jury trial; order of trial.
360.10 Trial jury; formation in general.
360.15 Trial jury; challenge to the panel.
360.20 Trial jury; examination of prospective jurors; challenges generally.
360.25 Trial jury; challenge for cause of an individual juror.
360.30 Trial jury; peremptory challenge of an individual juror.
360.35 Trial jury; alternate juror.
360.40 Trial jury; conduct of jury trial in general.
360.45 Court's charge and instructions; in general.
360.50 Court's submission of information to jury; counts and offenses to be submitted.
360.55 Deliberation and verdict of jury.

§ 360.05 Jury trial; order of trial

The provisions of section 260.30, governing the order of proceedings of a jury trial of an indictment in a superior court, are applicable to a jury trial of an information in a local criminal court.

§ 360.10 Trial jury; formation in general

1. A trial jury consists of six jurors, but "alternate jurors" may be selected and sworn pursuant to section 360.35.

2. The panel from which the jury is drawn is formed and selected as prescribed in the uniform district court act, uniform city court act, and uniform justice court act.

§ 360.15 Trial jury; challenge to the panel

1. A challenge to the panel is an objection made to the entire panel of prospective trial jurors returned for the trial of the action and may be taken to such panel or to any additional panel that may be ordered by the court. Such a challenge may be made only by the defendant and only on the ground that there has been such a departure from the requirements of the appropriate law in the drawing or return of the panel as to result in substantial prejudice to the defendant.

2. A challenge to the panel must be made before the selection of the jury commences, and, if it is not, such challenge is deemed to have been waived. Such challenge must be made in writing setting forth the facts constituting the ground of challenge. If such facts are denied by the people, witnesses may be called and examined by either party. All issues of fact and questions of law arising on the challenge must be tried and determined by the court. If a challenge to the panel is allowed, the court must discharge that panel and order the return of another panel of prospective trial jurors.

§ 360.20 Trial jury; examination of prospective jurors; challenges generally

If no challenge to the panel is made as prescribed by section 360.15, or if such challenge is made and disallowed, the court must direct that the names of six members of the panel be drawn and called. Such persons must take their places in the jury box and must be immediately sworn to answer truthfully questions asked them relative to their qualifications to serve as jurors in the action. The procedural rules prescribed in section 270.15 with respect to the examination of the prospective jurors and to challenges are also applicable to the selection of a trial jury in a local criminal court.

§ 360.25 Trial jury; challenge for cause of an individual juror

1. A challenge for cause is an objection to a prospective member of the jury and may be made only on the ground that:

(a) He does not have the qualifications required by the judiciary law; or

(b) He has a state of mind that is likely to preclude him from rendering an impartial verdict based upon the evidence adduced at the trial; or

(c) He is related within the sixth degree by consanguinity or affinity to the defendant, or to the person allegedly injured by the crime charged, or to a prospective witness at the trial, or to counsel for the people or for the defendant; or that he is or was a party adverse to any such person in a civil action; or that he has complained against or been accused by any such person in a criminal action; or that he bears some other relationship to any such person of such nature that it is likely to preclude him from rendering an impartial verdict; or

(d) He is to be a witness at the trial; or where a prosecutor's information was filed at the direction of a grand jury, he was a witness before the grand jury or at the preliminary hearing; or

(e) He served on a trial jury in a prior civil or criminal action involving the same conduct charged; or where a prosecutor's information was filed at the direction of a grand jury, he served on the grand jury which directed such filing.

2. All issues of fact or questions of law arising on the challenge must be tried and determined by the court. The provisions of subdivision two of section 270.20 with respect to challenges are also applicable to the selection of a trial jury in a local criminal court.

§ 360.30 Trial jury; peremptory challenge of an individual juror

1. A peremptory challenge is an objection to a prospective juror for which no reason need be assigned. Upon any peremptory challenge, the court must exclude the person challenged from service.

2. Each party must be allowed three peremptory challenges. When two or more defendants are tried jointly, such challenges are not multiplied by the number of defendants, but such defendants are to be treated as a single party. In any such case, a peremptory challenge by one or more defendants must be allowed if a majority of the defendants join in such challenge. Otherwise, it must be disallowed.

§ 360.35 Trial jury; alternate juror

1. Immediately after the last trial juror is sworn, the court may in its discretion direct the selection of either one or two additional jurors to be known as "alternate jurors." The alternate jurors must be drawn in the same manner, must have the same qualifications, must be subject to the same examination and challenges for cause and must take the same oath as the regular jurors. Whether or not a party has used its peremptory challenge in the selection of the trial jury, one peremptory challenge is authorized in the selection of the alternate jurors.

2. The provisions of section 270.35 with respect to alternate jurors are also applicable to a trial jury in a local criminal court.

§ 360.40 Trial jury; conduct of jury trial in general

A jury trial of an information must be conducted generally in the same manner as a jury trial of an indictment, and the rules governing preliminary instructions by the court, supervision of the jury, motion practice and other procedural matters involved in the conduct of a jury trial of an indictment are, where appropriate, applicable to the conduct of a jury trial of an information.

§ 360.45 Court's charge and instructions; in general

The general principles, prescribed in section 300.10, governing the court's charge to the jury and requests to charge upon a trial of an indictment, are applicable to a jury trial of an information in a local criminal court.

§ 360.50 Court's submission of information to jury; counts and offenses to be submitted

1. The term definitions contained in section 300.30 are applicable to this section, except that the word "information" is to be substituted for the word "indictment" wherever the latter appears in said section 300.30.

2. The court may submit to the jury only those counts of an information remaining therein at the time of its charge which are supported by legally sufficient trial evidence, and every count not so supported should be dismissed by a trial order of dismissal. If the trial evidence is not legally sufficient to establish a misdemeanor charged in a particular count which the court would otherwise be required to submit pursuant to this

section, but is legally sufficient to establish a lesser included offense, the court may submit such lesser included offense and, upon the people's request, must do so. In submitting a count charging a misdemeanor established by legally sufficient trial evidence, the court in its discretion may, in addition to submitting such misdemeanor, submit in the alternative any lesser included offense if there is a reasonable view of the evidence which would support a finding that the defendant committed such lesser offense but did not commit the misdemeanor charged.

3. If the information contains but one count, the court must submit such count.

4. If a multiple count information contains consecutive counts only, the court must submit every count thereof.

5. In any case where the information may be more complex by reason of concurrent counts or inconsistent counts or other factors indicated in subdivisions three, four and five of section 300.40, relating to multiple count indictments, the court, in its submission of such information to the jury, should, so far as practicable, be guided by the provisions of the said subdivisions of said section 300.40.

6. Notwithstanding any other provision of this section, the court is not required to submit to the jury any particular count of a multiple count information if the people consent that it not be submitted.

7. Every count not submitted to the jury is deemed to have been dismissed by the court. Where the court, over objection of the people, refuses to submit a count which is consecutive as to every count actually submitted, such count is deemed to have been dismissed by a trial order of dismissal even though no such order was expressly made by the court.

§ 360.55 Deliberation and verdict of jury

The provisions of article three hundred ten, governing the deliberation and verdict of a jury upon a jury trial of an indictment in a superior court, are applicable to a jury trial of an information in a local criminal court.

ARTICLE 370—PROCEEDINGS FROM VERDICT TO SENTENCE

Section

370.10 Proceedings from verdict to sentence.

§ 370.10 Proceedings from verdict to sentence

The provisions of article three hundred thirty, governing the proceedings from verdict to sentence in an action prosecuted by indictment in a superior court, are applicable to a prosecution by information in a local criminal court.

TITLE L—SENTENCE

ARTICLE 380—SENTENCING IN GENERAL

Section

380.10 Applicability.
380.20 Sentence required.
380.30 Time for pronouncing sentence.
380.40 Defendant's presence at sentencing.
380.50 Statements at time of sentence.
380.60 Authority for the execution of sentence.
380.70 Minutes of sentence.

§ 380.10 Applicability

1. In general. The procedure prescribed by this title applies to sentencing for every offense, whether defined within or outside of the penal law.

2. Exception. Whenever a different or inconsistent procedure is provided by any other law in relation to sentencing for a non-criminal offense defined therein, such different or inconsistent procedure applies thereto.

§ 380.20 Sentence required

The court must pronounce sentence in every case where a conviction is entered. If an accusatory instrument contains multiple counts and a conviction is entered on more than one count the court must pronounce sentence on each count.

§ 380.30 Time for pronouncing sentence

1. In general. Sentence must be pronounced without unreasonable delay.

2. Court to fix time. Upon entering a conviction the court must:

(a) Fix a date for pronouncing sentence; or

(b) Fix a date for one of the pre-sentence proceedings specified in article four hundred; or

(c) Pronounce sentence on the date the conviction is entered in accordance with the provisions of subdivision three.

3. Sentence on date of conviction. The court may sentence the defendant at the time the conviction is entered if:

(a) A pre-sentence report or a fingerprint report is not required; or

(b) Where any such report is required, the report has been received.

Provided, however, that the court may not pronounce sentence at such time without inquiring as to whether an adjournment is desired by the defendant. Where an adjournment is requested, the defendant must state the purpose thereof and the court may, in its discretion, allow a reasonable time.

4. Time for pre-sentence proceedings. The court may conduct one or more of the pre-sentence proceedings specified in article four hundred at any time before sentence is pronounced. Notice of any such proceeding issued after the date for pronouncing sentence has been fixed automatically adjourns the date for pronouncing sentence. In such case the court must fix a date for pronouncing sentence at the conclusion of such proceeding.

§ 380.40 Defendant's presence at sentencing

1. In general. The defendant must be personally present at the time sentence is pronounced.

2. Exception. Where sentence is to be pronounced for a misdemeanor or for a petty offense, the court may, on motion of the defendant, dispense with the requirement that the defendant be personally present. Any such motion must be accompanied by a waiver, signed and acknowledged by the defendant, reciting the maximum sentence that may be imposed for the offense and stat-

ing that the defendant waives the right to be personally present at the time sentence is pronounced.

3. **Corporations.** Sentence may be pronounced against a corporation in the absence of counsel if counsel fails to appear on the date of sentence after reasonable notice thereof.

§ 380.50 Statements at time of sentence

At the time of pronouncing sentence, the court must accord the prosecutor an opportunity to make a statement with respect to any matter relevant to the question of sentence. The court must then accord counsel for the defendant an opportunity to speak on behalf of the defendant. The defendant also has the right to make a statement personally in his own behalf, and before pronouncing sentence the court must ask him whether he wishes to make such a statement.

The court may, either before or after receiving such statements, summarize the factors it considers relevant for the purpose of sentence and afford an opportunity to the defendant or his counsel to comment thereon.

§ 380.60 Authority for the execution of sentence

Except where a sentence of death is pronounced, a certificate of conviction showing the sentence pronounced by the court, or a certified copy thereof, constitutes the authority for execution of the sentence and serves as the order of commitment, and no other warrant, order of commitment or authority is necessary to justify or to require execution of the sentence.

§ 380.70 Minutes of sentence

In any case where a person receives an indeterminate sentence of imprisonment or a reformatory or alternative local reformatory sentence of imprisonment, a certified copy of the stenographic minutes of the sentencing proceeding must be delivered to the person in charge of the institution to which the defendant has been delivered within thirty days from the date such sentence was imposed; provided, however, that a sentence or commitment is not defective by reason of a failure to comply with the provisions of this section.

ARTICLE 390—PRE-SENTENCE REPORTS

Section
390.10 Requirement of fingerprint report.
390.20 Requirement of pre-sentence report.
390.30 Scope of pre-sentence investigation and report.
390.40 Defendant's pre-sentence memorandum.
390.50 Confidentiality of pre-sentence reports and memoranda.
390.60 Copy of reports to accompany defendant sentenced to imprisonment.

§ 390.10 Requirement of fingerprint report

In any case where the defendant is convicted of an offense specified in subdivision one of section 160.10, the court may not pronounce sentence until it has received a fingerprint report from the New York state identification and intelligence system. For such purpose, the court may use the original fingerprint report obtained after the arrest or arraignment of the defendant, or it may direct that a new fingerprint report be prepared and transmitted to it.

§ 390.20 Requirement of pre-sentence report

1. **Requirement for felonies.** In any case where a person is convicted of a felony, the court must order a pre-sentence investigation of the defendant and it may not pronounce sentence until it has received a written report of such investigation.

2. **Requirement for misdemeanors.** Where a person is convicted of a misdemeanor a pre-sentence report is not required, but the court may not pronounce any of the following sentences unless it has ordered a pre-sentence investigation of the defendant and has received a written report thereof:

(a) A sentence of probation;

(b) A reformatory or alternative local reformatory sentence of imprisonment;

(c) A sentence of imprisonment for a term in excess of ninety days;

(d) Consecutive sentences of imprisonment for terms aggregating more than ninety days.

3. **Permissible in any case.** For purposes of sentence, the court may, in its discretion, order a pre-sentence investigation and report in any case, irrespective of whether such investigation and report is required by subdivision one or two.

§ 390.30 Scope of pre-sentence investigation and report

1. **The investigation.** The pre-sentence investigation consists of the gathering of information with respect to the circumstances attending the commission of the offense, the defendant's history of delinquency or criminality, and the defendant's social history, employment history, family situation, economic status, education, and personal habits. Such investigation may also include any other matter which the agency conducting the investigation deems relevant to the question of sentence, and must include any matter the court directs to be included.

2. **Physical and mental examinations.** Whenever information is available with respect to the defendant's physical and mental condition, the pre-sentence investigation must include the gathering of such information. In the case of a felony or a class A misdemeanor, or in any case where a person under the age of twenty-one is convicted of a crime, the court may order that the defendant undergo a thorough physical or mental examination in a designated facility and may further order that the defendant remain in such facility for such purpose for a period not exceeding thirty days.

3. **The report.** The report of the pre-sentence investigation must contain an analysis of as much of the information gathered in the investigation as the agency that conducted the investigation deems relevant to the question of sentence. The report must also include any other information that the court directs to be included.

§ 390.40 Defendant's pre-sentence memorandum

The defendant may, at any time prior to the pronouncement of sentence, file with the court a written memorandum setting forth any information he may deem pertinent to the question of sentence. Such memorandum may include information with respect to any of the matters described in section 390.30 and the defendant may annex written statements by others in support of facts alleged in the memorandum.

§ 390.50 Confidentiality of pre-sentence reports and memoranda

1. **In general.** Any pre-sentence report or memorandum submitted to the court pursuant to this article and any medical, psychiatric or social agency report or other information gathered for the court by a probation department, or submitted directly to the court, in connection with the question of sentence is confiden-

tial and may not be made available to any person or public or private agency except where specifically required or permitted by statute or upon specific authorization of the court.

2. **Public agencies within this state.** A probation department must make available a copy of its pre-sentence report and any medical, psychiatric or social agency report submitted to it in connection with its pre-sentence investigation or its supervision of a defendant, to any court, or to the probation department of any court, within this state that subsequently has jurisdiction over such defendant for the purpose of pronouncing or reviewing sentence and to any state agency to which the defendant is subsequently committed or certified or under whose care and custody or jurisdiction the defendant subsequently is placed upon the official request of such court or agency therefor. In any such case, the court or agency receiving such material must retain it under the same conditions of confidentiality as apply to the probation department that made it available.

3. **Public agencies outside this state.** Upon official request of any probation, parole or public institutional agency outside this state, a probation department may make any information in its files available to such agency.

4. **New York state identification and intelligence system.** Nothing contained in this section may be construed to prevent the voluntary submission by a probation department of data in its files to the New York state identification and intelligence system.

§ 390.60 Copy of reports to accompany defendant sentenced to imprisonment

1. **Cases where copy of report is required.** Whenever a person is sentenced to a term of imprisonment in excess of ninety days, or to consecutive sentences of imprisonment aggregating more than ninety days, or to a reformatory or alternative local reformatory sentence of imprisonment, or to an indeterminate sentence of imprisonment, a copy of the pre-sentence report, a copy of any pre-sentence memorandum filed by the defendant and a copy of any medical, psychiatric or social agency report submitted to the court or to the probation department in connection with the question of sentence must be delivered to the person in charge of the correctional facility to which the defendant is committed at the time the defendant is delivered thereto.

2. **Effect of failure to deliver required report.** A commitment is not void by reason of failure to comply with the provisions of

subdivision one, but the person in charge of the correctional facility to which the defendant has been delivered in execution of the sentence is authorized to refuse to accept custody of such person until the required report is delivered.

ARTICLE 400—PRE-SENTENCE PROCEEDINGS

Section
400.10 Pre-sentence conference.
400.20 Procedure for determining whether defendant should be sentenced as a persistent felony offender.
400.30 Procedure for determining the amount of a fine based upon the defendant's gain from the offense.
400.40 Procedure for determining prior convictions for the purpose of sentence in certain cases.

§ 400.10 Pre-sentence conference

1. Authorization and purpose. Before pronouncing sentence, the court, in its discretion, may hold one or more pre-sentence conferences in open court or in chambers in order to (a) resolve any discrepancies between the pre-sentence report, or other information the court has received, and the defendant's pre-sentence memorandum submitted pursuant to section 390.40, or (b) assist the court in its consideration of any matter relevant to the sentence to be pronounced.

2. Attendance. Such conference may be held with defense counsel in the absence of the defendant, or the court may direct that the defendant attend. The court may also direct that any person who has furnished or who can furnish information to the court concerning sentence attend. Reasonable notice of the conference must be given to the prosecutor, who must be afforded an opportunity to participate therein.

3. Procedure at conference. The court may advise the persons present at the conference of the factual contents of any report or memorandum it has received and afford any of the participants an opportunity to controvert or to comment upon any fact. The court may also conduct a summary hearing at the conference on any matter relevant to sentence and may take testimony under oath. In the discretion of the court, all or any part of the proceedings at the conference may be recorded by a court stenographer and the transcript made part of the pre-sentence report.

§ 400.20 Procedure for determining whether defendant should be sentenced as a persistent felony offender

1. **Applicability.** The provisions of this section govern the procedure that must be followed in order to impose the persistent felony offender sentence authorized by subdivision two of section 70.10 of the penal law. Such sentence may not be imposed unless, based upon evidence in the record of a hearing held pursuant to this section, the court (a) has found that the defendant is a persistent felony offender as defined in subdivision one of section 70.10 of the penal law, and (b) is of the opinion that the history and character of the defendant and the nature and circumstances of his criminal conduct are such that extended incarceration and lifetime supervision of the defendant are warranted to best serve the public interest.

2. **Authorization for hearing.** When information available to the court prior to sentencing indicates that the defendant is a persistent felony offender, and when, in the opinion of the court, the available information shows that a persistent felony offender sentence may be warranted, the court may order a hearing to determine (a) whether the defendant is in fact a persistent felony offender, and (b) if so, whether a persistent felony offender sentence should be imposed.

3. **Order directing a hearing.** An order directing a hearing to determine whether the defendant should be sentenced as a persistent felony offender must be filed with the clerk of the court and must specify a date for the hearing not less than twenty days from the date the order is filed. The court must annex to and file with the order a statement setting forth the following:

(a) The dates and places of the previous convictions which render the defendant a persistent felony offender as defined in subdivision one of section 70.10 of the penal law; and

(b) The factors in the defendant's background and prior criminal conduct which the court deems relevant for the purpose of sentencing the defendant as a persistent felony offender.

4. **Notice of hearing.** Upon receipt of the order and statement of the court, the clerk of the court must send a notice of hearing to the defendant, his counsel and the district attorney. Such notice must specify the time and place of the hearing and the fact that the purpose of the hearing is to determine whether

or not the defendant should be sentenced as a persistent felony offender. Each notice required to be sent hereunder must be accompanied by a copy of the statement of the court.

5. **Burden and standard of proof; evidence.** Upon any hearing held pursuant to this section the burden of proof is upon the people. A finding that the defendant is a persistent felony offender, as defined in subdivision one of section 70.10 of the penal law, must be based upon proof beyond a reasonable doubt by evidence admissible under the rules applicable to the trial of the issue of guilt. Matters pertaining to the defendant's history and character and the nature and circumstances of his criminal conduct may be established by any relevant evidence, not legally privileged, regardless of admissibility under the exclusionary rules of evidence, and the standard of proof with respect to such matters shall be a preponderance of the evidence.

6. **Constitutionality of prior convictions.** A previous conviction in this or any other jurisdiction which was obtained in violation of the rights of the defendant under the applicable provisions of the Constitution of the United States may not be counted in determining whether the defendant is a persistent felony offender. The defendant may, at any time during the course of the hearing hereunder controvert an allegation with respect to such conviction in the statement of the court on the grounds that the conviction was unconstitutionally obtained. Failure to challenge the previous conviction in the manner provided herein constitutes a waiver on the part of the defendant of any allegation of unconstitutionality unless good cause be shown for such failure to make timely challenge.

7. **Preliminary examination.** When the defendant appears for the hearing the court must ask him whether he wishes to controvert any allegation made in the statement prepared by the court, and whether he wishes to present evidence on the issue of whether he is a persistent felony offender or on the question of his background and criminal conduct. If the defendant wishes to controvert any allegation in the statement of the court, he must specify the particular allegation or allegations he wishes to controvert. If he wishes to present evidence in his own behalf, he must specify the nature of such evidence. Uncontroverted allegations in the statement of the court are deemed evidence in the record.

8. **Cases where further hearing is not required.** Where the uncontroverted allegations in the statement of the court are sufficient to support a finding that the defendant is a persistent

felony offender and the court is satisfied that (a) the uncontroverted allegations with respect to the defendant's background and the nature of his prior criminal conduct warrant sentencing the defendant as a persistent felony offender, and (b) the defendant either has no relevant evidence to present or the facts which could be established through the evidence offered by the defendant would not affect the court's decision, the court may enter a finding that the defendant is a persistent felony offender and sentence him in accordance with the provisions of subdivision two of section 70.10 of the penal law.

9. **Cases where further hearing is required.** Where the defendant controverts an allegation in the statement of the court and the uncontroverted allegations in such statement are not sufficient to support a finding that the defendant is a persistent felony offender as defined in subdivision one of section 70.10 of the penal law, or where the uncontroverted allegations with respect to the defendant's history and the nature of his prior criminal conduct do not warrant sentencing him as a persistent felony offender, or where the defendant has offered to present evidence to establish facts that would affect the court's decision on the question of whether a persistent felony offender sentence is warranted, the court may fix a date for a further hearing. Such hearing shall be before the court without a jury and either party may introduce evidence with respect to the controverted allegations or any other matter relevant to the issue of whether or not the defendant should be sentenced as a persistent felony offender. At the conclusion of the hearing the court must make a finding as to whether or not the defendant is a persistent felony offender and, upon a finding that he is such, must then make such findings of fact as it deems relevant to the question of whether a persistent felony offender sentence is warranted. If the court both finds that the defendant is a persistent felony offender and is of the opinion that a persistent felony offender sentence is warranted, it may sentence the defendant in accordance with the provisions of subdivision two of section 70.10 of the penal law.

10. **Termination of hearing.** At any time during the pendency of a hearing pursuant to this section, the court may, in its discretion, terminate the hearing without making any finding. In such case, unless the court recommences the proceedings and makes the necessary findings, the defendant may not be sentenced as a persistent felony offender.

§ 400.30 Procedure for determining the amount of a fine based upon the defendant's gain from the offense

1. **Order directing a hearing.** In any case where the court is of the opinion that the sentence should consist of or include a fine and that, pursuant to article eighty of the penal law, the amount of the fine should be based upon the defendant's gain from the commission of the offense, the court may order a hearing to determine the amount of such gain. The order must be filed with the clerk of the court and must specify a date for the hearing not less than ten days after the filing of the order.

2. **Notice of hearing.** Upon receipt of the order, the clerk of the court must send a notice of the hearing to the defendant, his counsel and the district attorney. Such notice must specify the time and place of the hearing and the fact that the purpose thereof is to determine the amount of the defendant's gain from the commission of the offense so that an appropriate fine can be imposed.

3. **Hearing.** When the defendant appears for the hearing the court must ask him whether he wishes to make any statement with respect to the amount of his gain from the commission of the offense. If the defendant does make a statement, the court may accept such statement and base its finding thereon. Where the defendant does not make a statement, or where the court does not accept the defendant's statement, it may proceed with the hearing.

4. **Burden and standard of proof; evidence.** At any hearing held pursuant to this section the burden of proof rests upon the people. A finding as to the amount of the defendant's gain from the commission of the offense must be based upon a preponderance of the evidence. Any relevant evidence, not legally privileged, may be received regardless of its admissibility under the exclusionary rules of evidence.

5. **Termination of hearing.** At any time during the pendency of a hearing pursuant to this section the court may, in its discretion, terminate the hearing without making any finding.

§ 400.40 Procedure for determining prior convictions for the purpose of sentence in certain cases

1. **Applicability.** Where a conviction is entered for an unclassified misdemeanor or for a traffic infraction and the authorized

sentence depends upon whether the defendant has a previous judgment of conviction for an offense, or where a conviction is entered for a violation defined outside the penal law and the amount of the fine authorized by the law defining such violation depends upon whether the defendant has a previous judgment of conviction for an offense, such issue is determined as provided in this section.

2. **Statement to be filed.** If it appears that the defendant has a previous judgment of conviction and if the court is required, or in its discretion desires, to impose a sentence that would not be authorized in the absence of such previous judgment, a statement must be filed after conviction and before sentence setting forth the date and place of the previous judgment or judgments and the court must conduct a hearing to determine whether the defendant is the same person mentioned in the record of such judgment or judgments. In any case where an increased sentence is mandatory, the statement may be filed by the court or by the prosecutor. In any case where an increased sentence is discretionary, the statement may be filed only by the court.

3. **Preliminary examination.** The defendant must be given a copy of such statement and the court must ask him whether he admits or denies such prior judgment or judgments. If the defendant denies the same or remains mute, the court may proceed with the hearing and, where the increased sentence is mandatory, it must impose such.

4. **Time for hearing.** In any case where a copy of the statement was not received by the defendant at least two days prior to the preliminary examination, the court must upon request of the defendant grant an adjournment of at least two days before proceeding with the hearing.

5. **Manner of conducting hearing.** A hearing pursuant to this section must be before the court without a jury. The burden of proof is upon the people and a finding that the defendant has been convicted of any offense alleged in the statement must be based upon proof beyond a reasonable doubt by evidence admissible under the rules applicable to trial of the issue of guilt.

ARTICLE 410—SENTENCES OF PROBATION AND OF CONDITIONAL DISCHARGE

Section

410.10 Specification of conditions of the sentence.
410.20 Modification or enlargement of conditions.
410.30 Declaration of delinquency.
410.40 Notice to appear, warrant.
410.50 Custody and supervision of probationers.
410.60 Appearance before court.
410.70 Hearing on violation.
410.80 Transfer of supervision of probationers.
410.90 Termination of sentence.

§ 410.10 Specification of conditions of the sentence

1. When the court pronounces a sentence of probation or of conditional discharge it must specify as part of the sentence the conditions to be complied with. Where the sentence is one of probation, the defendant must be given a written copy of the conditions at the time sentence is imposed. In any case where the defendant is given a written copy of the conditions, a copy thereof must be filed with and become part of the record of the case, and it is not necessary to specify the conditions orally.

2. Commission of an additional offense, other than a traffic infraction, after imposition of a sentence of probation or of conditional discharge, and prior to expiration or termination of the period of the sentence, constitutes a ground for revocation of such sentence irrespective of whether such fact is specified as a condition of the sentence.

§ 410.20 Modification or enlargement of conditions

1. The court may modify or enlarge the conditions of a sentence of probation or of conditional discharge at any time prior to the expiration or termination of the period of the sentence. Such action may not, however, be taken unless the defendant is personally present. In any such case the modification or enlargement may be specified in the same manner as the conditions originally imposed and becomes part of the sentence.

2. The procedure set forth in this section applies to the imposition of an additional period of conditional discharge as authorized by subdivision three of section 65.05 of the penal law.

§ 410.30 Declaration of delinquency

If at any time during the period of a sentence of probation or of conditional discharge the court has reasonable cause to believe that the defendant has violated a condition of the sentence, it may declare the defendant delinquent and file a written declaration of delinquency. Upon such filing, the court must promptly take reasonable and appropriate action to cause the defendant to appear before it for the purpose of enabling the court to make a final determination with respect to the alleged delinquency.

§ 410.40 Notice to appear, warrant

1. **Notice to appear.** The court may at any time order that a person who is under a sentence of probation or of conditional discharge appear before it. Such order may be in the form of a written notice, specifying the time and place of appearance, mailed to or served personally upon the defendant as the court may direct. When the order is in the form of such a notice, failure to appear as ordered without reasonable cause therefor constitutes a violation of the conditions of the sentence irrespective of whether such requirement is specified as a condition thereof.

2. **Warrant.** If at any time during the period of a sentence of probation or of conditional discharge the court has reasonable grounds to believe that the defendant has violated a condition of the sentence, the court may issue a warrant to an appropriate peace officer directing him to take the defendant into custody and bring him before the court.

§ 410.50 Custody and supervision of probationers

1. **Custody.** A person who is under a sentence of probation is in the legal custody of the court that imposed it pending expiration or termination of the period of the sentence.

2. **Supervision.** The probation department serving the court that imposed a sentence of probation has the duty of supervising the defendant during the period of such legal custody.

3. **Search order.** If at any time during the period of probation the court has reasonable cause to believe that the defendant has violated a condition of the sentence, it may issue a search order. Such order must be directed to a probation officer and may authorize such officer to search the person of the defendant and/or any premises in which he resides or any real or personal property which he owns or which is in his possession.

4. **Taking custody without warrant.** When a probation officer has reasonable cause to believe that a person under his supervision pursuant to a sentence of probation has violated a condition of the sentence, such officer may, without a warrant, take the probationer into custody and search his person.

5. **Assistance by police officer.** In executing a search order, or in taking a person into custody, pursuant to this section, a probation officer may be assisted by a police officer.

§ 410.60 Appearance before court

A person who has been taken into custody pursuant to section 410.40 or section 410.50 for violation of a condition of a sentence of probation or a sentence of conditional discharge must forthwith be brought before the court that imposed the sentence. If the court has reasonable cause to believe that such person has violated a condition of the sentence, it may commit him to the custody of the sheriff or fix bail or release such person on his own recognizance for future appearance at a hearing to be held in accordance with section 410.70. If the court does not have reasonable cause to believe that such person has violated a condition of the sentence, it must direct that he be released.

§ 410.70 Hearing on violation

1. **In general.** The court may not revoke a sentence of probation or a sentence of conditional discharge unless (a) the court has found that the defendant has violated a condition of the sentence and (b) the defendant has had an opportunity to be heard. The defendant is entitled to a hearing in accordance with this section promptly after the court has filed a declaration of delinquency or has committed him or has fixed bail pursuant to this article.

2. **Statement; preliminary examination.** The court must file or cause to be filed with the clerk of the court a statement setting forth the condition or conditions of the sentence violated and a reasonable description of the time, place and manner in which the violation occurred. The defendant must appear before the court and the court must advise him of the contents of the statement and furnish him with a copy thereof. At the time of such appearance the court must ask the defendant whether he wishes to make any statement with respect to the violation. If the defendant makes a statement, the court may accept it and base its decision thereon. If the court does not accept it, or if the defendant does not make a statement, the court must proceed with the hear-

ing. Provided, however, that upon request, the court must grant a reasonable adjournment to the defendant to enable him to prepare for the hearing.

3. **Manner of conducting hearing.** The hearing must be a summary one by the court without a jury and the court may receive any relevant evidence not legally privileged. The defendant may cross-examine witnesses and may present evidence on his own behalf. A finding that the defendant has violated a condition of his sentence must be based upon a preponderance of the evidence.

4. **Counsel.** The defendant is entitled to counsel at all stages of any proceeding under this section and the court must advise him of such right at the outset of the proceeding.

5. **Revocation; modification; continuation.** At the conclusion of the hearing the court may revoke, continue or modify the sentence of probation or conditional discharge. Where the court revokes the sentence, it must impose sentence as specified in subdivision two of section 60.10 of the penal law. Where the court continues or modifies the sentence, it must vacate the declaration of delinquency and direct that the defendant be released.

§ 410.80 Transfer of supervision of probationers

1. **Authority to transfer supervision.** In any case where a sentence of probation is pronounced, if the defendant resides or desires to reside in a place other than one within the jurisdiction of the probation department that serves the sentencing court, such court may designate any other probation department within the state to perform the duties of probation supervision and may transfer supervision of the defendant thereto. Any such designation must be in accordance with rules adopted by the director of the state division of probation.

2. **Transfer of powers.** Where supervision of a probationer is transferred pursuant to subdivision one, the probation department and probation officers to which the duties of probation supervision have been transferred have the same powers and duties as otherwise would have been possessed by those serving the sentencing court. The court served by the probation department to which supervision is transferred has the powers specified in sections 410.30, 410.40, subdivision three of section 410.50, and section 410.60. If it appears that the defendant has

violated a condition of his sentence, such court also has the power to:

(a) Commit the defendant to the custody of the sheriff, and direct such official to bring the defendant promptly before the court that imposed the sentence; or

(b) Conduct a hearing on the violation pursuant to subdivisions one through four of section 410.70 and make findings of fact. In such case, the court may then either (i) continue or modify the sentence, or (ii) commit the defendant as provided in paragraph (a) and send a certified copy of the transcript of the hearings and its findings to the court that imposed the sentence.

3. **Procedure upon return of the defendant.** When a defendant is returned to the court that imposed the sentence the transfer is terminated and such court must proceed in accordance with the provisions of sections 410.60 and 410.70. In any case where a hearing was conducted pursuant to paragraph (b) of subdivision two, the hearing and findings have the same effect as a hearing conducted by and findings made by the sentencing court. No person who has been returned to such court may be transferred back to supervision in the county that returned him without consent of the court that returned him.

4. **Costs of returning a probationer.** The costs incurred by a county in returning a probationer transferred thereto, including any costs necessary for a hearing conducted in such county, are charges upon the county in which the sentencing court is located.

5. **Interstate compact.** Nothing contained in this section affects or limits the provisions of section two hundred twenty-four of the correction law relating to out-of-state probation supervision.

§ 410.90 Termination of sentence

The court may at any time terminate a period of probation or a period of conditional discharge.

ARTICLE 420—FINES

Section

420.10 Collection of fines.
420.20 Collection of fines imposed upon corporations.
420.30 Remission of fines.

§ 420.10 Collection of fines

1. **Alternative methods of payment.** When the court imposes a fine upon an individual, it may direct:

(a) That the defendant pay the entire amount at the time sentence is pronounced; or

(b) That the defendant pay the entire amount at some later date; or

(c) That the defendant pay a specified portion at designated periodic intervals, and that such portion be remitted to a designated official. In such case the latter must report to the court on any failure to comply with the order; or

(d) Where the defendant is sentenced to a period of probation as well as a fine, that payment of the fine be a condition of the sentence.

2. **Imprisonment for failure to pay.** Where the court imposes a fine, the sentence may provide that if the defendant fails to pay the fine in accordance with the direction of the court, the defendant must be imprisoned until the fine is satisfied. Such provision may be added at the time sentence is pronounced or at any later date while the fine or any part thereof remains unpaid; provided, however, that if the provision is added at a time subsequent to the pronouncement of sentence the defendant must be personally present when it is added. In any case where the defendant fails to pay a fine as directed the court may issue a warrant directing a peace officer to take him into custody and bring him before the court.

3. **Period of imprisonment.** When the court directs that the defendant be imprisoned until the fine be satisfied, it must specify a maximum period of imprisonment subject to the following limits:

(a) Where the fine is imposed for a felony, the period may not exceed one year;

(b) Where the fine is imposed for a misdemeanor, the period may not exceed one-third of the maximum authorized term of imprisonment;

(c) Where the fine is imposed for a petty offense, the period may not exceed fifteen days; and

(d) Where a sentence of imprisonment as well as a fine is imposed, the aggregate of the period and the term of the sentence may not exceed the maximum authorized term of imprisonment.

4. **Application for resentence.** In any case where the defendant is unable to pay a fine imposed by the court, he may at any time apply to the court for resentence. In such case, if the court is satisfied that the defendant is unable to pay the fine, it must:

(a) Adjust the terms of payment; or

(b) Lower the amount of the fine; or

(c) Where the sentence consists of probation or imprisonment and a fine, revoke the portion of the sentence imposing the fine; or

(d) Revoke the entire sentence imposed and resentence the defendant. Upon such resentence the court may impose any sentence it originally could have imposed, except that the amount of any fine imposed may not be in excess of the amount the defendant is able to pay.

5. **Civil proceeding for collection.** Even though the defendant was imprisoned for failure to pay a fine, or has served the period of imprisonment imposed, a fine may be collected in the same manner as a judgment in a civil action. The district attorney may, in his discretion, and must, upon order of the court, institute proceedings to collect such fine.

§ 420.20 Collection of fines imposed upon corporations

Where a corporation is sentenced to pay a fine, the fine must be paid at the time sentence is imposed. If the fine is not so paid, it may be collected in the same manner as a judgment in a civil action, and if execution issued upon such judgment be returned unsatisfied an action may be brought in the name of the people of the state of New York to procure a judgment sequestering the property of the corporation, as provided by the general corporation law. It is the duty of the district attorney to institute proceedings to collect such fine.

§ 420.30 Remission of fines

1. **Applicability.** The procedure specified in this section governs remission of fines in all cases not covered by subdivision four of section 420.10.

2. **Procedure.** Any superior court which has imposed a fine for any offense may, in its discretion, on five days notice to the district attorney of the county in which such fine was imposed, remit such fine or any portion thereof. In case of a fine imposed by a local criminal court for any offense, a superior court holding a term in the county in which the fine was imposed may, upon like notice, remit such fine or any portion thereof.

ARTICLE 430—SENTENCES OF IMPRISONMENT

Section

430.10 Sentence of imprisonment not to be changed after commencement.
430.20 Commitment of defendant.
430.30 Duty to deliver defendant.

§ 430.10 Sentence of imprisonment not to be changed after commencement

Except as otherwise specifically authorized by law, when the court has imposed a sentence of imprisonment and such sentence is in accordance with law, such sentence may not be changed, suspended or interrupted once the term or period of the sentence has commenced.

§ 430.20 Commitment of defendant

1. **In general.** When a sentence of imprisonment is pronounced, or when the sentence consists of a fine and the court has directed that the defendant be imprisoned until it is satisfied, the defendant must forthwith be committed to the custody of the appropriate public servant and detained until the sentence is complied with.

2. **Indeterminate sentence.** In the case of an indeterminate sentence of imprisonment, commitment must be to the custody of the state department of correction as provided in subdivision one of section 70.20 of the penal law and the order of commitment must direct that the defendant be delivered to an institution designated by the commissioner of correction in accordance with section eight hundred one of the correction law.

3. **Reformatory sentence.** In the case of a reformatory sentence of imprisonment, commitment must be to the custody of the state department of correction as provided in section 75.05 of the penal law, and the order of commitment must direct, in accord-

ance with section eight hundred one of the correction law, as follows:

(a) If the defendant is a male, the order must direct that he be delivered to the reception center at Elmira;

(b) If the defendant is a female, the order must direct that she be delivered to an institution designated by the state commissioner of correction.

4. **Definite sentence.** In the case of a definite sentence of imprisonment, commitment must be as follows:

(a) In counties contained within New York City or in any county that has a county department of correction, commitment must be to the custody of the department of correction of such city or county;

(b) In any other case, commitment must be to the county jail, workhouse or penitentiary, or to a penitentiary outside the county and the order of commitment must specify the institution to which the defendant is to be delivered.

5. **Alternative local reformatory sentence.** In the case of an alternative local reformatory sentence of imprisonment, commitment must be to, and the sentence must be served in, the local reformatory as provided in subdivision three of section 75.20 of the penal law.

6. **Mentally defective defendants.** In any case where the defendant may be committed upon a certificate of mental defect, as provided in sections four hundred thirty-eight and four hundred fifty-one of the correction law, the court may, notwithstanding any other provision of this section, commit the defendant to the custody of the state department of correction, and in such case the order of commitment must direct in accordance with section eight hundred one of the correction law that the defendant be delivered as follows:

(a) If the defendant is a male, to the Beacon state institution; and

(b) If the defendant is a female, to the Albion state training school.

7. **Commitment for failure to pay fine.** Where the sentence consists of a fine and the court has directed that the defendant be imprisoned until it is satisfied, commitment must be as follows:

(a) If the sentence also includes a term of imprisonment, commitment must be to the same institution as is designated

for service of the term of imprisonment, and the period of commitment commences (i) when the term of imprisonment is satisfied, or (ii) with the approval of the state board of parole, when the defendant becomes eligible for parole, or (iii) when the defendant becomes eligible for conditional release, whichever occurs first; provided, however, that the court may direct that the period of imprisonment for the fine run concurrently with the term of imprisonment; and

(b) In any other case, commitment must be to the agency or institution that would be designated in the case of a definite sentence.

§ 430.30 Duty to deliver defendant

In counties contained within New York City and in counties that have a commissioner of correction who is responsible for detention of defendants in criminal actions, it is the duty of the commissioner of correction of such city or county to deliver the defendant forthwith to the proper institution in accordance with the commitment. In all other counties it is the duty of the sheriff to deliver the defendant forthwith to the proper institution in accordance with the commitment.

TITLE M—PROCEEDINGS AFTER JUDGMENT

ARTICLE 440—POST-JUDGMENT MOTIONS

Section

440.10 Motion to vacate judgment.
440.20 Motion to set aside sentence; by defendant.
440.30 Motion to vacate judgment and to set aside sentence; procedure.
440.40 Motion to set aside sentence; by people.

§ 440.10 Motion to vacate judgment

1. At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that:

(a) The court did not have jurisdiction of the action or of the person of the defendant; or

(b) The judgment was procured by duress, misrepresentation or fraud on the part of the court or a prosecutor or a person acting for or in behalf of a court or a prosecutor; or

(c) Material evidence adduced at a trial resulting in the judgment was false and was, prior to the entry of the judgment, known by the prosecutor or by the court to be false; or

(d) Material evidence adduced by the people at a trial resulting in the judgment was procured in violation of the defendant's rights under the constitution of this state or of the United States; or

(e) During the proceedings resulting in the judgment, the defendant, by reason of mental disease or defect, was incapable of understanding or participating in such proceedings; or

(f) Improper and prejudicial conduct not appearing in the record occurred during a trial resulting in the judgment which conduct, if it had appeared in the record, would have required a reversal of the judgment upon an appeal therefrom; or

(g) New evidence has been discovered since the entry of a judgment based upon a verdict of guilty after trial, which could not have been produced by the defendant at the trial even with due diligence on his part and which is of such character as to create a probability that had such evidence been received at the trial the verdict would have been more favorable to the defendant; provided that a motion based upon such ground must be made with due diligence after the discovery of such alleged new evidence; or

(h) The judgment was obtained in violation of a right of the defendant under the constitution of this state or of the United States.

2. Notwithstanding the provisions of subdivision one, the court must deny a motion to vacate a judgment when:

(a) The ground or issue raised upon the motion was previously determined on the merits upon an appeal from the judgment, unless since the time of such appellate determination there has been a retroactively effective change in the law controlling such issue; or

(b) The judgment is, at the time of the motion, appealable or pending on appeal, and sufficient facts appear on the record with respect to the ground or issue raised upon the motion to permit adequate review thereof upon such an appeal; or

(c) Although sufficient facts appear on the record of the proceedings underlying the judgment to have permitted, up-

on appeal from such judgment, adequate review of the ground or issue raised upon the motion, no such appellate review or determination occurred owing to the defendant's unjustifiable failure to take or perfect an appeal during the prescribed period or to his unjustifiable failure to raise such ground or issue upon an appeal actually perfected by him; or

(d) The ground or issue raised relates solely to the validity of the sentence and not to the validity of the conviction.

3. Notwithstanding the provisions of subdivision one, the court may deny a motion to vacate a judgment when:

(a) Although facts in support of the ground or issue raised upon the motion could with due diligence by the defendant have readily been made to appear on the record in a manner providing adequate basis for review of such ground or issue upon an appeal from the judgment, the defendant unjustifiably failed to adduce such matter prior to sentence and the ground or issue in question was not subsequently determined upon appeal. This paragraph does not apply to a motion based upon deprivation of the right to counsel at the trial or upon failure of the trial court to advise the defendant of such right; or

(b) The ground or issue raised upon the motion was previously determined on the merits upon a prior motion or proceeding in a court of this state, other than an appeal from the judgment, or upon a motion or proceeding in a federal court; unless since the time of such determination there has been a retroactively effective change in the law controlling such issue; or

(c) Upon a previous motion made pursuant to this section, the defendant was in a position adequately to raise the ground or issue underlying the present motion but did not do so.

Although the court may deny the motion under any of the circumstances specified in this subdivision, in the interest of justice and for good cause shown it may in its discretion grant the motion if it is otherwise meritorious and vacate the judgment.

4. If the court grants the motion, it must, except as provided in subdivision five, vacate the judgment, and must dismiss the accusatory instrument, or order a new trial, or take such other action as is appropriate in the circumstances.

5. Upon granting the motion upon the ground, as prescribed in paragraph (g) of subdivision one, that newly discovered evidence creates a probability that had such evidence been received at the trial the verdict would have been more favorable to the defendant in that the conviction would have been for a lesser offense than the one contained in the verdict, the court may either:

(a) Vacate the judgment and order a new trial; or

(b) With the consent of the people, modify the judgment by reducing it to one of conviction for such lesser offense. In such case, the court must re-sentence the defendant accordingly.

6. Upon a new trial resulting from an order vacating a judgment pursuant to this section, the indictment is deemed to contain all the counts and to charge all the offenses which it contained and charged at the time the previous trial was commenced, regardless of whether any count was dismissed by the court in the course of such trial, except (a) those upon or of which the defendant was acquitted or deemed to have been acquitted, and (b) those dismissed by the order vacating the judgment, and (c) those previously dismissed by an appellate court upon an appeal from the judgment, or by any court upon a previous post-judgment motion.

7. Upon an order which vacates a judgment based upon a plea of guilty to an accusatory instrument or a part thereof, but which does not dismiss the entire accusatory instrument, the criminal action is, in the absence of an express direction to the contrary, restored to its prepleading status and the accusatory instrument is deemed to contain all the counts and to charge all the offenses which it contained and charged at the time of the entry of the plea, except those subsequently dismissed under circumstances specified in paragraphs (b) and (c) of subdivision six. Where the plea of guilty was entered and accepted, pursuant to subdivision three of section 220.30, upon the condition that it constituted a complete disposition and dismissal not only of the accusatory instrument underlying the judgment vacated but also of one or more other accusatory instruments against the defendant then pending in the same court, the order of vacation completely restores such other accusatory instruments; and such is the case even though such order dismisses the main accusatory instrument underlying the judgment.

§ 440.20 Motion to set aside sentence; by defendant

1. At any time after the entry of a judgment, the court in which the judgment was entered may, upon motion of the defendant, set aside the sentence upon the ground that it was unauthorized, illegally imposed or otherwise invalid as a matter of law.

2. Notwithstanding the provisions of subdivision one, the court must deny such a motion when the ground or issue raised thereupon was previously determined on the merits upon an appeal from the judgment or sentence, unless since the time of such appellate determination there has been a retroactively effective change in the law controlling such issue.

3. Notwithstanding the provisions of subdivision one, the court may deny such a motion when the ground or issue raised thereupon was previously determined on the merits upon a prior motion or proceeding in a court of this state, other than an appeal from the judgment, or upon a prior motion or proceeding in a federal court, unless since the time of such determination there has been a retroactively effective change in the law controlling such issue. Despite such determination, however, the court in the interest of justice and for good cause shown, may in its discretion grant the motion if it is otherwise meritorious.

4. An order setting aside a sentence pursuant to this section does not affect the validity or status of the underlying conviction, and after entering such an order the court must resentence the defendant in accordance with the law.

§ 440.30 Motion to vacate judgment and to set aside sentence; procedure

1. A motion to vacate a judgment pursuant to section 440.10 and a motion to set aside a sentence pursuant to section 440.20 must be made in writing and upon reasonable notice to the people. Upon the motion, a defendant who is in a position adequately to raise more than one ground should raise every such ground upon which he intends to challenge the judgment or sentence. If the motion is based upon the existence or occurrence of facts, the motion papers must contain sworn allegations thereof, whether by the defendant or by another person or persons. Such sworn allegations may be based upon personal knowledge of the affiant or upon information and belief, provided that in the latter event the affiant must state the sources of such information and the grounds of such belief. The defendant may further submit documentary evidence or information supporting or tending to sup-

port the allegations of the moving papers. The people may file with the court, and in such case must serve a copy thereof upon the defendant or his counsel, if any, an answer denying or admitting any or all of the allegations of the motion papers, and may further submit documentary evidence or information refuting or tending to refute such allegations. After all papers of both parties have been filed, and after all documentary evidence or information, if any, has been submitted, the court must consider the same for the purpose of ascertaining whether the motion is determinable without a hearing to resolve questions of fact.

2. If it appears by conceded or uncontradicted allegations of the moving papers or of the answer, or by unquestionable documentary proof, that there are circumstances which require denial thereof pursuant to subdivision two of section 440.10 or subdivision two of section 440.20, the court must summarily deny the motion. If it appears that there are circumstances authorizing, though not requiring, denial thereof pursuant to subdivision three of section 440.10 or subdivision three of section 440.20, the court may in its discretion either (a) summarily deny the motion, or (b) proceed to consider the merits thereof.

3. Upon considering the merits of the motion, the court must grant it without conducting a hearing and vacate the judgment or set aside the sentence, as the case may be, if:

(a) The moving papers allege a ground constituting legal basis for the motion; and

(b) Such ground, if based upon the existence or occurrence of facts, is supported by sworn allegations thereof; and

(c) The sworn allegations of fact essential to support the motion are either conceded by the people to be true or are conclusively substantiated by unquestionable documentary proof.

4. Upon considering the merits of the motion, the court may deny it without conducting a hearing if:

(a) The moving papers do not allege any ground constituting legal basis for the motion; or

(b) The motion is based upon the existence or occurrence of facts and the moving papers do not contain sworn allegations substantiating or tending to substantiate all the essential facts, as required by subdivision one; or

(c) An allegation of fact essential to support the motion is conclusively refuted by unquestionable documentary proof.

5. If the court does not determine the motion pursuant to subdivisions two, three or four, it must conduct a hearing and make findings of fact essential to the determination thereof. The defendant has a right to be present at such hearing but may waive such right in writing. If he does not so waive it and if he is confined in a prison or other institution of this state, the court must cause him to be produced at such hearing.

6. At such a hearing, the defendant has the burden of proving by a preponderance of the evidence every fact essential to support the motion.

7. Regardless of whether a hearing was conducted, the court, upon determining the motion, must set forth on the record its findings of fact, its conclusions of law and the reasons for its determination.

§ 440.40 Motion to set aside sentence; by people

1. At any time not more than one year after the entry of a judgment, the court in which it was entered may, upon motion of the people, set aside the sentence upon the ground that it was invalid as a matter of law.

2. Notwithstanding the provisions of subdivision one, the court must summarily deny the motion when the ground or issue raised thereupon was previously determined on the merits upon an appeal from the judgment or sentence, unless since the time of such appellate determination there has been a retroactively effective change in the law controlling such issue.

3. Notwithstanding the provisions of subdivision one, the court may summarily deny such a motion when the ground or issue raised thereupon was previously determined on the merits upon a prior motion or proceeding in a court of this state, other than an appeal from the judgment or sentence, unless since the time of such determination there has been a retroactively effective change in the law controlling such issue. Despite such circumstance, however, the court, in the interests of justice and for good cause shown, may in its discretion grant the motion if it is otherwise meritorious.

4. The motion must be made upon reasonable notice to the defendant and to the attorney if any who appeared for him in the last proceeding which occurred in connection with the judgment or sentence, and the defendant must be given adequate opportunity to appear in opposition to the motion. The defendant has a right to be present at such proceeding but may waive such right in writing. If he does not so waive it and if he is confined

in a prison or other institution of this state, the court must cause him to be produced at the proceeding upon the motion.

5. An order setting aside a sentence pursuant to this section does not affect the validity or status of the underlying conviction, and after entering such an order the court must resentence the defendant in accordance with the law.

6. Upon a resentence imposed pursuant to subdivision five, the terms of which are more severe than those of the original sentence, the defendant's time for taking an appeal from the judgment is automatically extended in the manner prescribed in subdivision four of section 450.30.

ARTICLE 450—APPEALS—IN WHAT CASES AUTHORIZED AND TO WHAT COURTS TAKEN

Section

450.10 Appeal by defendant to intermediate appellate court; in what cases authorized.
450.20 Appeal by people to intermediate appellate court; in what cases authorized.
450.30 Appeal from sentence.
450.40 Appeal by people from trial order of dismissal.
450.50 Appeal by people from order suppressing evidence; filing of statement in appellate court.
450.60 Appeal to intermediate appellate court; to what court taken.
450.70 Appeal by defendant directly to court of appeals; in what cases authorized.
450.80 Appeal by people directly to court of appeals; in what cases authorized.
450.90 Appeal to court of appeals from order of intermediate appellate court; in what cases authorized.

§ 450.10 Appeal by defendant to intermediate appellate court; in what cases authorized

An appeal to an intermediate appellate court may be taken as of right by the defendant from the following judgment, sentence and orders of a criminal court:

1. A judgment other than one including a sentence of death;

2. A sentence other than one of death, as prescribed in subdivision two of section 450.30;

3. An order denying a motion, made pursuant to section 440.10, to vacate a judgment other than one including a sentence of death;

4. An order denying a motion by the defendant, made pursuant to section 440.20, to set aside a sentence other than one of death;

5. An order, entered pursuant to section 440.40, setting aside a sentence other than one of death, upon motion of the people.

§ 450.20 Appeal by people to intermediate appellate court; in what cases authorized

An appeal to an intermediate appellate court may be taken as of right by the people from the following sentence and orders of a criminal court:

1. An order dismissing an accusatory instrument or a count thereof, entered pursuant to section 170.30, 170.50 or 210.20;

2. A trial order of dismissal, entered pursuant to section 290.10 or 360.40;

3. An order setting aside a verdict, entered pursuant to section 330.30 or 370.10;

4. A sentence other than one of death, as prescribed in subdivisions two and three of section 450.30;

5. An order, entered pursuant to section 440.10, vacating a judgment other than one including a sentence of death;

6. An order, entered pursuant to section 440.20, setting aside a sentence other than one of death;

7. An order denying a motion by the people, made pursuant to section 440.40, to set aside a sentence other than one of death;

8. An order suppressing evidence, entered before trial pursuant to section 710.20; provided that the people file a statement in the appellate court pursuant to section 450.50.

§ 450.30 Appeal from sentence

1. An appeal by the defendant from a sentence, as authorized by subdivision two of section 450.10, may be based upon the ground that such sentence either was (a) invalid as a matter of law, or (b) harsh or excessive. A sentence is invalid as a matter of law not only when the terms thereof are unauthorized but also when it is based upon an erroneous determination that the defendant had a previous valid conviction for an offense or, in the case of a resentence following a revocation of a sentence of probation or conditional discharge, upon an improper revocation of such original sentence.

2. An appeal by the people from a sentence, as authorized by subdivision four of section 450.20, may be based only upon the ground that such sentence was invalid as a matter of law.

3. An appeal from a sentence, within the meaning of this section and sections 450.10 and 450.20, means an appeal from either the sentence originally imposed or from a resentence following an order vacating the original sentence. For purposes of appeal, the judgment consists of the conviction and the original sentence only, and when a resentence occurs more than thirty days after the original sentence, a defendant who has not previously filed a notice of appeal from the judgment may not appeal from the judgment, but only from the resentence.

4. When as a result of a successful appeal by the people from a sentence, the defendant receives a resentence the terms of which are more severe than those of the original or reversed sentence, the defendant, if he has not taken an appeal from the judgment, may, even though the period for doing so as prescribed in section 460.10 has expired, take such an appeal by filing and serving a notice of appeal, or an affidavit of errors as the case may be, within thirty days after imposition of the resentence. Upon such an appeal, only the conviction is reviewable; and any appellate challenge to the resentence must be made upon a separate appeal therefrom.

§ 450.40 Appeal by people from trial order of dismissal

1. An appeal by the people from a trial order of dismissal, as authorized by subdivision two of section 450.20, may, as indicated by section 290.10, be based either (a) upon the ground that the evidence adduced at the trial was legally sufficient to support the count or counts of the accusatory instrument dismissed by the order, or (b) upon the ground that, though not legally sufficient, such evidence would have been legally sufficient had the court not erroneously excluded admissible evidence offered by the people.

2. If the appeal is based upon the ground specified in paragraph (b) of subdivision one, and if the appellate court determines that the evidence unsuccessfully offered by the people was improperly excluded, and if at the trial the people made an offer of proof with respect thereto pursuant to subdivision three of section 290.10, the appellate court, in making its determination whether the people's evidence would have been legally sufficient had it not been for the improper exclusion, must treat the excluded evidentiary matter as it is summarized in the offer of proof as evidence constituting a part of the people's case.

§ 450.50 Appeal by people from order suppressing evidence; filing of statement in appellate court

1. In taking an appeal, pursuant to subdivision eight of section 450.20, to an intermediate appellate court from an order of a criminal court suppressing evidence, the people must file, in addition to a notice of appeal or, as the case may be, an affidavit of errors, a statement asserting that the deprivation of the use of the evidence ordered suppressed has rendered the sum of the proof available to the people with respect to a criminal charge which has been filed in the court either (a) insufficient as a matter of law, or (b) so weak in its entirety that any reasonable possibility of prosecuting such charge to a conviction has been effectively destroyed.

2. The taking of an appeal by the people, pursuant to subdivision eight of section 450.20, from an order suppressing evidence constitutes a bar to the prosecution of the accusatory instrument involving the evidence ordered suppressed, unless and until such suppression order is reversed upon appeal and vacated.

§ 450.60 Appeal to intermediate appellate court; to what court taken

The particular intermediate appellate courts to which appeals authorized by sections 450.10 and 450.20 must be taken are as follows:

1. An appeal from a judgment, sentence or order of the supreme court must be taken to the appellate division of the department in which such judgment, sentence or order was entered.

2. An appeal from a judgment, sentence or order of a county court must, except as otherwise provided in this subdivision, be taken to the appellate division of the department in which such judgment, sentence or order was entered. If an appellate division of the second, third or fourth department has established an appellate term of the supreme court for its department, it may direct that an appeal be taken to such appellate term instead of to the appellate division from any judgment, sentence or order of a county court located in such department, entered in a case in which no felony was charged in the indictment or in a case which resulted in a conviction of an offense or offenses of less than felony grade only; and in such case such an appeal must be so taken.

3. An appeal from a judgment, sentence or order of a local criminal court located outside of New York City must, except as otherwise provided in this subdivision, be taken to the county court of the county in which such judgment, sentence or order was entered.

If an appellate division of the second, third or fourth department has established an appellate term of the supreme court for its department, it may direct that appeals from such judgments, sentences and orders of such local criminal courts, or of particular classifications of such local criminal courts, be taken to such appellate term of the supreme court instead of to the county court; and in such case such an appeal must be so taken.

4. An appeal from a judgment, sentence or order of the New York City criminal court must be taken, if such judgment, sentence or order was entered at a term of such court held in New York or Bronx county, to the appellate division of the first department, and, if entered at a term of such court held in Kings, Queens or Richmond county, to the appellate division of the second department; except that if the appellate division of either such department has established an appellate term of the supreme court for its department, it may direct that all such appeals be taken thereto; and in such case such an appeal must be so taken.

§ 450.70 Appeal by defendant directly to court of appeals; in what cases authorized

An appeal directly to the court of appeals may be taken as of right by the defendant from the following judgment and orders of a superior court:

1. A judgment including a sentence of death;

2. An order denying a motion, made pursuant to section 440.10, to vacate a judgment including a sentence of death;

3. An order denying a motion, made pursuant to section 440.20, to set aside a sentence of death.

§ 450.80 Appeal by people directly to court of appeals; in what cases authorized

An appeal directly to the court of appeals may be taken as of right by the people from the following orders of a superior court:

1. An order, entered pursuant to section 440.10, vacating a judgment including a sentence of death;

2. An order, entered pursuant to section 440.20, setting aside a sentence of death.

§ 450.90 Appeal to court of appeals from order of intermediate appellate court; in what cases authorized

1. Provided that a certificate granting leave to appeal is issued pursuant to section 460.20, an appeal may, except as provided in subdivision two, be taken to the court of appeals by either the defendant or the people from any adverse or partially adverse order of an intermediate appellate court entered upon an appeal taken to such intermediate appellate court pursuant to section 450.10 or 450.20. An order of an intermediate appellate court is adverse to the party who was the appellant in such court when it affirms the judgment, sentence or order appealed from, and is adverse to the party who was the respondent in such court when it reverses the judgment, sentence or order appealed from. An appellate court order which modifies a judgment or order appealed from is partially adverse to each party.

2. An appeal to the court of appeals from an order of an intermediate appellate court reversing or modifying a judgment, sentence or order of a criminal court may be taken only if:

(a) The intermediate appellate court's order expressly states the determination of reversal or modification to be on the law alone; or

(b) The appeal is based upon a contention that corrective action, as that term is defined in section 470.10, taken or directed by the intermediate appellate court was illegal.

ARTICLE 460—APPEALS—TAKING AND PERFECTION THEREOF AND STAYS DURING PENDENCY THEREOF

Section

460.10 Appeal; how taken.
460.20 Certificate granting leave to appeal to court of appeals.
460.30 Extension of time for taking appeal.
460.40 Effect of taking of appeal upon judgment or order of courts below; when stayed.
460.50 Stay of judgment pending appeal to intermediate appellate court.
460.60 Stay of judgment pending appeal to court of appeals from intermediate appellate court.
460.70 Appeal; how perfected.
460.80 Appeal; argument and submission thereof.

§ 460.10 Appeal; how taken

1. Except as provided in subdivisions two and three, an appeal to an intermediate appellate court or directly to the court of appeals from a judgment, sentence or order of a criminal court is taken as follows:

(a) A party seeking to appeal from a judgment or the sentence included within it, or from a resentence, or from an order of a criminal court, must, within thirty days after imposition of the sentence or as the case may be, within thirty days after service upon him of a copy of such order, file with the clerk of the criminal court in which such sentence was imposed or in which such order was entered a written notice of appeal, in duplicate, stating that such party appeals therefrom to a designated appellate court.

(b) If the defendant is the appellant, he must, within such thirty day period, serve a copy of such notice of appeal upon the district attorney of the county embracing the criminal court in which the judgment or order being appealed was entered. If the appeal is directly to the court of appeals, the district attorney, following such service upon him, must immediately give written notice thereof to the public servant having custody of the defendant.

(c) If the people are the appellant, they must, within such thirty day period, serve a copy of such notice of appeal upon the defendant or upon the attorney who last appeared for him in the court in which the order being appealed was entered.

(d) Upon filing and service of the notice of appeal as prescribed in paragraphs (a), (b) and (c), the appeal is deemed to have been taken.

(e) Following the filing with him of the notice of appeal in duplicate, the clerk of the court in which the judgment, sentence or order being appealed was entered or imposed, must endorse upon such instruments the filing date and must transmit the duplicate notice of appeal to the clerk of the court to which the appeal is being taken.

2. An appeal to a county court or to an appellate term of the supreme court from a judgment, sentence or order of a local criminal court in a case in which the underlying proceedings were recorded by a court stenographer is taken in the manner provided in subdivision one; except that where no clerk is employed by such local criminal court the appellant must file the notice of appeal with the judge of such court, and must further

file a copy thereof with the clerk of the appellate court to which the appeal is being taken.

3. An appeal to a county court or to an appellate term of the supreme court from a judgment, sentence or order of a local criminal court in a case in which the underlying proceedings were not recorded by a court stenographer is taken as follows:

(a) Within thirty days after entry or imposition in such local criminal court of the judgment, sentence or order being appealed, the appellant must file with such court either (i) an affidavit of errors, setting forth alleged errors or defects in the proceedings which are the subjects of the appeal, or (ii) a notice of appeal. Where a notice of appeal is filed, the appellant must serve a copy thereof upon the respondent in the manner provided in paragraphs (b) and (c) of subdivision one, and, within thirty days after the filing thereof, must file with such court an affidavit of errors.

(b) Not more than three days after the filing of the affidavit of errors, the appellant must serve a copy thereof upon the respondent or the respondent's counsel or authorized representative. If the defendant is the appellant, such service must be upon the district attorney of the county in which the local criminal court is located. If the people are the appellant, such service must be upon the defendant or upon the attorney who appeared for him in the proceedings in the local criminal court;

(c) Upon filing and service of the affidavit of errors as prescribed in paragraphs (a) and (b), the appeal is deemed to have been taken.

(d) Within ten days after the appellant's filing of the affidavit of errors with the local criminal court, such court must file with the clerk of the appellate court to which the appeal has been taken both the affidavit of errors and the court's return, and must deliver a copy of such return to each party or a representative thereof as indicated in paragraph (b). The court's return must set forth or summarize evidence, facts or occurrences in or adduced at the proceedings resulting in the judgment, sentence or order, which constitute the factual foundation for the contentions alleged in the affidavit of errors.

(e) If the local criminal court does not file such return within the prescribed period, or if it files a defective return, the appellate court, upon application of the appellant, must order such local criminal court to file a return or an amend-

ed return, as the case may be, within a designated time which such appellate court deems reasonable.

4. An appeal to the court of appeals from an order of an intermediate appellate court is taken as follows:

(a) Within thirty days after service upon the appellant of a copy of the order sought to be appealed, the appellant must make application, pursuant to section 460.20, for a certificate granting leave to appeal to the court of appeals.

(b) If such application is granted and such certificate issued, the appellant, within fifteen days after issuance thereof, must file with the clerk of the intermediate appellate court in which the order being appealed was entered a written notice of appeal, in duplicate, stating that the appellant appeals to the court of appeals from such order.

(c) If the defendant in the original proceeding in the criminal court is the appellant, he must, in addition to filing such notice of appeal with such intermediate appellate court clerk, serve, within the indicated fifteen day period, a copy thereof upon the district attorney who appeared for the people in the intermediate appellate court. If the people are the appellant, they must, within the indicated fifteen day period, serve a copy of such notice of appeal upon the defendant-respondent or upon an attorney who appeared for him in the intermediate appellate court.

(d) Upon filing and service of the notice of appeal and the copies thereof as prescribed in paragraphs (b) and (c), the appeal is deemed to have been taken.

(e) Following the filing of the notice of appeal in duplicate, the clerk of the intermediate appellate court must endorse the filing date upon such instruments and must transmit the duplicate notice of appeal to the clerk of the court of appeals.

5. Where a notice of appeal, an affidavit of errors or an application for leave to appeal to the court of appeals is premature or contains an inaccurate description of the judgment, sentence or order being or sought to be appealed, the appellate court, in its discretion, may, in the interest of justice, treat such instrument as valid. Where an appellant files a notice of appeal within the prescribed period but, through mistake, inadvertence or excusable neglect, omits to serve a copy thereof upon the respondent within the prescribed period, the appellate court to which the appeal is sought to be taken may, in its discretion and for good cause shown, permit such service to be made within a designated

period of time, and upon such service the appeal is deemed to be taken.

§ 460.20 Certificate granting leave to appeal to court of appeals

1. A certificate granting leave to appeal to the court of appeals from an order of an intermediate appellate court is an order of a judge granting such permission and certifying that the case involves a question of law which ought to be reviewed by the court of appeals.

2. Such certificate may be issued by the following judges in the indicated situations:

(a) Where the appeal sought is from an order of the appellate division, the certificate may be issued by (i) a judge of the court of appeals or (ii) a justice of the appellate division of the department which entered the order sought to be appealed.

(b) Where the appeal sought is from an order of an intermediate appellate court other than the appellate division, the certificate may be issued only by a judge of the court of appeals.

3. An application for such a certificate must be made in the following manner:

(a) An application to a justice of the appellate division must be made upon reasonable notice to the respondent;

(b) An application seeking such a certificate from a judge of the court of appeals must be made to the chief judge of such court by submission thereof, either in writing or first orally and then in writing, to the clerk of the court of appeals. The chief judge must then designate a judge of such court to determine the application. The clerk must then notify the respondent of the application and must inform both parties of such designation.

4. A justice of the appellate division to whom such an application has been made, or a judge of the court of appeals designated to determine such an application, may in his discretion determine it upon such papers as he may request the parties to submit, or upon oral argument, or upon both.

§ 460.30 Extension of time for taking appeal

1. Upon motion to an intermediate appellate court of a defendant who desires to take an appeal to such court from a judg-

ment, sentence or order of a criminal court but has failed to file a notice of appeal or, as the case may be, an affidavit of errors, with such criminal court within the prescribed period, such intermediate appellate court may order that the time for the taking of such appeal be extended to a date not more than thirty days subsequent to the determination of such motion, upon the ground that the failure to file such notice of appeal or affidavit of errors in timely fashion resulted from improper conduct of a public servant or from improper conduct, death or disability of the defendant's attorney. Such motion must be made with due diligence after the time for the taking of such appeal has expired, and in any case not more than one year thereafter.

2. The motion must be in writing and upon reasonable notice to the people and with opportunity to be heard. The motion papers must contain sworn allegations of facts claimed to establish the improper conduct or other facts essential to support the motion, and the people may file papers in opposition thereto. After all papers have been filed, the court must consider the same for the purpose of ascertaining whether the motion is determinable without a hearing to resolve issues of fact.

3. If the motion papers allege facts constituting a legal basis for the motion, and if the essential allegations are either conclusively substantiated by unquestionable documentary proof or are conceded by the people to be true, the court must grant the motion.

4. If the motion papers do not allege facts constituting a legal basis for the motion, or if an essential allegation is conclusively refuted by unquestionable documentary proof, the court may deny the motion.

5. If the court does not determine the motion pursuant to subdivision three or four, it must order the criminal court which entered or imposed the judgment, sentence or order sought to be appealed to conduct a hearing and to make and report findings of fact essential to the determination of such motion. Upon receipt of such report, the intermediate appellate court must determine the motion.

6. An order granting or denying a motion made pursuant to this section is appealable to the court of appeals if (a) such order states that the determination was made upon the law alone, and (b) a judge of the court of appeals, pursuant to procedure provided in section 460.20, issues a certificate granting leave to the appellant to appeal to the court of appeals.

§ 460.40 Effect of taking of appeal upon judgment or order of courts below; when stayed

The taking of an appeal by the defendant directly to the court of appeals, pursuant to subdivision one of section 450.70, from a superior court judgment including a sentence of death stays the execution of such sentence. In no other case does the taking of an appeal, by either party, in and of itself stay the execution of any judgment, sentence or order of either a criminal court or an intermediate appellate court.

§ 460.50 Stay of judgment pending appeal to intermediate appellate court

1. Upon application of a defendant who has taken an appeal to an intermediate appellate court from a judgment including a sentence of imprisonment, or from a sentence of imprisonment, of a criminal court, a judge designated in subdivision two may issue an order both (a) staying or suspending the execution of the judgment pending the determination of the appeal, and (b) either releasing the defendant on his own recognizance or fixing bail pursuant to the provisions of article five hundred thirty. That phase of the order staying or suspending execution of the judgment does not become effective unless and until the defendant is released, either on his own recognizance or upon the posting of bail.

2. An order as prescribed in subdivision one may be issued by the following judges in the indicated situations:

(a) If the appeal is to the appellate division from a judgment or a sentence of either the supreme court or the New York City criminal court, such order may be issued by (i) a justice of the appellate division of the department in which the judgment was entered, or (ii) a justice of the supreme court of the judicial district embracing the county in which the judgment was entered;

(b) If the appeal is to the appellate division from a judgment or a sentence of a county court, such order may be issued by (i) a justice of such appellate division, or (ii) a justice of the supreme court of the judicial district embracing the county in which the judgment was entered, or (iii) a judge of such county court;

(c) If the appeal is to an appellate term of the supreme court from a judgment or sentence of the New York City criminal court, such order may be issued by a justice of the

supreme court of the judicial district embracing the county in which the judgment was entered;

(d) With respect to appeals to county courts from judgments or sentences of local criminal courts, and with respect to appeals to appellate terms of the supreme court from judgments or sentences of any criminal courts located outside of New York City, the judges who may issue such orders in any particular situation are determined by rules of the appellate division of the department embracing the appellate court to which the appeal has been taken.

3. An application for an order specified in this section must be made upon reasonable notice to the people, and the people must be accorded adequate opportunity to appear in opposition thereto. Not more than one application may be made pursuant to this section.

4. Notwithstanding the provisions of subdivision one, if within one hundred twenty days after the issuance of such an order the appeal has not been brought to argument in or submitted to the intermediate appellate court, the operation of such order terminates and the defendant must surrender himself to the criminal court in which the judgment was entered in order that execution of the judgment be commenced or resumed; except that this subdivision does not apply where the intermediate appellate court has (a) extended the time for argument or submission of the appeal to a date beyond the specified period of one hundred twenty days, and (b) upon application of the defendant, expressly ordered that the operation of the order continue until the date of the determination of the appeal or some other designated future date or occurrence.

5. Where the defendant is at liberty during the pendency of an appeal as a result of an order issued pursuant to this section, the intermediate appellate court, upon affirmance of the judgment, must by appropriate certificate remit the case to the criminal court in which such judgment was entered. The criminal court must, upon at least two days notice to the defendant, his surety and his attorney, promptly direct the defendant to surrender himself to the criminal court in order that execution of the judgment be commenced or resumed, and if necessary the criminal court may issue a bench warrant to secure his appearance.

§ 460.60 Stay of judgment pending appeal to court of appeals from intermediate appellate court

1. A judge who, pursuant to section 460.20, has issued an order granting a defendant leave to appeal to the court of appeals from an order of an intermediate appellate court affirming or modifying a judgment including a sentence of imprisonment, or a sentence of imprisonment, of a criminal court, may, upon application of such defendant-appellant issue an order both (a) staying or suspending the execution of the judgment pending the determination of the appeal, and (b) either releasing the defendant on his own recognizance or fixing bail pursuant to the provisions of article five hundred thirty. Such an order does not become effective unless and until the appeal is actually taken, as prescribed in subdivision two, and that phase of the order staying or suspending execution of the judgment does not become effective unless and until the defendant is released, either on his own recognizance or upon the posting of bail.

2. An application pursuant to subdivision one must be made upon reasonable notice to the people, and the people must be accorded opportunity to appear in opposition thereto. Such an application may be made immediately after the issuance of the underlying certificate granting leave to appeal to the court of appeals, or at any subsequent time during the pendency of the appeal. Not more than one application may be made pursuant to this section.

3. Notwithstanding the provisions of subdivision one, if within one hundred twenty days after the first to occur of (a) the issuance of an order pursuant to this section or (b) the filing of a notice of appeal, the appeal or prospective appeal has not been brought to argument in or submitted to the court of appeals, the operation of such order terminates and the defendant must surrender himself to the criminal court in which the original judgment was entered in order that execution of such judgment be commenced or resumed; except that this subdivision does not apply where the court of appeals has (a) extended the time for argument or submission of the appeal to a date beyond the specified period of one hundred twenty days and (b) upon application of the defendant expressly ordered that the operation of such order continue until the date of the determination of the appeal or some other designated future date or occurrence.

4. Where the defendant is at liberty during the pendency of an appeal as a result of an order issued pursuant to this section, the court of appeals, upon affirmance of the judgment, must,

by appropriate certificate, remit the case to the criminal court in which such judgment was entered, and the latter must proceed in the manner provided in subdivision five of section 460.50.

§ 460.70 Appeal; how perfected

1. Except as provided in subdivision two, the mode of and time for perfecting an appeal which has been taken to an intermediate appellate court from a judgment, sentence or order of a criminal court are determined by rules of the appellate division of the department in which such appellate court is located. Among the matters to be determined by such court rules are the times when the appeal must be noticed for and brought to argument, the content and form of the records and briefs to be served and filed, and the time when such records and briefs must be served and filed.

When an appeal is taken by a defendant pursuant to section 450.10, the criminal court in which the judgment, sentence or order being appealed was entered or imposed must, within two days after the filing of the notice of appeal therein, direct the stenographer to make and to file with the court, within twenty days, two transcripts of the stenographic minutes of the proceedings constituting the record on appeal. The expense of such transcripts is a county charge or city charge, as the case may be, payable to the stenographer out of the court fund, or out of the juror's fund or out of any other available fund, upon the certificate of the criminal court. The appellate court may where such is necessary for perfection of the appeal, order that the criminal court furnish one of such transcripts to the defendant or his counsel.

2. An appeal which has been taken to a county court or to an appellate term of the supreme court from a judgment, sentence or order of a local criminal court pursuant to subdivision three of section 460.10 is perfected as follows:

(a) After the local criminal court has, pursuant to paragraph (d) of subdivision three of section 460.10, filed its return with the clerk of the appellate court and delivered a copy thereof to the appellant, the appellant must file with such clerk, and serve a copy thereof upon the respondent, a notice of argument, noticing the appeal for argument at the term of such appellate court immediately following the term being held at the time of the appellant's receipt of the return. Upon motion of the appellant, however, such appellate court may for good cause shown enlarge the time to a sub-

sequent term, in which case the appellant must notice the appeal for argument at such subsequent term;

(b) The appellant must further comply with all court rules applicable to the mode of perfecting such appeals;

(c) If the appellant does not file a notice of argument as provided in paragraph (a) or does not comply with all applicable court rules as provided in paragraph (b), the appellate court may, either upon motion of the respondent or upon its own motion, dismiss the appeal.

3. The mode of and time for perfecting any appeal which has been taken to the court of appeals are determined by the rules of the court of appeals. Among the matters to be determined by such court rules are the times when the appeal must be noticed for and brought to argument, the content, form and number of the records and briefs and copies thereof to be served and filed, and the times when such records and briefs must be served and filed.

When an appeal is taken by a defendant pursuant to section 450.70, the criminal court in which the judgment, sentence or order being appealed was entered or imposed must, as promptly as practicable, cause to be prepared and printed or otherwise duplicated pursuant to rules of the court of appeals the record on appeal and the required number of copies thereof. The expense thereof is a county charge payable out of the court fund upon the certificate of the county clerk approved by the criminal court.

§ 460.80 Appeal; argument and submission thereof

The mode of and procedure for arguing or otherwise litigating appeals in criminal cases are determined by rules of the individual appellate courts. Among the matters to be determined by such court rules are the circumstances in which oral argument is required and those in which the case may be submitted by either or both parties without oral argument; the consequences or effect of failure to present oral argument when such is required; the amount of time for oral argument allowed to each party; and the number of counsel entitled to be heard.

ARTICLE 470—APPEALS—DETERMINATION THEREOF

Section

470.05 Determination of appeals; general criteria.
470.10 Determination of appeals; definitions of terms.
470.15 Determination of appeals by intermediate appellate courts; scope of review.
470.20 Determination of appeals by intermediate appellate courts; corrective action upon reversal or modification.
470.25 Determination of appeals by intermediate appellate courts; form and content of order.
470.30 Determination by court of appeals of appeals taken directly thereto from judgments and orders of criminal courts.
470.35 Determination by court of appeals of appeals from orders of intermediate appellate courts; scope of review.
470.40 Determination by court of appeals of appeals from intermediate appellate courts; corrective action upon reversal or modification.
470.45 Remission of case by appellate court to criminal court upon reversal or modification of judgment; action by criminal court.
470.50 Reargument of appeal; motion and criteria for.
470.55 Status of accusatory instrument upon order of new trial or restoration of action to pre-pleading status.
470.60 Dismissal of appeal.

§ 470.05 Determination of appeals; general criteria

1. An appellate court must determine an appeal without regard to technical errors or defects which do not affect the substantial rights of the parties.

2. For purposes of appeal, a question of law with respect to a ruling or instruction of a criminal court during a trial or proceeding is presented when a protest thereto was registered, by the party claiming error, at the time of such ruling or instruction or at any subsequent time when the court had an opportunity of effectively changing the same. Such protest need not be in the form of an "exception" but is sufficient if the party made his position known to the court. In addition, a party who without success has either expressly or impliedly sought or requested a particular ruling or instruction, is deemed to have sufficiently protested the court's ultimate failure to rule or instruct accordingly as to raise a question of law with respect to the matter regardless of whether any protest was registered at the time of or subsequent to the court's disposition thereof.

§ 470.10 Determination of appeals; definitions of terms

The following definitions are applicable to this article:

1. "Reversal" by an appellate court of a judgment, sentence or order of another court means the vacating of such judgment, sentence or order.

2. "Modification" by an appellate court of a judgment or order of another court means the vacating of a part thereof and affirmance of the remainder.

3. "Corrective action" means affirmative action taken or directed by an appellate court upon reversing or modifying a judgment, sentence or order of another court, which disposes of or continues the case in a manner consonant with the determinations and principles underlying the reversal or modification.

§ 470.15 Determination of appeals by intermediate appellate courts; scope of review

1. Upon an appeal to an intermediate appellate court from a judgment, sentence or order of a criminal court, such intermediate appellate court may consider and determine any question of law or issue of fact involving error or defect in the criminal court proceedings which may have adversely affected the appellant.

2. Upon such an appeal, the intermediate appellate court must either affirm or reverse or modify the criminal court judgment, sentence or order. The ways in which it may modify a judgment include, but are not limited to, the following:

(a) Upon a determination that the trial evidence adduced in support of a verdict is not legally sufficient to establish the defendant's guilt of an offense of which he was convicted but is legally sufficient to establish his guilt of a lesser included offense, the court may modify the judgment by changing it to one of conviction for the lesser offense;

(b) Upon a determination that the trial evidence is not legally sufficient to establish the defendant's guilt of all the offenses of which he was convicted but is legally sufficient to establish his guilt of one or more of such offenses, the court may modify the judgment by reversing it with respect to the unsupported counts and otherwise affirming it;

(c) Upon a determination that a sentence imposed upon a valid conviction is illegal or unduly harsh or severe, the court may modify the judgment by reversing it with respect to the sentence and by otherwise affirming it.

3. A reversal or a modification of a judgment, sentence or order must be based upon a determination made:

(a) Upon the law; or

(b) Upon the facts; or

(c) As a matter of discretion in the interest of justice; or

(d) Upon any two or all three of the bases specified in paragraphs (a), (b) and (c).

4. The kinds of determinations of reversal or modification deemed to be upon the law include, but are not limited to, the following:

(a) That a ruling or instruction of the court, duly protested by the defendant, as prescribed in subdivision two of section 470.05, at a trial resulting in a judgment, deprived the defendant of a fair trial;

(b) That evidence adduced at a trial resulting in a judgment was not legally sufficient to establish the defendant's guilt of an offense of which he was convicted;

(c) That a sentence was unauthorized, illegally imposed or otherwise invalid as a matter of law.

5. The kinds of determinations of reversal or modification deemed to be on the facts include, but are not limited to, a determination that a verdict of conviction resulting in a judgment was, in whole or in part, against the weight of the evidence.

6. The kinds of determinations of reversal or modification deemed to be made as a matter of discretion in the interest of justice include, but are not limited to, the following:

(a) That an error or defect occurring at a trial resulting in a judgment, which error or defect was not duly protested at trial as prescribed in subdivision two of section 470.05 so as to present a question of law, deprived the defendant of a fair trial;

(b) That a sentence, though legal, was unduly harsh or severe.

§ 470.20 Determination of appeals by intermediate appellate courts; corrective action upon reversal or modification

Upon reversing or modifying a judgment, sentence or order of a criminal court, an intermediate appellate court must take or direct such corrective action as is necessary and appropriate

both to rectify any injustice to the appellant resulting from the error or defect which is the subject of the reversal or modification and to protect the rights of the respondent. The particular corrective action to be taken or directed is governed in part by the following rules:

1. Upon a reversal of a judgment after trial for error or defect which resulted in prejudice to the defendant or deprived him of a fair trial, the court must, whether such reversal be on the law or as a matter of discretion in the interest of justice, order a new trial of the accusatory instrument and remit the case to the criminal court for such action.

2. Upon a reversal of a judgment after trial for legal insufficiency of trial evidence, the court must dismiss the accusatory instrument.

3. Upon a modification of a judgment after trial for legal insufficiency of trial evidence with respect to one or more but not all of the offenses of which the defendant was convicted, the court must dismiss the count or counts of the accusatory instrument determined to be legally unsupported and must otherwise affirm the judgment. In such case, it must either reduce the total sentence to that imposed by the criminal court upon the counts with respect to which the judgment is affirmed or remit the case to the criminal court for re-sentence upon such counts; provided that nothing contained in this paragraph precludes further sentence reduction in the exercise of the appellate court's discretion pursuant to subdivision six.

4. Upon a modification of a judgment after trial which reduces a conviction of a crime to one for a lesser included offense, the court must remit the case to the criminal court with a direction that the latter sentence the defendant accordingly.

5. Upon a reversal or modification of a judgment after trial upon the ground that the verdict, either in its entirety or with respect to a particular count or counts, is against the weight of the trial evidence, the court must dismiss the accusatory instrument or any reversed count.

6. Upon modifying a judgment or reversing a sentence as a matter of discretion in the interest of justice upon the ground that the sentence is unduly harsh or severe, the court must itself impose some legally authorized lesser sentence.

§ 470.25 Determination of appeals by intermediate appellate courts; form and content of order

1. An order of an intermediate appellate court which affirms a judgment, sentence or order of a criminal court need only state such affirmance.

2. An order of an intermediate appellate court which reverses or modifies a judgment, sentence or order of a criminal court must contain the following:

(a) A statement of whether the determination was upon the law or upon the facts or as a matter of discretion in the interest of justice, or upon any specified two or all three of such bases; and

(b) If the decision is rendered without opinion, a brief statement of the specific grounds of the reversal or modification; and

(c) A statement of the corrective action taken or directed by the court; and

(d) If the determination is exclusively upon the law, a statement of whether or not the facts upon which the criminal court's judgment, sentence or order is based have been considered and determined to have been established. In the absence of such a statement, it is presumed that the intermediate appellate court did not consider or make any determination with respect to such facts.

§ 470.30 Determination by court of appeals of appeals taken directly thereto from judgments and orders of criminal courts

1. Wherever appropriate, the rules set forth in sections 470.15 and 470.20, governing the consideration and determination by intermediate appellate courts of appeals thereto from judgments and orders of criminal courts, and prescribing their scope of review and the corrective action to be taken by them upon reversal or modification, apply equally to the consideration and determination by the court of appeals of appeals taken directly thereto, pursuant to sections 450.70 and 450.80, from judgments and orders of superior criminal courts; except that the court of appeals may not as a matter of discretion in the interest of justice set aside, reduce or change a sentence of death as being unduly harsh or severe.

2. Upon affirming a judgment including a sentence of death, the court of appeals, by an order signed by a majority of the

judges thereof, must fix the week during which such sentence of death is to be executed, and the sentence must be executed according to law. The entry of an order granting a motion for reargument of such an appeal, however, stays the execution of the judgment. If the judgment is thereafter reaffirmed a new execution date must be fixed by the court.

§ 470.35 Determination by court of appeals of appeals from orders of intermediate appellate courts; scope of review

1. Upon an appeal to the court of appeals from an order of an intermediate appellate court affirming a judgment, sentence or order of a criminal court, the court of appeals may consider and determine not only questions of law which were raised or considered upon the appeal to the intermediate appellate court, but also any question of law involving alleged error or defect in the criminal court proceedings resulting in the original criminal court judgment, sentence or order, regardless of whether such question was raised, considered or determined upon the appeal to the intermediate appellate court.

2. Upon an appeal to the court of appeals from an order of an intermediate appellate court reversing or modifying a judgment, sentence or order of a criminal court, the court of appeals may consider and determine:

(a) Any question of law which was determined by the intermediate appellate court and which, as so determined, constituted a basis for such court's order of reversal or modification; and

(b) Any other question of law involving alleged or possible error or defect in the criminal court proceedings resulting in the original judgment, sentence or order which may have adversely affected the party who was appellant in the intermediate appellate court and who is respondent in the court of appeals. The court of appeals is not precluded from considering and determining such a question by the circumstance that it was not considered or determined by the intermediate appellate court, or that it did not constitute a basis for such court's reversal or modification, or that the party who may have been adversely affected thereby is the respondent rather than the appellant in the court of appeals; and the court of appeals, even though rejecting the intermediate appellate court's reasons for its order of reversal or modification, may affirm or modify such order upon the basis of such other questions; and

(c) Any question concerning the legality of the corrective action taken by the intermediate appellate court.

3. Upon such an appeal, the court must affirm, reverse or modify the intermediate appellate court order.

§ 470.40 Determination by court of appeals of appeals from intermediate appellate courts; corrective action upon reversal or modification

1. Upon reversing or modifying an order of an intermediate appellate court affirming a criminal court judgment, sentence or order, the court of appeals must take or direct such corrective action as the intermediate appellate court would, pursuant to section 470.20, have been required or authorized to take or direct had it reversed or modified the criminal court judgment, sentence or order upon the same ground or grounds.

2. Upon reversing an order of an intermediate appellate court reversing or modifying a criminal court judgment, sentence or order upon the ground that questions of law were erroneously determined by the intermediate appellate court in favor of the party appellant therein, the court of appeals must take or direct corrective action as follows:

(a) If the facts underlying the original criminal court judgment, sentence or order were considered and determined to have been established by the intermediate appellate court, the court of appeals must reinstate and affirm the original criminal court judgment, sentence or order and remit the case to such criminal court for whatever further proceedings may be necessary to complete the action or proceedings therein;

(b) If the facts underlying the original criminal court judgment, sentence or order were not, or are presumed not to have been, considered and determined by the intermediate appellate court, the court of appeals must remit the case to such intermediate appellate court for determination of the facts.

3. Upon modifying an intermediate appellate court order reversing or modifying a criminal court judgment or order, upon the ground that corrective action taken or directed by the intermediate appellate court was illegal, the court of appeals must either (a) itself take or direct the appropriate corrective action or (b) remit the case to the intermediate appellate court for appropriate corrective action by the latter.

§ 470.45 Remission of case by appellate court to criminal court upon reversal or modification of judgment; action by criminal court

Upon reversing or modifying a judgment and directing corrective action, an appellate court must remit the case to the criminal court in which the judgment was entered. Such criminal court must execute the direction of the appellate court and must, depending upon the nature of such direction, either discharge the defendant from custody, exonerate his bail or issue a securing order.

§ 470.50 Reargument of appeal; motion and criteria for

1. After its determination of an appeal taken pursuant to article four hundred fifty, an appellate court, in the interest of justice and for good cause shown, may in its discretion, upon motion of a party adversely affected by its determination, or upon its own motion, order a reargument or reconsideration of the appeal. Upon such an order the court may either direct further oral argument by the parties or confine its reconsideration to re-examination of the issues as previously argued or submitted upon the appeal proper. Upon ordering a reargument or reconsideration of an appeal, the court must again determine the appeal pursuant to the provisions of this article.

2. The court of appeals may promulgate rules limiting the time within which a motion for reargument of appeals determined by such court may be made, and the appellate division of each department may similarly promulgate such rules with respect to appeals determined by such appellate division and appeals determined by the other intermediate appellate courts located within such department. In the absence of any such rule of limitation, a motion for reargument may be made at any time.

§ 470.55 Status of accusatory instrument upon order of new trial or restoration of action to pre-pleading status

1. Upon a new trial of an accusatory instrument resulting from an appellate court order reversing a judgment and ordering such new trial, such accusatory instrument is deemed to contain all the counts and to charge all the offenses which it contained and charged at the time the previous trial was commenced, regardless of whether any count was dismissed by the court in the course of such trial, except (a) those upon or of which the

defendant was acquitted or deemed to have been acquitted, and (b) those dismissed upon appeal or upon some other post-judgment order.

2. Upon an appellate court order which reverses a judgment based upon a plea of guilty to an accusatory instrument or a part thereof, but which does not dismiss the entire accusatory instrument, the criminal action is, in the absence of express appellate court direction to the contrary, restored to its pre-pleading status and the accusatory instrument is deemed to contain all the counts and to charge all the offenses which it contained and charged at the time of the entry of the plea, except those dismissed upon appeal or upon some other post-judgment order. Where the plea of guilty was entered and accepted, pursuant to subdivision three of section 220.30, upon the condition that it constituted a complete disposition and dismissal not only of the accusatory instrument underlying the judgment reversed but also of one or more other accusatory instruments against the defendant then pending in the same court, the appellate court order of reversal completely restores such other accusatory instruments; and such is the case even though such order of reversal dismisses the main accusatory instrument underlying the judgment.

§ 470.60 Dismissal of appeal

1. At any time after an appeal has been taken and before determination thereof, the appellate court in which such appeal is pending may, upon motion of the respondent or upon its own motion, dismiss such appeal upon the ground of mootness, lack of jurisdiction to determine it, failure of timely prosecution or perfection thereof, or other substantial defect, irregularity or failure of action by the appellant with respect to the prosecution or perfection of such appeal.

2. Such motion must be made upon reasonable notice to the appellant and with opportunity to be heard. If the people are the appellant, such notice must be served upon the appropriate district attorney either personally or by ordinary mail. If the appellant is a defendant, such notice must be served upon him by ordinary mail at his last known place of residence or, if he is imprisoned, at the institution in which he is confined, and similar notice must be served upon the attorney, if any, who last appeared for him. Upon determination of the motion, a copy of the order entered thereon must similarly be served.

3. Provided that a certificate granting leave to appeal is issued pursuant to this subdivision, an appeal may be taken, in the manner prescribed in subdivision four of section 460.10, to the

court of appeals from an order of an intermediate appellate court dismissing an appeal thereto. Such appeal may be based either upon the ground that the dismissal was invalid as a matter of law or upon the ground that it constituted an abuse of discretion. A certificate granting leave to appeal from such an order of dismissal may be issued only by a judge of the court of appeals upon an application made in the manner prescribed in paragraph (b) of subdivision three of section 460.20. Upon such an appeal, the court of appeals must either affirm or reverse the intermediate appellate court order.

PART THREE—SPECIAL PROCEEDINGS AND MISCELLANEOUS PROCEDURES

TITLE P—PROCEDURES FOR SECURING ATTENDANCE AT CRIMINAL ACTIONS AND PROCEEDINGS OF DEFENDANTS AND WITNESSES UNDER CONTROL OF COURT—RECOGNIZANCE, BAIL AND COMMITMENT

ARTICLE 500—RECOGNIZANCE, BAIL AND COMMITMENT—DEFINITIONS OF TERMS

Section

500.10 Recognizance, bail and commitment; definitions of terms.

§ 500.10 Recognizance, bail and commitment; definitions of terms

As used in this title, and in this chapter generally, the following terms have the following meanings:

1. "Principal" means a defendant in a criminal action or proceeding, or a person adjudged a material witness therein, or any other person so involved therein that he may by law be compelled to appear before a court for the purpose of having such court exercise control over his person to secure his future attendance at the action or proceeding when required, and who in fact either is before the court for such purpose or has been before it and been subjected to such control.

2. "Release on own recognizance." A court releases a principal on his own recognizance when, having acquired control over his person, it permits him to be at liberty during the pendency of the criminal action or proceeding involved upon condition that he will appear thereat whenever his attendance may be required and will at all times render himself amenable to the orders and processes of the court.

3. "Fix bail." A court fixes bail when, having acquired control over the person of a principal, it designates a sum of money and stipulates that, if bail in such amount is posted on behalf of the principal and approved, it will permit him to be at liberty during the pendency of the criminal action or proceeding involved.

4. "Commit to the custody of the sheriff." A court commits a principal to the custody of the sheriff when, having acquired

control over his person, it orders that he be confined in the custody of the sheriff during the pendency of the criminal action or proceeding involved.

5. "Securing order" means an order of a court committing a principal to the custody of the sheriff, or fixing bail, or releasing him on his own recognizance.

6. "Order of recognizance or bail" means a securing order releasing a principal on his own recognizance or fixing bail.

7. "Application for recognizance or bail" means an application by a principal that the court, instead of committing him to or retaining him in the custody of the sheriff, either release him on his own recognizance or fix bail.

8. "Post bail" means to deposit bail in the amount and form fixed by the court, with the court or with some other authorized public servant or agency.

9. "Bail" means cash bail or a bail bond.

10. "Cash bail" means a sum of money, in the amount designated in an order fixing bail, posted by a principal or by another person on his behalf with a court or other authorized public servant or agency, upon the condition that such money will become forfeit to the people of the state of New York if the principal does not comply with the directions of a court requiring his attendance at the criminal action or proceeding involved or does not otherwise render himself amenable to the orders and processes of the court.

11. "Obligor" means a person who executes a bail bond on behalf of a principal and thereby assumes the undertaking described therein. The principal himself may be an obligor.

12. "Surety" means an obligor who is not a principal.

13. "Bail bond" means a written undertaking, executed by one or more obligors, that the principal designated in such instrument will, while at liberty as a result of an order fixing bail and of the posting of the bail bond in satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders and processes of the court, and that in the event that he fails to do so the obligor or obligors will pay to the people of the state of New York a specified sum of money, in the amount designated in the order fixing bail.

14. "Appearance bond" means a bail bond in which the only obligor is the principal.

15. "Surety bond" means a bail bond in which the obligor or obligors consist of one or more sureties or of one or more sureties and the principal.

16. "Insurance company bail bond" means a surety bond, executed in the form prescribed by the superintendent of insurance, in which the surety-obligor is a corporation licensed by the superintendent of insurance to engage in the business of executing bail bonds.

17. "Secured bail bond" means a bail bond secured by either:

(a) Personal property which is not exempt from execution and which, over and above all liabilities and encumbrances, has a value equal to or greater than the total amount of the undertaking; or

(b) Real property having a value of at least twice the total amount of the undertaking. For purposes of this paragraph, value of real property is determined by dividing the last assessed value of such property by the last given equalization rate of the assessing municipality wherein the property is situated and by deducting from the resulting figure the total amount of any liens or other encumbrances upon such property.

18. "Partially secured bail bond" means a bail bond secured only by a deposit of a sum of money not exceeding ten percent of the total amount of the undertaking.

19. "Unsecured bail bond" means a bail bond, other than an insurance company bail bond, not secured by any deposit of or lien upon property.

20. "Court" includes, where appropriate, a judge authorized to act as described in a particular statute, though not as a court.

ARTICLE 510—RECOGNIZANCE, BAIL AND COMMITMENT—DETERMINATION OF APPLICATION FOR RECOGNIZANCE OR BAIL, ISSUANCE OF SECURING ORDERS, AND RELATED MATTERS

Section

510.10 Securing order; when required.
510.20 Application for recognizance or bail; making and determination thereof in general.
510.30 Application for recognizance of bail; rules of law and criteria controlling determination.
510.40 Application for recognizance or bail; determination thereof, form of securing order and execution thereof.
510.50 Enforcement of securing order.

§ 510.10 Securing order; when required

When a principal, whose future court attendance at a criminal action or proceeding is or may be required, initially comes under the control of a court, such court must, by a securing order, either release him on his own recognizance, fix bail or commit him to the custody of the sheriff. When a securing order is revoked or otherwise terminated in the course of an uncompleted action or proceeding but the principal's future court attendance still is or may be required and he is still under the control of a court, a new securing order must be issued.

§ 510.20 Application for recognizance or bail; making and determination thereof in general

1. Upon any occasion when a court is required to issue a securing order with respect to a principal, or at any time when a principal is confined in the custody of the sheriff as a result of a previously issued securing order, he may make an application for recognizance or bail.

2. Upon such application, the principal must be accorded an opportunity to be heard and to contend that an order of recognizance or bail must or should issue, that the court should release him on his own recognizance rather than fix bail, and that if bail is fixed it should be in a suggested amount and form.

§ 510.30 Application for recognizance or bail; rules of law and criteria controlling determination

1. Determinations of applications for recognizance or bail are not in all cases discretionary but are subject to rules, prescribed in article five hundred thirty and other provisions of law relating to specific kinds of criminal actions and proceedings, providing (a) that in some circumstances such an application must as a matter of law be granted, (b) that in others it must as a matter of law be denied and the principal committed to or retained in the custody of the sheriff, and (c) that in others the granting or denial thereof is a matter of judicial discretion.

2. To the extent that the issuance of an order of recognizance or bail and the terms thereof are matters of discretion rather than of law, an application must be determined on the basis of the following factors and criteria:

(a) The kind and degree of control or restriction of the principal that is necessary to secure his court attendance when required. In determining that matter, the court must,

on the basis of available information, consider and take into account:

(i) The principal's character, reputation, habits and mental condition;

(ii) His employment and financial resources; and

(iii) His family ties and the length of his residence if any in the community; and

(iv) His criminal record if any; and

(v) His previous record if any in responding to court appearances when required or with respect to flight to avoid criminal prosecution; and

(vi) If he is a defendant, the weight of the evidence against him in the pending criminal action and any other factor indicating probability or improbability of conviction; or, in the case of an application for bail or recognizance pending appeal, the merit or lack of merit of the appeal; and

(vii) If he is a defendant, the sentence which may be or has been imposed upon conviction.

(b) Where the principal is a defendant in a criminal action or proceeding or a defendant-appellant in a pending appeal from a judgment of conviction, the likelihood that he would be a danger to society or to himself if at liberty during the pendency of the action or proceeding. In determining that matter, the court must, on the basis of available information, consider and take into account:

(i) The defendant's character, reputation, habits and mental condition; and

(ii) The nature of the offense or offenses with which he is charged or of which he has been convicted in the action or proceeding involved; and

(iii) His previous criminal record if any, and the nature and number of offenses of which he has been convicted and with which he has been charged.

(c) Where the principal is a defendant-appellant in a pending appeal from a judgment of conviction, the likelihood of ultimate reversal of the judgment. A determination that the appeal is palpably without merit alone justifies, but does not require, a denial of the application, regardless of any determination made with respect to the factors specified in paragraphs (a) and (b).

§ 510.40 Application for recognizance or bail; determination thereof, form of securing order and execution thereof

1. An application for recognizance or bail must be determined by a securing order which either:

(a) Grants the application and releases the principal on his own recognizance; or

(b) Grants the application and fixes bail; or

(c) Denies the application and commits the principal to, or retains him in, the custody of the sheriff.

2. Upon ordering that a principal be released on his own recognizance, the court must direct him to appear in the criminal action or proceeding involved whenever his attendance may be required and to render himself at all times amenable to the orders and processes of the court. If such principal is in the custody of the sheriff or at liberty upon bail at the time of the order, the court must direct that he be discharged from such custody or, as the case may be, that his bail be exonerated.

3. Upon the issuance of an order fixing bail, and upon the posting thereof, the court must examine the bail to determine whether it complies with the order. If it does, the court must, in the absence of some factor or circumstance which in law requires or authorizes disapproval thereof, approve the bail and must issue a certificate of release, authorizing the principal to be at liberty, and, if he is in the custody of the sheriff at the time, directing the sheriff to discharge him therefrom. If the bail fixed is not posted, or is not approved after being posted, the court must order that the principal be committed to the custody of the sheriff.

§ 510.50 Enforcement of securing order

When the attendance of a principal confined in the custody of the sheriff is required at the criminal action or proceeding at a particular time and place, the court may compel such attendance by directing the sheriff to produce him at such time and place. If the principal is at liberty on his own recognizance or on bail, his attendance may be achieved or compelled by various methods, including notification and the issuance of a bench warrant, prescribed by law in provisions governing such matters with respect to the particular kind of action or proceeding involved.

ARTICLE 520—BAIL AND BAIL BONDS

Section

520.10 Bail and bail bonds; fixing of bail and authorized forms thereof.
520.20 Bail and bail bonds; posting of bail bond and justifying affidavits; form and contents thereof.
520.30 Bail and bail bonds; examination as to sufficiency.

§ 520.10 Bail and bail bonds; fixing of bail and authorized forms thereof

1. The only authorized forms of bail are the following:

(a) Cash bail.

(b) An insurance company bail bond.

(c) A secured surety bond.

(d) A secured appearance bond.

(e) A partially secured surety bond.

(f) A partially secured appearance bond.

(g) An unsecured surety bond.

(h) An unsecured appearance bond.

2. The methods of fixing bail are as follows:

(a) A court may designate the amount of the bail without designating the form or forms in which it may be posted. In such case, the bail may be posted in any of the forms specified in paragraphs (a), (b), (c) and (d) of subdivision one, but in no other form;

(b) A court may direct that the bail be posted in any one of two or more of the forms specified in subdivision one, designated in the alternative, and may designate different amounts varying with the forms.

§ 520.20 Bail and bail bonds; posting of bail bond and justifying affidavits; form and contents thereof

1. When a bail bond is to be posted in satisfaction of bail, the obligor or obligors must submit to the court a bail bond in the amount fixed, executed in the form prescribed in subdivision two, accompanied by a justifying affidavit of each obligor, executed in the form prescribed in subdivision four.

2. A bail bond must be subscribed and sworn to by each obligor and must state:

(a) The name, residential address and occupation of each obligor; and

(b) The title of the criminal action or proceeding involved; and

(c) The offense or offenses which are the subjects of the action or proceeding involved, and the status of such action or proceeding; and

(d) The name of the principal and the nature of his involvement in or connection with such action or proceeding; and

(e) That the obligor, or the obligors jointly and severally, undertake that the principal will appear in such action or proceeding whenever required and will at all times render himself amenable to the orders and processes of the court; and

(f) That in the event that the principal does not comply with any such requirement, order or process, such obligor or obligors will pay to the people of the state of New York a designated sum of money fixed by the court.

3. A bail bond posted in the course of a criminal action in the form prescribed in subdivision two is effective and binding upon the obligor or obligors until the imposition of sentence or other termination of the action, regardless of whether such action is partially conducted or prosecuted in a court or courts other than the one in which the action was pending when such bond was posted, unless prior to such termination such order of bail is vacated or revoked or the principal is surrendered, or unless the terms of such bond expressly limit its effectiveness to a lesser period.

4. A justifying affidavit must be subscribed and sworn to by the obligor-affiant and must state his name, residential address and occupation. Depending upon the kind of bail bond which it justifies, such affidavit must contain further statements as follows:

(a) An affidavit justifying an insurance company bail bond must state:

(i) The amount of the premium paid to the obligor; and

(ii) All security and all promises of indemnity received by the surety-obligor in connection with its execution of the bond, and the name, occupation and residential and business addresses of every person who has given any such indemnifying security or promise.

An action by the surety-obligor against an indemnitor, seeking retention of security deposited by the latter with the former or enforcement of any indemnity agreement of a kind described in this sub-paragraph, will not lie except with respect to agreements and security specified in the justifying affidavit.

(b) An affidavit justifying a secured bail bond must state every item of personal property deposited and of real property pledged as security, the value of each such item, and the nature and amount of every lien or encumbrance thereon.

(c) An affidavit justifying a partially secured bail bond or an unsecured bail bond must state the place and nature of the obligor-affiant's business or employment, the length of time he has been engaged therein, his income during the past year, and his average income over the past five years.

§ 520.30 Bail and bail bonds; examination as to sufficiency

1. Following the posting of a bail bond and the justifying affidavit or affidavits, the court may conduct an inquiry for the purpose of determining the reliability of the obligors, the value and sufficiency of any security offered, and whether any feature of the undertaking contravenes public policy. The court may inquire into any matter stated or required to be stated in the justifying affidavits, and may also inquire into other matters appropriate to the determination, which include but are not limited to the following:

(a) The background, character and reputation of any obligor, and, in the case of an insurance company bail bond, the qualifications of the surety-obligor and its executing agent; and

(b) The source of any money or property deposited by any obligor as security, and whether any such money or property constitutes the fruits of criminal or unlawful conduct; and

(c) The source of any money or property delivered or agreed to be delivered to any obligor as indemnification on the bond, and whether any such money or property constitutes the fruits of criminal or unlawful conduct; and

(d) The background, character and reputation of any person who has indemnified or agreed to indemnify an obligor upon the bond; and whether any such indemnitor, not being licensed by the superintendent of insurance in accordance

with the insurance law, has within a period of one month prior to such indemnity transaction given indemnification or security for like purpose in more than two cases not arising out of the same transaction.

2. Upon such inquiry, the court may examine, under oath or otherwise, the obligors and any other persons who may possess material information. The district attorney has a right to attend such inquiry, to call witnesses and to examine any witness in the proceeding. The court may, upon application of the district attorney, adjourn the proceeding for a reasonable period to allow him to investigate the matter.

3. At the conclusion of the inquiry, the court must issue an order either approving or disapproving the bail.

ARTICLE 530—ORDERS OF RECOGNIZANCE OR BAIL WITH RESPECT TO DEFENDANTS IN CRIMINAL ACTIONS AND PROCEEDINGS—WHEN AND BY WHAT COURTS AUTHORIZED

Section

530.10 Order of recognizance or bail; in general.
530.20 Order of recognizance or bail, by local criminal court when action is pending therein.
530.30 Order of recognizance or bail; by superior court judge when action is pending in local criminal court.
530.40 Order of recognizance or bail; by superior court when action is pending therein.
530.50 Order of recognizance or bail; during pendency of appeal.
530.60 Order of recognizance or bail; revocation thereof.
530.70 Order of recognizance or bail; bench warrant.
530.80 Order of recognizance or bail; surrender of defendant.

§ 530.10 Order of recognizance or bail; in general

Under circumstances prescribed in this article, a court, upon application of a defendant charged with or convicted of an offense, is required or authorized to order bail or recognizance for the release or prospective release of such defendant during the pendency of either:

1. A criminal action based upon such charge; or

2. An appeal taken by the defendant from a judgment of conviction or a sentence or from an order of an intermediate appellate court affirming or modifying a judgment of conviction or a sentence.

§ 530.20 Order of recognizance or bail; by local criminal court when action is pending therein

When a criminal action is pending in a local criminal court, such court, upon application of a defendant, must or may order recognizance or bail as follows:

1. When the defendant is charged, by information, simplified traffic information, prosecutor's information or misdemeanor complaint, with an offense or offenses of less than felony grade only, the court must order recognizance or bail.

2. When the defendant is charged, by felony complaint, with a felony, the court may, in its discretion, order recognizance or bail except as otherwise provided in this subdivision:

(a) A city court, a town court or a village court may not order recognizance or bail when (i) the defendant is charged with a class A felony, or (ii) it appears that the defendant has two previous felony convictions;

(b) No local criminal court may order recognizance or bail with respect to a defendant charged with a felony unless and until:

(i) The district attorney has been heard in the matter or, after knowledge or notice of the application and reasonable opportunity to be heard, has failed to appear at the proceeding or has otherwise waived his right to do so; and

(ii) The court has been furnished with a report of the New York state identification and intelligence system concerning the defendant's criminal record if any.

§ 530.30 Order of recognizance or bail; by superior court judge when action is pending in local criminal court

1. When a criminal action is pending in a local criminal court, other than one consisting of a superior court judge sitting as such, a judge of a superior court holding a term thereof in the county, upon application of a defendant, may order recognizance or bail when such local criminal court:

(a) Lacks authority to issue such an order, pursuant to paragraph (a) of subdivision two of section 530.20; or

(b) Has denied an application for recognizance or bail; or

(c) Has fixed bail which is excessive. In such case, such superior court judge may vacate the order of such local crim-

inal court and release the defendant on his own recognizance or fix bail in a lesser amount or in a less burdensome form.

2. Notwithstanding the provisions of subdivision one, when the defendant is charged with a felony in a local criminal court, a superior court judge may not order recognizance or bail unless and until the district attorney has had an opportunity to be heard in the matter and such judge has been furnished with a report of the defendant's criminal record.

3. Not more than one application may be made pursuant to this section.

§ 530.40 Order of recognizance or bail; by superior court when action is pending therein

When a criminal action is pending in a superior court, such court, upon application of a defendant, must or may order recognizance or bail as follows:

1. When the defendant is charged with an offense or offenses of less than felony grade only, the court must order recognizance or bail.

2. When the defendant is charged with a felony, the court may, in its discretion, order recognizance or bail. In any such case in which an indictment (a) has resulted from an order of a local criminal court holding the defendant for the action of the grand jury, or (b) was filed at a time when a felony complaint charging the same conduct was pending in a local criminal court, and in which such local criminal court or a superior court judge has issued an order of recognizance or bail which is still effective, the superior court's order may be in the form of a direction continuing the effectiveness of the previous order.

3. Notwithstanding the provisions of subdivision two, a superior court may not order recognizance or bail, or permit a defendant to remain at liberty pursuant to an existing order, after he has been convicted of a class A felony, but must commit or remand the defendant to the custody of the sheriff.

4. Notwithstanding the provisions of subdivision two, a superior court may not order recognizance or bail when the defendant is charged with a felony unless and until the district attorney has had an opportunity to be heard in the matter and such court has been furnished with a report of the defendant's criminal record.

§ 530.50 Order of recognizance of bail; during pendency of appeal

A judge who is otherwise authorized pursuant to section 460.-50 and 460.60 to issue an order of recognizance or bail pending the determination of an appeal, may do so unless the defendant received a class A felony sentence.

§ 530.60 Order of recognizance or bail; revocation thereof

Whenever in the course of a criminal action or proceeding a defendant is at liberty as a result of an order of recognizance or bail issued pursuant to this article, and the court considers it necessary to review such order, it may, and by a bench warrant if necessary, require the defendant to appear before the court. Upon such appearance, the court, for good cause shown, may revoke the order of recognizance or bail. If the defendant is entitled to recognizance or bail as a matter of right, the court must issue another such order. If he is not, the court may either issue such an order or commit the defendant to the custody of the sheriff.

§ 530.70 Order of recognizance or bail; bench warrant

1. A bench warrant issued by a superior court, by a district court, by the New York City criminal court or by a superior court judge sitting as a local criminal court may be executed anywhere in the state. A bench warrant issued by a city court, a town court or a village court may be executed in the county of issuance or any adjoining county. It may be executed anywhere else in the state upon the written endorsement thereon of a local criminal court of the county in which the defendant is to be taken into custody. When so endorsed, the warrant is deemed the process of the endorsing court as well as that of the issuing court.

2. A bench warrant may be addressed to any police officer whose geographical area of employment embraces either the place where the offense charged was allegedly committed or the locality of the court by which the warrant is issued. It must be executed in the same manner as a warrant of arrest, as provided in section 120.80, and following the arrest of the executing police officer must without unnecessary delay bring the defendant before the court in which it is returnable.

§ 530.80 Order of recognizance or bail; surrender of defendant

1. At any time before the forfeiture of a bail bond, an obligor may surrender the defendant in his exoneration, or the defendant may surrender himself, to the court in which his case is pending or to the sheriff to whose custody he was committed at the time of giving bail, in the following manner:

(a) A certified copy of the bail bond must be delivered to the sheriff, who must detain the defendant in his custody thereon, as upon a commitment. The sheriff must acknowledge the surrender by a certificate in writing, and must forthwith notify the court in which the case is pending that such surrender has been made.

(b) Upon the bail bond and the certificate of the sheriff, or upon the surrender to the court in which the case is pending, such court must, upon five days notice to the district attorney, order that the bail be exonerated. On filing such order, the bail is exonerated accordingly.

2. For the purpose of surrendering the defendant, an obligor may take him into custody at any place within the state, or he may, by a written authority indorsed on a certified copy of the bail bond, empower any person over twenty years of age to do so.

3. At any time before the forfeiture of cash bail, the defendant may surrender himself in the manner prescribed in subdivision one. In such case, the court must order a return of the money to the person who posted it, upon producing the certificate of the sheriff showing the surrender, and upon a notice of five days to the district attorney.

ARTICLE 540—FORFEITURE OF BAIL AND REMISSION THEREOF

Section

540.10 Forfeiture of bail; generally.
540.20 Forfeiture of bail; certain local criminal courts.
540.30 Remission of forfeiture.

§ 540.10 Forfeiture of bail; generally

1. If, without sufficient excuse, a principal does not appear when required or does not render himself amenable to the orders and processes of the criminal court wherein bail has been posted, the court must enter such facts upon its minutes and the bail bond or the cash bail, as the case may be, is thereupon forfeited.

2. If the principal appears at any time before the final adjournment of the court, and satisfactorily excuses his neglect, the court may direct the forfeiture to be discharged upon such terms as are just. If the forfeiture is not so discharged and the forfeited bail consisted of a bail bond, the district attorney, within sixty days after the adjournment of the court at which such bond was directed to be forfeited, must proceed against the obligor or obligors who executed such bond, in the manner prescribed in subdivision three. If the forfeited bail consisted of cash bail, the county treasurer with whom it is deposited may at any time after the final adjournment of the court apply the money deposited to the use of the county.

3. A bail bond, upon being forfeited, together with a certified copy of the order of the court forfeiting the same, must be filed by the district attorney in the office of the clerk of the county wherein such order was issued. Such clerk must docket the same in the book kept by him for docketing of judgments and enter therein a judgment against the obligor or obligors who executed such bail bond for the amount of the penalty of said bond, and the bond and the certified copy of the order of the court forfeiting the bond constitutes the judgment roll. Such judgment constitutes a lien on the real estate of the obligor or obligors who executed such bail bond from the time of the entry of the judgment. An execution may be issued to collect the amount of said bail bond in the same form and with the same effect as upon a judgment recovered in an action in said county upon a debt in favor of the people of the state of New York against such obligor or obligors.

§ 540.20 Forfeiture of bail; certain local criminal courts

Notwithstanding the provisions of section 540.10, when bail has been posted in a city court, town court or village court in connection with a local criminal court accusatory instrument, other than a felony complaint, and thereafter such bail is forfeited, the following rules are applicable:

1. If such bail consists of a bail bond, the financial officer of such city, town or village must promptly commence an action for the recovery of the sum of money specified in such bond, and upon collection thereof shall pay the same over to the treasurer or financial officer of the city, the supervisor of the town or the treasurer of the village. Any amount recovered in such action, unless otherwise provided by law, shall be the property of the city, town or village in which the offense charged is alleged to have been committed.

2. If such bail consists of cash bail, the local criminal court must:

(a) If it is a city court, pay the forfeited bail to the treasurer or other financial officer of the city. Such forfeited bail, unless otherwise provided by law, is the property of such city.

(b) If it is a town court or a village court, pay the forfeited bail to the state comptroller on or before the tenth day of the month next succeeding such forfeiture. Such forfeited bail, unless otherwise provided by law, is the property of the town or village in which the offense charged is alleged to have been committed.

§ 540.30 Remission of forfeiture

1. After the forfeiture of a bail bond or cash bail, as provided in section 540.10, an application for remission of such forfeiture may be made to a court as follows:

(a) If the forfeiture has been ordered by a superior court, the application must be made in such court;

(b) If the forfeiture has been ordered by a local criminal court, the application must be made to a superior court in the county.

2. The application must be made within one year after the forfeiture of the bail is declared upon at least five days notice to the district attorney and service of copies of the affidavits and papers upon which the application is founded. The court may grant the application and remit the forfeiture or any part thereof, upon such terms as are just. The application may be granted only upon payment of the costs and expenses incurred in the proceedings for the enforcement of the forfeiture.

TITLE Q—PROCEDURES FOR SECURING ATTENDANCE AT CRIMINAL ACTIONS AND PROCEEDINGS OF DEFENDANTS NOT UNDER CONTROL OF COURT AND NOT AMENABLE TO ORDINARY PROCESS—AND RELATED MATTERS

ARTICLE 550—SECURING ATTENDANCE OF DEFENDANTS—IN GENERAL

Section

550.10 Securing attendance of defendants; in general.

§ 550.10 Securing attendance of defendants; in general

Depending upon the status of a criminal action pending against a defendant, the geographical location of the defendant at the time and other factors, his attendance thereat for purposes of arraignment, prosecution or sentencing may be secured by the following methods:

1. If the defendant has never been arraigned in the action, and if he is at liberty within the state, his attendance may, under given circumstances, be secured by a warrant of arrest, as prescribed in article one hundred twenty, a superior court warrant of arrest, as prescribed in subdivision three of section 210.-10, or a summons, as prescribed in article one hundred thirty.

2. If the defendant has been arraigned in the action and, by virtue of a securing order, is either in the custody of the sheriff or at liberty within the state on his own recognizance or on bail, his attendance may be secured as follows:

(a) If the defendant is confined in the custody of the sheriff, the court may direct the sheriff to produce him;

(b) If the defendant is at liberty within the state as a result of an order releasing him on his own recognizance or on bail, the court may secure his attendance by notification or by the issuance of a bench warrant.

3. If the defendant's attendance cannot be secured by methods described in subdivisions one and two, either because he is outside the state or because he is confined in an institution within the state as a result of an order issued in some other action, proceeding or matter, his attendance may, under indicated circumstances, be secured by procedures prescribed in the ensuing articles of this title.

ARTICLE 560—SECURING ATTENDANCE OF DEFENDANTS CONFINED IN INSTITUTIONS WITHIN THE STATE

Section

560.10 Securing attendance of defendants confined in institutions within the state.

§ 560.10 Securing attendance of defendants confined in institutions within the state

1. When a criminal action is pending against a defendant who is confined in an institution within the state pursuant to a court order issued in a different action, proceeding or matter, the following courts and judges may, under the indicated circumstances, order that the defendant be produced in the court in which the criminal action is pending for purposes of arraignment or prosecution therein:

(a) If the action is pending in a superior court or with a superior court judge sitting as a local criminal court, such court may, upon application of the district attorney, order the production therein of a defendant confined in any institution within the state;

(b) If the action is pending in a district court or the New York City criminal court, such court may, upon application of the district attorney, order the production therein of a defendant confined in any institution within the state other than a state prison. Production therein of a defendant confined in a state prison may, upon application of the district attorney, be ordered by a judge of a superior court holding a term thereof in the county in which the action is pending;

(c) If the action is pending in a city court or a town court or a village court, such court may, upon application of the district attorney, order production therein of a defendant confined in a county jail of such county. Production therein of a defendant confined in any other institution within the state may, upon application of the district attorney, be ordered by a judge of a superior court holding a term thereof in the county in which the action is pending.

2. An application by a district attorney, pursuant to subdivision one, for production of a defendant confined in an institution located in another county in connection with a criminal action or proceeding pending in such other county, must be made upon reasonable notice to the district attorney of such other

county and to the attorney representing such defendant in or in connection with the action or proceeding pending therein, and the court or judge must accord them reasonable opportunity to be heard in the matter. If such court or judge determines that production of the defendant would result in an unreasonable interference with the conduct of the action in such other county, it must deny the application. If an order of production is issued, a justice of the appellate division, of either the department embracing the county of issuance thereof or of the department embracing the county of the defendant's confinement, upon application of the district attorney of the county of confinement or of the attorney representing the defendant in or in connection with the action pending therein, may for good cause shown vacate such order of production.

ARTICLE 570—SECURING ATTENDANCE OF DEFENDANTS WHO ARE OUTSIDE THE STATE BUT WITHIN THE UNITED STATES—RENDITION TO OTHER JURISDICTIONS OF DEFENDANTS WITHIN THE STATE—UNIFORM CRIMINAL EXTRADITION ACT

Section

570.02 Short title.
570.04 Definitions.
570.06 Fugitives from justice; duty of governor.
570.08 Demand; form.
570.10 Investigation by governor.
570.12 Extradition of persons imprisoned or awaiting trial in another state.
570.14 Extradition of persons who left the demanding state under compulsion.
570.16 Extradition of persons not present in demanding state at time of commission of crime.
570.18 Issuance of warrant of arrest by governor; recitals therein.
570.20 Execution of warrant; manner and place thereof.
570.22 Authority of arresting officer.
570.24 Rights of accused person; application for writ of habeas corpus.
570.26 Noncompliance with preceding section; penalties for violation.
570.28 Confinement of the accused in jail when necessary.
570.30 Confinement of extradited persons passing through this state.
570.32 Arrest of accused before making of requisition.
570.34 Arrest of accused without warrant therefor.
570.36 Commitment to await requisition; bail.
570.38 Bail; in what cases; conditions of bond.

Section
570.40 Extension of time of commitment; adjournment.
570.42 Bail; when forfeited.
570.44 Persons under criminal prosecution in this state at time of requisition.
570.46 Guilt or innocence of accused; when inquired into.
570.48 Alias warrant of arrest.
570.50 Written waiver of extradition proceedings.
570.52 Fugitives from this state; duty of governor.
570.54 Application for issuance of requisition; by whom made; contents.
570.56 Expense of extradition.
570.58 Immunity from service of process in certain civil actions.
570.60 No immunity from other criminal prosecution while in this state.
570.62 Non-waiver by this state.
570.64 Interpretation.
570.66 Constitutionality.

§ 570.02 Short title

This article may be cited and referred to as the uniform criminal extradition act.

§ 570.04 Definitions

As used in this article, the following terms have the following meanings:

1. "Governor" includes any person performing the functions of governor by authority of the law of this state.

2. "Executive authority" includes the governor, and any person performing the functions of governor in a state other than this state.

3. "State," when referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

§ 570.06 Fugitives from justice; duty of governor

Subject to the provisions of this article, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

§ 570.08 Demand; form

No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, except in cases arising under section 570.14 or 570.16, and accompanied by a copy of an indictment found or by information supported by an affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon, or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of the indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

§ 570.10 Investigation by governor

When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney-general or any district attorney in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

§ 570.12 Extradition of persons imprisoned or awaiting trial in another state

When it is desired to have returned to this state a person charged in this state with a crime and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

§ 570.14 Extradition of persons who left the demanding state under compulsion

The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state who is charged in the manner provided in section 570.08 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

§ 570.16 Extradition of persons not present in demanding state at time of commission of crime

The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 570.08 with committing an act in this state or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, when the acts for which extradition is sought would be punishable by the laws of this state, if the consequences claimed to have resulted therefrom in the demanding state had taken effect in this state; and the provisions of this article not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom; provided, however, that the governor of this state may, in his discretion, make any such surrender conditional upon agreement by the executive authority of the demanding state, that the person so surrendered will be held to answer no criminal charges of any nature except those set forth in the requisition upon which such person is so surrendered, at least until such person has been given reasonable opportunity to return to this state after his acquittal, if he shall be acquitted, or if he shall be convicted, after he shall be released from confinement. Nothing in this section shall apply to the crime of libel.

§ 570.18 Issuance of warrant of arrest by governor; recitals therein

If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any police officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

§ 570.20 Execution of warrant; manner and place thereof

Such warrant shall authorize the police officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all police officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this article to the duly authorized agent of the demanding state.

§ 570.22 Authority of arresting officer

Every such police officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused to command assistance therein, as police officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

§ 570.24 Rights of accused person; application for writ of habeas corpus

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a justice or judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the justice or judge of such court of record shall fix a reasonable time to be allowed within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the district attorney of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

§ 570.26 Noncompliance with preceding section; penalties for violation

Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in disobedience of the preceding section, shall be guilty of a felony.

§ 570.28 Confinement of the accused in jail when necessary

The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person, however, being chargeable with the expense of keeping.

§ 570.30 Confinement of extradited persons passing through this state

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping, provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state or waiver thereof. Such person shall not be entitled to demand a new requisition while in this state.

§ 570.32 Arrest of accused before making of requisition

Whenever any person within this state shall be charged on the oath of any credible person before any local criminal court of this state with the commission of any crime in any other state and, except in cases arising under section 570.14 or 570.16, with having fled from justice, or, with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or, whenever complaint shall have been made before any local criminal court in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such other

state with the commission of the crime, and, except in cases arising under section 570.14 or 570.16, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation or parole and is believed to be in this state, the local criminal court shall issue a warrant directed to any police officer directing him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other local criminal court which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to such warrant.

§ 570.34 Arrest of accused without warrant therefor

The arrest of a person in this state may be lawfully made also by any police officer or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year; but when so arrested the accused must be taken before a local criminal court with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and, thereafter, his answers shall be heard as if he had been arrested on a warrant.

§ 570.36 Commitment to await requisition; bail

If from the examination before the local criminal court it appears that the person held is the person charged with having committed the crime alleged, and, except in cases arising under section 570.14 or 570.16, that he has fled from justice, the local criminal court must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused gives bail as provided in the next section, or until he shall be legally discharged.

§ 570.38 Bail; in what cases; conditions of bond

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a

justice of the supreme court or county judge in this state may admit the person arrested to bail by bond or undertaking, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond or undertaking but not later than thirty days after the examination referred to in section 570.36 and for his surrender, to be arrested upon the warrant of the governor of this state.

§ 570.40 Extension of time of commitment; adjournment

If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant, bond or undertaking, a local criminal court may discharge him or may recommit him for a further period of sixty days, or for further periods not to exceed in the aggregate sixty days, or a supreme court justice or county judge may again take bail for his appearance and surrender, as provided in section 570.38 but within a period not to exceed sixty days after the date of such new bond or undertaking.

§ 570.42 Bail; when forfeited

If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond or undertaking, the justice of the supreme court or county judge, by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond or undertaking in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state.

§ 570.44 Persons under criminal prosecution in this state at time of requisition

If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, may either surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

§ 570.46 Guilt or innocence of accused; when inquired into

The guilt or innocence of the accused as to the crime with which he is charged may not be inquired into by the governor, or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall

have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

§ 570.48 Alias warrant of arrest

The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

§ 570.50 Written waiver of extradition proceedings

Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole, may waive the issuance and service of the warrant provided for in sections 570.18 and 570.20 and all other procedure incidental to extradition proceedings by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state, provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 570.24.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the secretary of state of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent. Provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state.

§ 570.52 Fugitives from this state; duty of governor

Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state from the executive authority of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of

this state to some agent commanding him to receive the person so charged, if delivered to him, and convey him to the proper officer of the county in this state in which the offense was committed.

§ 570.54 Application for issuance of requisition; by whom made; contents

1. When the return to this state of a person charged with crime in this state is required, the district attorney of the county in which the offense was committed, or, if the offense is one which is cognizable by him, the attorney-general shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said district attorney or attorney-general the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

2. When there is required the return to this state of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the district attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time the application is made.

3. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the accusatory instrument stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The district attorney, attorney general, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the accusatory instru-

ment, or of the judgment of conviction or the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

§ 570.56 Expense of extradition

The expenses of extradition must be borne by the county from which the application for a requisition comes or, where the application is made by the attorney general, by the county in which the offense was committed. In the case of extradition of a person who has been convicted of a crime in this state and has escaped from a state prison or reformatory, the expense of extradition shall be borne by the state department of correction. Where a person has broken the terms of his parole from a state prison or reformatory, the expense of extradition shall be borne by the state division of parole. Where a person has broken the terms of his bail or probation, the expense of extradition shall be borne by the county. Where a person has been convicted but not yet confined to a prison, or has been sentenced for a felony to a county jail or penitentiary and escapes, the expenses of extradition shall be charged to the county from whose custody the escape is effected.

§ 570.58 Immunity from service of process in certain civil actions

A person brought into this state on or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned until he has been convicted in the criminal proceeding, or if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

§ 570.60 No immunity from other criminal prosecution while in this state

After a person has been brought back to this state by extradition proceedings, he may be tried in this state for other offenses which he may be charged with having committed here as well as that specified in the requisition for his extradition.

§ 570.62 Non-waiver by this state

Nothing in this article contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such

demanded person for offenses committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any offense committed within this state, nor shall any proceedings had under this article which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

§ 570.64 Interpretation

The provisions of this article shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

§ 570.66 Constitutionality

If any part of this article is for any reason declared void, such invalidity shall not affect the validity of the remaining portions thereof.

ARTICLE 580—SECURING ATTENDANCE OF DEFENDANTS CONFINED AS PRISONERS IN INSTITUTIONS OF OTHER JURISDICTIONS OF THE UNITED STATES—RENDITION TO OTHER JURISDICTIONS OF PERSONS CONFINED AS PRISONERS IN THIS STATE—AGREEMENT ON DETAINERS

Section

580.10 Securing attendance of defendants confined as prisoners in institutions outside the state; methods.
580.20 Agreement on detainers.
580.30 Securing attendance of defendants confined in federal prisons.

§ 580.10 Securing attendance of defendants confined as prisoners in institutions outside the state; methods

The attendance in a criminal action pending in a court of this state of a defendant confined as a prisoner in an institution of another jurisdiction may, under prescribed circumstances, be secured pursuant to:

1. Section 570.12 of article five hundred seventy, known as the uniform criminal extradition act; or
2. Section 580.20, known as the agreement on detainers; or
3. Section 580.30.

§ 580.20 Agreement on detainers

The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

TEXT OF THE AGREEMENT ON DETAINERS

The contracting states solemnly agree that:

ARTICLE I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

ARTICLE III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment

there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of correction or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of correction or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of correction or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial

is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

ARTICLE IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is

being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an officer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which for the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from

the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

1. This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

2. The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean any court with criminal jurisdiction.

3. All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes.

4. Escape from custody while in another state pursuant to the agreement on detainers shall constitute an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the agreement on detainers and shall be punishable in the same manner as an escape from said institution.

5. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

6. The governor is hereby authorized and empowered to designate an administrator who shall perform the duties and functions and exercise the powers conferred upon such person by Article VII of the agreement on detainers.

7. In order to implement Article IV (a) of the agreement on detainers, and in furtherance of its purposes, the appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request, notify the prisoner and the governor in writing that a request for temporary custody

has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him in writing of his rights to counsel, to make representations to the governor within thirty days, and to contest the legality of his delivery.

§ 580.30 Securing attendance of defendants confined in federal prisons

1. A defendant against whom a criminal action is pending in a court of record of this state, and who is confined in a federal prison or custody either within or outside the state, may, with the consent of the attorney general of the United States, be produced in such court for the purpose of criminal prosecution, pursuant to the provisions of:

(a) Section four thousand eighty-five of title eighteen of the United States Code; or

(b) Subdivision two of this section.

2. When such a defendant is in federal custody as specified in subdivision one, a superior court, at a term held in the county in which the criminal action against him is pending, may, upon application of the district attorney of such county, issue a certificate, known as a writ of habeas corpus ad prosequendum, addressed to the attorney general of the United States, certifying that such defendant has been charged by the particular accusatory instrument filed against him in the specified court with the offense or offenses alleged therein, and that attendance of the defendant in such court for the purpose of criminal prosecution thereon is necessary in the interest of justice, and requesting the attorney general of the United States to cause such defendant to be produced in such court, under custody of a federal public servant, upon a designated date and for a period of time necessary to complete the prosecution. Upon issuing such a certificate, the court may deliver it, or cause or authorize it to be delivered, together with a certified copy of the accusatory instrument upon which it is based, to the attorney general of the United States or to his representative authorized to entertain the request.

ARTICLE 590—SECURING ATTENDANCE OF DEFENDANTS WHO ARE OUTSIDE THE UNITED STATES

Section

590.10 Securing attendance of defendants who are outside the United States.

§ 590.10 Securing attendance of defendants who are outside the United States

1. When a criminal action for an offense committed in this state is pending in a criminal court of this state against a defendant who is in a foreign country with which the United States has an extradition treaty, and when the accusatory instrument charges an offense which is specified in such treaty as an extraditable one, the district attorney of the county in which such offense was allegedly committed may make an application to the Governor, requesting him to make an application to the President of the United States to institute extradition proceedings for the return of the defendant to this country and state for the purpose of prosecution of such action. The district attorney's application must comply with any rules, regulations and guidelines established by the Governor for such applications and must be accompanied by all the accusatory instruments, affidavits and other documents required by such rules, regulations and guidelines.

2. Upon receipt of the district attorney's application, the Governor, if satisfied that the defendant is in the foreign country in question, that the offense charged is an extraditable one pursuant to the treaty in question, and that there are no factors or impediments which in law preclude such an extradition, may in his discretion make an application, addressed to the secretary of state of the United States, requesting that the President of the United States institute extradition proceedings for the return of the defendant from such foreign country. The Governor's application must comply with any rules, regulations and guidelines established by the secretary of state for such applications and must be accompanied by all the accusatory instruments, affidavits and other documents required by such rules, regulations and guidelines.

3. If the Governor's application is granted and the extradition is achieved or attempted, all expenses incurred therein must be borne by the county from which the application emanated.

4. The provisions of this section apply equally to extradition or attempted extradition of a person who is a fugitive following the entry of a judgment of conviction against him in a criminal court of this state.

ARTICLE 600—SECURING ATTENDANCE OF CORPORATE DEFENDANTS AND RELATED MATTERS

Section

600.10 Corporate defendants; securing attendance.
600.20 Corporate defendants; prosecution thereof.

§ 600.10 Corporate defendants; securing attendance

1. The court attendance of a corporation for purposes of commencing or prosecuting a criminal action against it may be accomplished by the issuance and service of a summons or an appearance ticket if such action has been or is about to be commenced in a local criminal court, and by a corporate summons if such action has been commenced in a superior court. Such process must be served upon the corporation by delivery thereof to an officer, director, managing or general agent, or cashier or assistant cashier of such corporation or to any other agent of such corporation authorized by appointment or by law to receive service of process.

2. A "corporate summons" is a process issued by a superior court directing a corporate defendant designated in an indictment to appear before it at a designated future time in connection with such indictment. A corporate summons must be generally in the form of a summons as prescribed in subdivision two of section 130.10. A corporate summons may be served by a public servant designated by the issuing court, and may be served anywhere in the state.

§ 600.20 Corporate defendants; prosecution thereof

At all stages of a criminal action, from the commencement thereof through sentence, a corporate defendant must appear by counsel. Upon failure of appearance at the time such defendant is required to enter a plea to the accusatory instrument, the court may enter a plea of guilty and impose sentence.

TITLE R—PROCEDURES FOR SECURING ATTENDANCE OF WITNESSES IN CRIMINAL ACTIONS

ARTICLE 610—SECURING ATTENDANCE OF WITNESSES BY SUBPOENA

Section

610.10 Securing attendance of witnesses by subpoena; in general.
610.20 Securing attendance of witnesses by subpoena; when and by whom subpoena may be issued.
610.30 Securing attendance of witnesses by subpoena; where subpoena may be served.
610.40 Securing attendance of witnesses by subpoena; how and by whom subpoena may be served.
610.50 Securing attendance of witness by subpoena; fees.

§ 610.10 Securing attendance of witnesses by subpoena; in general

1. Under circumstances prescribed in this article, a person at liberty within the state may be required to attend a criminal court action or proceeding as a witness by the issuance and service upon him of a subpoena.

2. A "subpoena" is a process of a court directing the person to whom it is addressed to attend and appear as a witness in a designated action or proceeding in such court, on a designated date and any recessed or adjourned date of the action or proceeding. If the witness is given reasonable notice of such recess or adjournment, no further process is required to compel his attendance on the adjourned date.

3. As used in this article, "subpoena" includes a "subpoena duces tecum." A subpoena duces tecum is a subpoena requiring the witness to bring with him and produce specified physical evidence.

§ 610.20 Securing attendance of witnesses by subpoena; when and by whom subpoena may be issued

1. Any criminal court may issue a subpoena for the attendance of a witness in any criminal action or proceeding in such court.

2. A district attorney, or other prosecutor where appropriate, as an officer of a criminal court in which he is conducting the prosecution of a criminal action or proceeding, may issue a sub-

poena of such court, subscribed by himself, for the attendance in such court or a grand jury thereof of any witness whom the people are entitled to call in such action or proceeding.

3. An attorney for a defendant in a criminal action or proceeding, as an officer of a criminal court, may issue a subpoena of such court, subscribed by himself, for the attendance in such court of any witness whom the defendant is entitled to call in such action or proceeding. An attorney for a defendant may not issue a subpoena duces tecum of the court directed to any department, bureau or agency of the state or of a political subdivision thereof, or to any officer or representative thereof. Such a subpoena duces tecum may be issued in behalf of a defendant upon order of a court pursuant to the rules applicable to civil cases as provided in section twenty-three hundred seven of the civil practice law and rules.

§ 610.30 Securing attendance of witnesses by subpoena; where subpoena may be served

1. A subpoena of any criminal court, issued pursuant to section 610.20, may be served anywhere in the county of issuance or anywhere in an adjoining county.

2. A subpoena of a superior court or of a superior court judge sitting as a local criminal court, issued pursuant to section 610.20, may be served anywhere in the state.

3. A subpoena of a district court or of the New York City criminal court, issued pursuant to section 610.20, may be served anywhere in the state; provided that, if such subpoena is issued by a prosecutor or by an attorney for a defendant, it may be served in a county other than the county of issuance or an adjoining county only if such court, upon application of such prosecutor or attorney, endorses upon such subpoena an order for the attendance of the witness.

4. A subpoena of a city court or a town court or a village court, issued pursuant to section 610.20, may be served in a county other than the one of issuance or an adjoining county if a judge of a superior court, upon application of the issuing court or the district attorney or an attorney for the defendant, endorses upon such subpoena an order for the attendance of the witness.

§ 610.40 Securing attendance of witnesses by subpoena; how and by whom subpoena may be served

A subpoena may be served by any person more than eighteen years old. Service must be made in the manner provided by the civil practice law and rules for the service of subpoenas in civil cases.

§ 610.50 Securing attendance of witness by subpoena; fees

1. A witness subpoenaed by the people in a criminal action is entitled to the same fees and mileage as a witness in a civil action, payable by the treasurer of the county upon the certificate of the court or the clerk thereof, stating the number of days the witness actually attended and the number of miles traveled by him in order to attend. In any such action, the court may, by order, direct the county treasurer to pay to such witness a further reasonable sum for expenses, to be specified in the order, and the county treasurer, upon the production of the order or a certified copy thereof, must pay the witness the sum specified therein out of the county treasury. Such certificates shall only be issued by the court or the clerk thereof, upon the production of the affidavit of the witness, stating that he attended as such either on subpoena or request of the district attorney, the number of miles necessarily traveled and the duration of attendance. An officer in any state department who attends as a witness under this section in his official capacity, or in consequence of any official action taken by him, and who receives a fixed sum in lieu of expenses, or who is entitled to receive the actual expenses incurred by him in the discharge of his official duties, is not entitled to the compensation herein provided.

2. A witness subpoenaed by the defendant in a criminal action is not entitled as of right to witness and mileage fees, but the court may in its discretion, by order, direct the county treasurer to pay to such a witness a reasonable sum for expenses, to be specified in the order. Upon the production of the order or a certified copy thereof, the county treasurer must pay the witness the sum specified therein, out of the county treasury.

ARTICLE 620—SECURING ATTENDANCE OF WITNESSES BY MATERIAL WITNESS ORDER

Section
620.10 Material witness order; defined.
620.20 Material witness order; when authorized; by what courts issuable; duration thereof.
620.30 Material witness order; commencement of proceeding by application; procurement of appearance of prospective witness.
620.40 Material witness order; arraignment.
620.50 Material witness order; hearing, determination and execution of order.
620.60 Material witness order; vacation, modification and amendment thereof.
620.70 Material witness order; compelling attendance of witness who fails to appear.
620.80 Material witness order; witness fee.

§ 620.10 Material witness order; defined

A material witness order is a court order (a) adjudging a person a material witness in a pending criminal action and (b) fixing bail to secure his future attendance thereat.

§ 620.20 Material witness order; when authorized; by what courts issuable; duration thereof

1. A material witness order may be issued upon the ground that there is reasonable cause to believe that a person whom the people or the defendant desire to call as a witness in a pending criminal action:

(a) Possesses information material to the determination of such action; and

(b) Will not be amenable or responsive to a subpoena at a time when his attendance will be sought.

2. A material witness order may be issued only when:

(a) An indictment has been filed in a superior court and is currently pending therein; or

(b) A grand jury proceeding has been commenced and is currently pending; or

(c) A felony complaint has been filed with a local criminal court and is currently pending therein.

3. The following courts may issue material witness orders under the indicated circumstances:

(a) When an indictment has been filed, or a grand jury proceeding has been commenced, or a defendant has been held by a local criminal court for the action of a grand jury, a material witness order may be issued only by the superior court in which such indictment is pending or by which such grand jury has been or will be impaneled;

(b) When a felony complaint is currently pending in a district court or in the New York City criminal court or before a superior court judge sitting as a local criminal court, a material witness order may be issued either by such court or by the superior court which would have jurisdiction of the case upon a holding of the defendant for the action of the grand jury;

(c) When a felony complaint is currently pending in a city court or a town court or a village court, a material witness order may be issued only by the superior court which would have jurisdiction of the case upon a holding of the defendant for the action of the grand jury.

4. Unless vacated pursuant to section 620.60, a material witness order remains in effect during the following periods of time under the indicated circumstances:

(a) An order issued by a superior court under the circumstances prescribed in paragraph (a) of subdivision three remains in effect during the pendency of the criminal action in such superior court;

(b) An order issued by a district court or the New York City criminal court or a superior court judge sitting as a local criminal court, under circumstances prescribed in paragraph (b) of subdivision three, remains in effect (i) until the disposition of the felony complaint pending in such court, and (ii) if the defendant is held for the action of the grand jury, during the pendency of the grand jury proceeding, and (iii) if an indictment results, for a period of ten days following the filing of such indictment, and (iv) if within such ten day period such order is indorsed by the superior court in which the indictment is pending, during the pendency of the action in such superior court. Upon such indorsement, the order is deemed to be that of the superior court.

(c) An order issued by a superior court under circumstances prescribed in paragraph (c) of subdivision three

remains in effect (i) until the disposition of the felony complaint pending in the city, town or village court, and (ii) if the defendant is held for the action of the grand jury, during the pendency of the action in the superior court.

§ 620.30 Material witness order; commencement of proceeding by application; procurement of appearance of prospective witness

1. A proceeding to adjudge a person a material witness must be commenced by application to the appropriate court, made in writing and subscribed and sworn to by the applicant, demonstrating reasonable cause to believe the existence of facts, as specified in subdivision one of section 620.20, warranting the adjudication of such person as a material witness.

2. If the court is satisfied that the application is well founded, the prospective witness may be compelled to appear in response thereto as follows:

(a) The court may issue an order directing him to appear therein at a designated time in order that a determination may be made whether he should be adjudged a material witness, and, upon personal service of such order or a copy thereof within the state, he must so appear.

(b) If in addition to the allegations specified in subdivision one, the application contains further allegations demonstrating to the satisfaction of the court reasonable cause to believe that (i) the witness would be unlikely to respond to such an order, or (ii) after previously having been served with such an order, he did not respond thereto, the court may issue a warrant addressed to a police officer, directing such officer to take such prospective witness into custody within the state and to bring him before the court forthwith in order that a proceeding may be conducted to determine whether he is to be adjudged a material witness.

§ 620.40 Material witness order; arraignment

1. When the prospective witness appears before the court, the court must inform him of the nature and purpose of the proceeding, and that he is entitled to a prompt hearing upon the issue of whether he should be adjudged a material witness. The prospective witness possesses all the rights, and is entitled to all the court instructions, with respect to right to counsel, opportunity to obtain counsel and assignment of counsel in case of financial inability to retain such, which, pursuant to subdivi-

sions three through five of section 180.10, accrue to a defendant arraigned upon a felony complaint in a local criminal court.

2. If the proceeding is adjourned at the prospective witness' instance, for the purpose of obtaining counsel or otherwise, the court must order him to appear upon the adjourned date. The court may further fix bail to secure his appearance upon such date or until the proceeding is completed and, upon default thereof, may commit him to the custody of the sheriff for such period.

§ 620.50 Material witness order; hearing, determination and execution of order

1. The hearing upon the application must be conducted as follows:

(a) The applicant has the burden of proving by a preponderance of the evidence all facts essential to support a material witness order, and any testimony so adduced must be given under oath;

(b) The prospective witness may testify under oath or may make an unsworn statement;

(c) The prospective witness may call witnesses in his behalf, and the court must cause process to be issued for any such witness whom he reasonably wishes to call, and any testimony so adduced must be given under oath;

(d) Upon the hearing, evidence tending to demonstrate that the prospective witness does or does not possess information material to the criminal action in issue, or that he will or will not be amenable or respond to a subpoena at the time his attendance will be sought, is admissible even though it consists of hearsay.

2. If the court is satisfied after such hearing that there is reasonable cause to believe that the prospective witness (a) possesses information material to the pending action or proceeding, and (b) will not be amenable or respond to a subpoena at a time when his attendance will be sought, it may issue a material witness order, adjudging him a material witness and fixing bail to secure his future attendance.

3. A material witness order must be executed as follows:

(a) If the bail is posted and approved by the court, the witness must, as provided in subdivision three of section 510.40, be released and be permitted to remain at liberty; provided that, where the bail is posted by a person other

than the witness himself, he may not be so released except upon his signed written consent thereto;

(b) If the bail is not posted, or if though posted it is not approved by the court, the witness must, as provided in subdivision three of section 510.40, be committed to the custody of the sheriff.

§ 620.60 Material witness order; vacation, modification and amendment thereof

1. At any time after a material witness order has been issued the court must, upon application of such witness, with notice to the party upon whose application the order was issued, and with opportunity to be heard, make inquiry whether by reason of new or changed facts or circumstances the material witness order is no longer necessary or warranted, or, if it is, whether the original bail currently appears excessive. Upon making any such determination, the court must vacate the order. If its determination is that the order is no longer necessary or warranted, it must, as the situation requires, either discharge the witness from custody or exonerate the bail. If its determination is that the bail is excessive, it must issue a new order fixing bail in a lesser amount or on less burdensome terms.

2. At any time when a witness is at liberty upon bail pursuant to a material witness order, the court may, upon application of the party upon whose application the order was issued, with notice to the witness if possible and to his attorney if any and opportunity to be heard, make inquiry whether, by reason of new or changed facts or circumstances, the original bail is no longer sufficient to secure the future attendance of the witness at the pending action. Upon making such a determination, the court must vacate the order and issue a new order fixing bail in a greater amount or on terms more likely to secure the future attendance of the witness.

§ 620.70 Material witness order; compelling attendance of witness who fails to appear

If a witness at liberty on bail pursuant to a material witness order cannot be found or notified at the time his appearance as a witness is required, or if after notification he fails to appear in such action or proceeding as required, the court may issue a warrant, addressed to a police officer, directing such officer to take such witness into custody anywhere within the state and to bring him to the court forthwith.

§ 620.80 Material witness order; witness fee

A witness held in the custody of the sheriff as a result of a material witness order must be paid the sum of three dollars per day for each day of confinement in such custody. Such compensation is a county charge and is payable upon release of such material witness from custody or, in the discretion of the court, at any designated times or intervals during the confinement as the court may deem appropriate.

ARTICLE 630—SECURING ATTENDANCE AS WITNESSES OF PERSONS CONFINED IN INSTITUTIONS WITHIN THE STATE

Section

630.10 Securing attendance of witnesses confined in institutions within the state; in general.
630.20 Securing attendance of witnesses confined in institutions within the state; when and by what courts order may be issued.

§ 630.10 Securing attendance of witnesses confined in institutions within the state; in general

Under circumstances prescribed in this article, a person confined in an institution within this state pursuant to a court order may, upon application of a party to a criminal action or proceeding, demonstrating reasonable cause to believe that such person possesses information material thereto, be produced by court order and compelled to attend such action or proceeding as a witness.

§ 630.20 Securing attendance of witnesses confined in institutions within the state; when and by what courts order may be issued

The following courts and judges may, under the indicated circumstances, order production as witnesses of persons confined by court order in institutions within the state.

1. If the criminal action or proceeding is one pending in a superior court or with a superior court judge sitting as a local criminal court, such court may, except as provided in subdivision four, order the production as a witness therein of a person confined in any institution in the state.

2. If the criminal action or proceeding is one pending in a district court or the New York City criminal court, such court may order the production as a witness therein of a person confined in any institution within the state other than a state prison. Production therein of a prospective witness confined in a state prison may, except as provided in subdivision four, be ordered, upon application of the party desiring to call him, by a judge of a superior court holding a term thereof in the county in which the action or proceeding is pending.

3. If the criminal action or proceeding is one pending in a city court or a town court or a village court, such court may order the production as a witness therein of a person confined in a county jail of such county. Production therein of a prospective witness confined in any other institution within the state may, except as provided in subdivision four, be ordered, upon application of the party desiring to call him, by a judge of a superior court holding a term thereof in the county in which the action or proceeding is pending.

4. Regardless of the court in which the criminal action or proceeding is pending, production as a witness therein of a prisoner who has been sentenced to death may be ordered, upon application of the party desiring to call him, only by a justice of the appellate division of the department in which the action or proceeding is pending. The application for such order, if made by the defendant, must be upon notice to the district attorney of the county in which the action or proceeding is pending, and an application made by either party must be based upon a showing that the prisoner's attendance is clearly necessary in the interests of justice. Upon issuing such an order, the appellate division justice may fix and include therein any terms or conditions which he deems appropriate for execution thereof.

ARTICLE 640—SECURING ATTENDANCE AS WITNESSES OF PERSONS AT LIBERTY OUTSIDE THE STATE—RENDITION TO OTHER JURISDICTIONS OF WITNESSES AT LIBERTY WITHIN THE STATE—UNIFORM ACT TO SECURE ATTENDANCE OF WITNESSES FROM WITHOUT THE STATE IN CRIMINAL CASES

Section

640.10 Securing attendance of witnesses from within and without the state in criminal proceedings.

§ 640.10 Securing attendance of witnesses from within and without the state in criminal proceedings

1. As used in this section the following words shall have the following meanings unless the context requires otherwise.

"Witness" shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

"State" shall include any territory of the United States and the District of Columbia.

"Subpoena" shall include a summons in any state where a summons is used in lieu of a subpoena.

2. Subpoenaing witness in this state to testify in another state. If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to a justice of the supreme court or a county judge in the county in which such person is, such justice or judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at such hearing the justice or judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, will give to him protection from arrest and the service

of civil and criminal process, he shall issue a subpoena, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the subpoena. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state such justice or judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the justice or judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is subpoenaed as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile and five dollars for each day that he is required to travel and attend as a witness fails without good cause to attend and testify as directed in the subpoena, he shall be punished in the manner provided for the punishment of any witness who disobeys a subpoena issued from a court of record in this state.

3. Witness from another state subpoenaed to testify in this state. If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state, such judge may direct that such witness be forthwith brought before him; and the judge being satisfied of the desirability of such custody and delivery, for which determination said certificate shall be prima facie

proof, may order that said witness be forthwith taken into custody and delivered to an officer of this state, which order shall be sufficient authority to such officer to take such witness into custody and hold him unless and until he may be released by bail, recognizance, or order of the judge issuing the certificate.

If the witness is summoned to attend and testify in this state he shall be tendered the sum of ten cents a mile for each mile and five dollars for each day that he is required to travel and attend as a witness. Such fees shall be a proper charge upon the county in which such criminal prosecution or grand jury investigation is pending. A witness who has appeared in accordance with the provisions of the subpoena shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness fails without good cause to attend and testify as directed in this subpoena, he shall be punished in the manner provided for the punishment of any witness who disobeys a subpoena issued from a court of record in this state.

4. Exemption from arrest and service of process. If a person comes into this state in obedience to a subpoena directing him to attend and testify in this state he shall not while in this state pursuant to such subpoena or order be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the subpoena.

If a person passes through this state while going to another state in obedience to a subpoena or order to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the subpoena or order.

5. Uniformity of interpretation. This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

6. Short title. This section may be cited as "Uniform act to secure the attendance of witnesses from without the state in criminal cases."

7. Constitutionality. If any part of this section is for any reason declared void, such invalidity shall not affect the validity of the remaining portions thereof.

ARTICLE 650—SECURING ATTENDANCE AS WITNESSES OF PRISONERS CONFINED IN INSTITUTIONS OUTSIDE THE STATE OR IN FEDERAL INSTITUTIONS—RENDITION TO OTHER JURISDICTIONS OF PRISONERS CONFINED IN INSTITUTIONS WITHIN THE STATE

Section

650.10 Securing attendance of prisoner as witness in proceeding without the state.
650.20 Securing attendance of prisoner outside the state as witness in criminal action in the state.
650.30 Securing attendance of prisoner in federal institution as witness in criminal action in the state.

§ 650.10 Securing attendance of prisoner as witness in proceeding without the state

If a judge of a court of record in any other state, which by its laws has made provision for commanding a prisoner within that state to attend and testify in this state, certifies under the seal of that court that there is a criminal prosecution pending in such court or that a grand jury investigation has commenced, and that a person confined in a New York state correctional institution or prison within the department of correction, other than a person confined as criminally insane, or as a defective delinquent, or confined in the death house awaiting execution, is a material witness in such prosecution or investigation and that his presence is required for a specified number of days, upon presentment of such certificate to a judge of a superior court in the county where the person is confined, upon notice to the attorney general, such judge, shall fix a time and place for a hearing and shall make an order directed to the person having custody of the prisoner requiring that such prisoner be produced at the hearing.

If at such hearing the judge determines that the prisoner is a material and necessary witness in the requesting state, the judge shall issue an order directing that the prisoner attend in the court where the prosecution or investigation is pending, upon such terms and conditions as the judge prescribes, including among other things, provision for the return of the prisoner at the conclusion of his testimony, proper safeguards on his custody, and proper financial reimbursement or other payment by the demanding jurisdiction for all expenses incurred in the production and return of the prisoner.

The attorney general is authorized as agent for the state of New York, when in his judgment it is necessary, to enter into such agreements with the appropriate authorities of the demanding jurisdiction as he determines necessary to ensure proper compliance with the order of the court.

§ 650.20 Securing attendance of prisoner outside the state as witness in criminal action in the state

1. When (a) a criminal action is pending in a court of record of this state by reason of the filing therewith of an accusatory instrument, or a grand jury proceeding has been commenced, and (b) there is reasonable cause to believe that a person confined in a correctional institution or prison of another state, other than a person awaiting execution of a sentence of death or one confined as mentally ill or as a defective delinquent, possesses information material to such criminal action or proceeding, and (c) the attendance of such person as a witness in such action or proceeding is desired by a party thereto, and (d) the state in which such person is confined possesses a statute equivalent to section 650.10, the court in which such action or proceeding is pending may issue a certificate under the seal of such court, certifying all such facts and that the attendance of such person as a witness in such court is required for a specified number of days.

2. Such certificate may be issued upon application, of either the people or a defendant, demonstrating all the facts specified in subdivision one.

3. Upon issuing such a certificate, the court may deliver it, or cause or authorize it to be delivered, to a judge or a court of such other state who or which, pursuant to the laws thereof, is authorized to initiate or undertake legal action for the delivery of such prisoners to this state as witnesses.

§ 650.30 Securing attendance of prisoner in federal institution as witness in criminal action in the state

1. When (a) a criminal action is pending in a court of record of this state by reason of the filing therewith of an accusatory instrument, or a grand jury proceeding has been commenced, and (b) there is reasonable cause to believe that a person confined in a federal prison or other federal custody, either within or outside this state, possesses information material to such criminal action or proceeding, and (c) the attendance of such person as a witness in such action or proceeding is desired by a party thereto, a superior court, at a term held in the county in which

such action or proceeding is pending, may issue a certificate, known as a writ of habeas corpus ad testificandum, addressed to the attorney general of the United States, certifying all such facts and requesting the attorney general of the United States to cause the attendance of such person as a witness in such court for a specified number of days under custody of a federal public servant.

2. Such a certificate may be issued upon application of either the people or a defendant, demonstrating all the facts specified in subdivision one.

3. Upon issuing such certificate, the court may deliver it, or cause or authorize it to be delivered, to the attorney general of the United States or to his representative authorized to entertain the request.

TITLE S—PROCEDURES FOR SECURING TESTIMONY FOR FUTURE USE, AND FOR USING TESTIMONY GIVEN IN A PRIOR PROCEEDING

ARTICLE 660—SECURING TESTIMONY FOR USE IN A SUBSEQUENT PROCEEDING—EXAMINATION OF WITNESSES CONDITIONALLY

Section

660.10 Examination of witnesses conditionally; in general.
660.20 Examination of witnesses conditionally; grounds for order.
660.30 Examination of witnesses conditionally; when and to what courts application may be made.
660.40 Examination of witnesses conditionally; application and notice.
660.50 Examination of witnesses conditionally; determination of application.
660.60 Examination of witnesses conditionally; the examination proceeding.

§ 660.10 Examination of witnesses conditionally; in general

After a defendant has been arraigned upon an accusatory instrument, and under circumstances prescribed in this article, a criminal court may, upon application of either the people or a defendant, order that a witness or prospective witness in the action be examined conditionally under oath in order that such testimony may be received and read into evidence at subsequent proceedings in or related to the action.

§ 660.20 Examination of witnesses conditionally; grounds for order

An order directing examination of a witness conditionally must be based upon the ground that there is reasonable cause to believe that such witness:

1. Possesses information material to the criminal action or proceeding in issue; and

2. Will not be amenable or responsive to legal process or available as a witness at a time when his testimony will be sought, either because he is:

(a) About to leave the state and not return for a substantial period of time; or

(b) Physically ill or incapacitated.

§ 660.30 Examination of witnesses conditionally; when and to what courts application may be made

1. An application to examine a witness conditionally may be made at any time after the defendant has been arraigned upon an accusatory instrument and before termination of the action, or of a proceeding therein or related thereto, in which the witness's testimony is sought.

2. Such application must be made to and determined by the following courts under the indicated circumstances:

(a) If the action is pending in a local criminal court as a result of an accusatory instrument filed therewith, the application must be made to and determined by such local criminal court;

(b) If the defendant has been held by a local criminal court for the action of a grand jury on the basis of a felony complaint, or if an indictment has been filed against him, the application must be made to and determined by the superior court by which the grand jury was or is to be impaneled or in which the indictment is pending.

§ 660.40 Examination of witnesses conditionally; application and notice

1. An application to examine a witness conditionally must be made in writing, must be subscribed and sworn to, and must contain:

(a) The title of the action, the offense or offenses charged, the nature and status of the action, and the name

and residential address of the witness sought to be examined; and

(b) A statement that there is reasonable cause to believe that grounds for such an examination, as specified in section 660.20, exist, together with allegations of fact supporting such statement. Such allegations of fact may be those of the applicant, or those of another person in an accompanying deposition, or of both. They may be based either upon personal knowledge of the deponent or upon information and belief, provided that in the latter event the sources of such information and the grounds of such belief are stated.

2. A copy of the application, with reasonable notice and opportunity to be heard, must be served upon the other party to the action. If the defendant is the applicant, such service must be upon the district attorney. If the people are the applicant, such service must be upon the defendant and upon his attorney if any. The respondent party may file and serve a sworn written answer to the application.

§ 660.50 Examination of witnesses conditionally; determination of application

1. Before ruling upon the application, the court may, in addition to examining the papers and hearing oral argument, make any inquiry it deems appropriate for the purpose of making findings of fact essential to the determination. For such purpose, it may examine witnesses, under oath or otherwise, subpoena or call witnesses and authorize the attorneys for the parties to do so.

2. If the court is satisfied that grounds for the application exist, it must order an examination of the witness conditionally at a designated time and place. Such examination must be conducted by the same court; except that, if it is to be held in another county, it may be conducted by a designated superior court of such other county.

3. Upon ordering the examination, the court must cause a copy of the order to be served upon the respondent party and, if a defendant be such, upon his attorney also, and must either issue a subpoena for the witness' attendance thereat or authorize the applicant party's attorney to do so.

§ 660.60 Examination of witnesses conditionally; the examination proceeding

1. The examination proceeding must be conducted and recorded in the same manner as would be required were the witness testifying at a trial. The witness must testify under oath. The applicant party must first examine the witness and the respondent party may then cross-examine him, with each party entitled to register objections and to receive rulings of the court thereon.

2. Upon conclusion of the examination, a transcript thereof must be certified and filed with the court which ordered the examination.

ARTICLE 670—USE IN A CRIMINAL PROCEEDING OF TESTIMONY GIVEN IN A PREVIOUS PROCEEDING

Section

670.10 Use in a criminal proceeding of testimony given in a previous proceeding; when authorized.
670.20 Use in a criminal proceeding of testimony given in a previous proceeding; procedure.

§ 670.10 Use in a criminal proceeding of testimony given in a previous proceeding; when authorized

1. Under circumstances prescribed in this article, testimony given by a witness at (a) a trial of an accusatory instrument, or (b) a hearing upon a felony complaint conducted pursuant to section 180.60, or (c) an examination of such witness conditionally, conducted pursuant to article six hundred sixty, may, where otherwise admissible, be received and read into evidence at a subsequent proceeding in or relating to the action involved when at the time of such subsequent proceeding the witness is unable to attend the same by reason of death, illness or incapacity, or cannot with due diligence be found, or is outside the state or in federal custody and cannot with due diligence be brought before the court.

2. The subsequent proceedings at which such testimony may be received in evidence consist of:

(a) Any proceeding constituting a part of a criminal action based upon the charge or charges which were pending against the defendant at the time of the witness's testimony and to which such testimony related; and

(b) Any post-judgment proceeding in which a judgment of conviction upon a charge specified in paragraph (a) is challenged.

§ 670.20 Use in a criminal proceeding of testimony given in a previous proceeding; procedure

1. In any criminal action or proceeding other than a grand jury proceeding, a party thereto who desires to offer in evidence testimony of a witness given in a previous action or proceeding as provided in section 670.10, must so move, either in writing or orally in open court, and must submit to the court, and serve a copy thereof upon the adverse party, an authenticated transcript of the testimony sought to be introduced. Such moving party must further state facts showing that personal attendance of the witness in question is precluded by some factor specified in subdivision one of section 670.10. In determining the motion, the court, with opportunity for both parties to be heard, must make inquiry and conduct a hearing to determine whether personal attendance of the witness is so precluded. If the court determines that such is the case and grants the motion, the moving party may introduce the transcript in evidence and read into evidence the testimony contained therein. In such case, the adverse party may register any objection or protest thereto that he would be entitled to register were the witness testifying in person, and the court must rule thereon.

2. Without obtaining any court order or authorization, a district attorney may introduce in evidence in a grand jury proceeding testimony of a witness given in a previous action or proceeding specified in subdivision one of section 670.10, provided that a foundation for such evidence is laid by other evidence demonstrating that personal attendance of such witness is precluded by some factor specified in subdivision one of section 670.10.

ARTICLE 680—SECURING TESTIMONY OUTSIDE THE STATE FOR USE IN PROCEEDING WITHIN THE STATE—EXAMINATION OF WITNESSES ON COMMISSION

Section

680.10 Examination of witnesses on commission; in general.
680.20 Examination of witnesses on commission; when commission issuable; form and content of application.
680.30 Examination of witnesses on commission; application by people for examination of witnesses.
680.40 Examination of witnesses on commission; when commission issuable upon application of people.
680.50 Examination of witnesses on commission; interrogatories.
680.60 Examination of witnesses on commission; form and content of the commission.
680.70 Examination of witnesses on commission; the examination.
680.80 Examination of witnesses on commission; use at trial of transcript of examination.

§ 680.10 Examination of witnesses on commission; in general

1. Under circumstances prescribed in this article, testimony material to a trial or pending trial of an accusatory instrument which charges a crime, may be taken by "examination on a commission" outside the state and received in evidence at such trial.

2. A "commission" is a process issued by a superior court designating one or more persons as commissioners and authorizing them to conduct a recorded examination of a witness or witnesses under oath, primarily on the basis of interrogatories annexed to the commission, and to remit to the issuing court the transcript of such examination.

§ 680.20 Examination of witnesses on commission; when commission issuable; form and content of application

1. Upon a pre-trial application of a defendant who has pleaded not guilty to an indictment or other accusatory instrument which charges a crime, the superior court in which such indictment is pending, or a superior court in the county in which such other accusatory instrument is pending, may issue a commission for examination of a designated person as a witness in the action, at a designated place outside this state, if it is satisfied that (a) such person possesses information material to the action which

in the interest of justice should be disclosed at the trial, and (b) resides outside the state.

2. The application and moving papers must be in writing and must be subscribed and sworn to by the defendant or his attorney. A copy thereof must be served on the district attorney, with reasonable notice and opportunity to be heard. The moving papers must allege:

(a) The offense or offenses charged; and

(b) The status of the action; and

(c) The name of the prospective witness; and

(d) A statement that such prospective witness resides outside the state, and his address in the jurisdiction in which the examination sought is to occur; and

(e) A statement that he possesses information material to the action which in the interest of justice should be disclosed at the trial, together with a brief summary of the facts supporting such statement.

3. An application for issuance of a commission may request examination pursuant thereto of more than one person residing in the particular jurisdiction. In such case, it must contain allegations specified in subdivision two with respect to each such person, and the court must make separate rulings as to each.

§ 680.30 Examination of witnesses on commission; application by people for examination of witnesses

1. Upon granting the defendant's application for issuance of a commission, the court may, upon application of the people, determine that the commission shall also authorize examination of a person or persons designated by the people, who reside in the jurisdiction in which the examination proceeding is to occur, if it is satisfied that such person or persons possess material information, reside outside the state and otherwise meet the standards for examination of witnesses on a commission as prescribed in subdivision one of section 680.20.

2. Such application and the moving papers must be in writing, must be subscribed and sworn to by the district attorney, and copies thereof must be served upon the defendant and his attorney, with reasonable notice and opportunity to be heard. The moving papers must contain all of the allegations required upon a defendant's application, as specified in subdivision two of section 680.20.

§ 680.40 Examination of witnesses on commission; when commission issuable upon application of people

When a commission has been issued upon application of a defendant pursuant to section 680.20, the court may, upon application of the people, issue another commission for examination, either in the same or another jurisdiction, of a person designated by the people, under the same conditions as prescribed in said section 680.20. In such case, the court may, upon application of the defendant, determine, in the manner provided in section 680.30, that such commission shall also authorize examination of a person or persons designated by the defendant.

§ 680.50 Examination of witnesses on commission; interrogatories

1. Following an order for the issuance of a commission and the court's designation of the witnesses to be examined thereon, each party must prepare interrogatories or questions to be asked of each witness who is to be examined upon his or its request, and must submit the same to the court and serve a copy thereof upon the other party. Following such submission and service, such other party may in the same manner submit and serve cross-interrogatories or questions, to be asked of the witness following his examination upon the direct inquiry.

2. After all such interrogatories and cross-interrogatories have been submitted and served, the court may examine them and, with opportunity for counsel to be heard, exclude and strike any question which it considers irrelevant, incompetent or otherwise improper or violative of the rules of evidence which prevail at a criminal trial.

§ 680.60 Examination of witnesses on commission; form and content of the commission

1. The commission must be subscribed by the court and must contain:

(a) The name and address of each witness to be examined; and

(b) The name, or a descriptive title, of a commissioner or commissioners who, pursuant to subdivision two, are authorized to conduct the examination; and

(c) A statement authorizing such commissioner or commissioners to administer the oath to witnesses; and

(d) A direction that, upon completion of such examination, such commissioner or commissioners cause it to be transcribed and remit to the court the transcript, the commission, the interrogatories and all other pertinent instruments and documents.

2. The following persons may be designated commissioners:

(a) If the examination is to occur within the United States or any territory thereof, any attorney authorized to practice law in the specified jurisdiction or any person authorized to administer oaths therein;

(b) If the examination is to occur in a foreign country, any diplomatic or consular agent or representative of the United States employed in such capacity in such country, or any commissioned officer of the armed forces.

3. The court must cause the commission to be delivered to a commissioner designated therein, together with a copy of this article.

§ 680.70 Examination of witnesses on commission; the examination

The examination on the commission must be conducted as follows:

1. Each witness must testify under oath, and the examination must be recorded and transcribed.

2. Each witness must first be asked all the questions contained in the interrogatories submitted by the party requesting his examination. He must then be asked all the questions contained in the cross-interrogatories, if any, submitted by the other party.

3. The defendant has a right to be represented by counsel at the examination, and the district attorney also has a right to be present, but both such rights may be waived. Upon the conclusion of the questioning of a witness upon the written interrogatories, he may be further examined by the attorney or representative of the party who requested his examination, and may then be cross-examined by the attorney or representative of the adverse party. Each such attorney or representative may register objections to the authority or qualifications of the commissioner, to the manner in which the examination is conducted, and to the admissibility of evidence, and all such objections must be recorded and transcribed.

4. Documentary or other physical evidence may be produced and submitted by a witness. Such evidence must be subscribed

or otherwise identified by the witness, and certified by a commissioner and annexed to the transcript of the examination as a part of the record.

5. After the examination is transcribed, the commissioner or commissioners must subscribe and certify the transcript as an accurate record of the proceedings, and must then remit such transcript and all other pertinent instruments, documents and evidence to the court which issued the commission, in accordance with the directions thereof.

§ 680.80 Examination of witnesses on commission; use at trial of transcript of examination

1. When the transcript and record of the examination on commission are received by the superior court which issued the commission, they must be filed therewith if such court be the trial court, and, if not, transmitted to the trial court. A copy of the transcript must be delivered by the trial court to each party.

2. Upon the trial of the action, either party may, subject to the provisions of subdivision three, introduce and read into evidence the transcript or that portion thereof containing the testimony of a witness examined on the commission.

3. At any time prior to the introduction of such evidence, the trial court may examine the transcript and, upon according both parties opportunity to be heard and to register objections, may exclude and strike therefrom irrelevant, incompetent or otherwise inadmissible testimony. While the transcript or any portion thereof is being read into evidence at the trial by a party, the other party may register any objection or protest thereto that he would be entitled to register were the witness testifying in person, regardless of whether such protest has previously been raised and passed upon by the court, and the court must rule thereon.

TITLE T—PROCEDURES FOR SECURING EVIDENCE BY MEANS OF COURT ORDER AND FOR SUPPRESSING EVIDENCE UNLAWFULLY OR IMPROPERLY OBTAINED

ARTICLE 690—SEARCH WARRANTS

Section
690.05 Search warrants; in general; definition.
690.10 Search warrants; property subject to seizure thereunder.
690.15 Search warrants; what and who are subject to search thereunder.
690.20 Search warrants; where executable.
690.25 Search warrants; to whom addressable and by whom executable.
690.30 Search warrants; when executable.
690.35 Search warrants; the application.
690.40 Search warrants; determination of application.
690.45 Search warrants; form and content.
690.50 Search warrants; execution thereof.
690.55 Search warrants; disposition of seized property.

§ 690.05 Search warrants; in general; definition

1. Under circumstances prescribed in this article, a local criminal court may, upon application of a police officer, a district attorney or other public servant acting in the course of his official duties, issue a search warrant.

2. A search warrant is a court order and process directing a police officer to conduct a search of designated premises, or of a designated vehicle, or of a designated person, for the purpose of seizing designated property or kinds of property, and to deliver any property so obtained to the court which issued the warrant.

§ 690.10 Search warrants; property subject to seizure thereunder

Personal property is subject to seizure pursuant to a search warrant if there is reasonable cause to believe that it:

1. Is stolen; or

2. Is unlawfully possessed; or

3. Has been used, or is possessed for the purpose of being used, to commit or conceal the commission of an offense; or

4. Constitutes evidence or tends to demonstrate that an offense was committed or that a particular person participated in the commission of an offense.

§ 690.15 Search warrants; what and who are subject to search thereunder

1. A search warrant must direct a search of one or more of the following:

(a) A designated or described place or premises;

(b) A designated or described vehicle, as that term is defined in section 10.00 of the penal law;

(c) A designated or described person.

2. A search warrant which directs a search of a designated or described place, premises or vehicle, may also direct a search of any person present thereat or therein.

§ 690.20 Search warrants; where executable

1. A search warrant issued by a district court, the New York City criminal court or a superior court judge sitting as a local criminal court may be executed pursuant to its terms anywhere in the state.

2. A search warrant issued by a city court, a town court or a village court may be executed pursuant to its terms only in the county of issuance or an adjoining county.

§ 690.25 Search warrants; to whom addressable and by whom executable

1. A search warrant must be addressed to a police officer whose geographical area of employment embraces or is embraced or partially embraced by the county of issuance. The warrant need not be addressed to a specific police officer but may be addressed to any police officer of a designated classification, or to any police officer of any classification employed or having general jurisdiction to act as a police officer in the county.

2. A police officer to whom a search warrant is addressed, as provided in subdivision one, may execute it pursuant to its terms anywhere in the county of issuance or an adjoining county, and he may execute it pursuant to its terms in any other county of the state in which it is executable if (a) his geographical area of

employment embraces the entire county of issuance or (b) he is a member of the police department or force of a city located in such county of issuance.

§ 690.30 Search warrants; when executable

1. A search warrant must be executed not more than ten days after the date of issuance and it must thereafter be returned to the court without unnecessary delay.

2. A search warrant may be executed on any day of the week. It may be executed only between the hours of 6:00 A.M. and 9:00 P.M., unless the warrant expressly authorizes execution thereof at any time of the day or night, as provided in subdivision five of section 690.45.

§ 690.35 Search warrants; the application

1. An application for a search warrant must be in writing and must be made, subscribed and sworn to by a public servant specified in subdivision one of section 690.05.

2. The application must contain:

(a) The name of the court and the name and title of the applicant; and

(b) A statement that there is reasonable cause to believe that property of a kind or character described in section 690.10 may be found in or upon a designated or described place, vehicle or person; and

(c) Allegations of fact supporting such statement. Such allegations of fact may be based upon personal knowledge of the applicant or upon information and belief, provided that in the latter event the sources of such information and the grounds of such belief are stated. The applicant may also submit depositions of other persons containing allegations of fact supporting or tending to support those contained in the application; and

(d) A request that the court issue a search warrant directing a search for and seizure of the property in question.

3. The application may also contain:

(a) A request that the search warrant be made executable at any time of the day or night, upon the ground that there is reasonable cause to believe that (i) it cannot be executed between the hours of 6:00 A.M. and 9:00 P.M., or (ii) the

property sought will be removed or destroyed if not seized forthwith; and

(b) A request that the search warrant authorize the executing police officer to enter premises to be searched without giving notice of his authority and purpose, upon the ground that there is reasonable cause to believe that (i) the property sought may be easily and quickly destroyed or disposed of, or (ii) the giving of such notice may endanger the life or safety of the executing police officer or another person.

Any request made pursuant to this subdivision must be accompanied and supported by allegations of fact of a kind prescribed in paragraph (c) of subdivision two.

§ 690.40 Search warrants; determination of application

1. In determining an application for a search warrant the court may examine, under oath, any person whom it believes may possess pertinent information. Any such examination must be either recorded or summarized on the record by the court.

2. If the court is satisfied that there is reasonable cause to believe that property of a kind or character referred to in section 690.10, and described in the application, may be found in or upon the place, premises, vehicle or person designated or described in the application, it may grant the application and issue a search warrant directing a search of the said place, premises, vehicle or person and a seizure of the described property. If the court is further satisfied that grounds, described in subdivision three of section 690.35, exist for authorizing the search to be made at any hour of the day or night, or without giving notice of the police officer's authority and purpose, it may make the search warrant executable accordingly.

§ 690.45 Search warrants; form and content

A search warrant must contain:

1. The name of the issuing court and the subscription of the issuing judge; and

2. The name, department or classification of the police officer to whom it is addressed; and

3. A description of the property which is the subject of the search; and

4. A designation or description of the place, premises or person to be searched, by means of address, ownership, name or any other means essential to identification with certainty; and

5. A direction that the warrant be executed between the hours of 6:00 A.M. and 9:00 P.M., or, where the court has specially so determined, an authorization for execution thereof at any time of the day or night; and

6. An authorization, where the court has specially so determined, that the executing police officer enter the premises to be searched without giving notice of his authority and purpose; and

7. A direction that the warrant and any property seized pursuant thereto be returned and delivered to the court without unnecessary delay.

§ 690.50 Search warrants; execution thereof

1. In executing a search warrant directing a search of premises or a vehicle, a police officer must, except as provided in subdivision two, give, or make reasonable effort to give, notice of his authority and purpose to an occupant thereof before entry and show him the warrant or a copy thereof upon request. If he is not thereafter admitted, he may forcibly enter such premises or vehicle and may use against any person resisting his entry or search thereof as much physical force, other than deadly physical force, as is necessary to execute the warrant; and he may use deadly physical force if he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

2. In executing a search warrant directing a search of premises or a vehicle, a police officer need not give notice to anyone of his authority and purpose, as prescribed in subdivision one, but may promptly enter the same if:

(a) Such premises or vehicle are at the time unoccupied or reasonably believed by the officer to be unoccupied; or

(b) The search warrant expressly authorizes entry without notice.

3. In executing a search warrant directing or authorizing a search of a person, a police officer must give, or make reasonable effort to give, such person notice of his authority and purpose and show him the warrant or a copy thereof upon request. If such person, or another, thereafter resists or refuses to permit the search, the officer may use as much physical force, other

than deadly physical force, as is necessary to execute the warrant; and he may use deadly physical force if he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

4. Upon seizing property pursuant to a search warrant, a police officer must write and subscribe a receipt itemizing the property taken and containing the name of the court by which the warrant was issued. If property is taken from a person, such receipt must be given to such person. If property is taken from premises or a vehicle, such receipt must be given to the owner, tenant or other person in possession thereof if he is present; or if he is not, the officer must leave such a receipt in the premises or vehicle from which the property was taken.

5. Upon seizing property pursuant to a search warrant, a police officer must without unnecessary delay return to the court the warrant and the property, and must file therewith a written inventory of such property, subscribed and sworn to by such officer.

§ 690.55 Search warrants; disposition of seized property

1. Upon receiving property seized pursuant to a search warrant, the court must either:

(a) Retain it in the custody of the court pending further disposition thereof pursuant to subdivision two or some other provision of law; or

(b) Direct that it be held in the custody of the person who applied for the warrant, or of the police officer who executed it, or of the governmental or official agency or department by which either such public servant is employed, upon condition that upon order of such court such property be returned thereto or delivered to another court.

2. A local criminal court which retains custody of such property must, upon request of another criminal court in which a criminal action involving or relating to such property is pending, cause it to be delivered thereto.

ARTICLE 700—EAVESDROPPING WARRANTS

Section

700.05 Eavesdropping warrants; definitions of terms.
700.10 Eavesdropping warrants; in general.
700.15 Eavesdropping warrants; when issuable.
700.20 Eavesdropping warrants; application.
700.25 Eavesdropping warrants; determination of application.
700.30 Eavesdropping warrants; form and content.
700.35 Eavesdropping warrants; manner and time of execution.
700.40 Eavesdropping warrants; order of extension.
700.45 Eavesdropping warrants; emergency authority.
700.50 Eavesdropping warrants; progress reports and notice.
700.55 Eavesdropping warrants; custody of warrants, applications and recordings.
700.60 Eavesdropping warrants; reports to the administrative office of the United States courts and the judicial conference.
700.65 Eavesdropping warrants; disclosure and use of information; order of amendment.
700.70 Eavesdropping warrants; notice before use of evidence.

§ 700.05 Eavesdropping warrants; definitions of terms

As used in this article, the following terms have the following meanings:

1. "Eavesdropping" means "wiretapping" or "mechanical overhearing of conversation," as those terms are defined in section 250.00 of the penal law.

2. "Eavesdropping warrant" means an order of a justice authorizing or approving eavesdropping.

3. "Intercepted communication" means (a) a telephonic or telegraphic communication which was intentionally overheard or recorded by a person other than the sender or receiver thereof, without the consent of the sender or receiver, by means of any instrument, device or equipment, or (b) a conversation or discussion which was intentionally overheard or recorded, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment. The term "contents," when used with respect to a communication, includes any information concerning the identity of the parties to such communications, and the existence, substance, purport, or meaning of that communication. The term "communication" includes conversation and discussion.

4. "Justice," except as otherwise provided herein, means any justice of an appellate division of the judicial department in

which the eavesdropping warrant is to be executed, or any justice of the supreme court of the judicial district in which the eavesdropping warrant is to be executed, or any county court judge of the county in which the eavesdropping warrant is to be executed.

5. "Applicant" means a district attorney or the attorney general. If a district attorney or the attorney general is actually absent or disabled, the term "applicant" means that person designated to act for him and perform his official function in and during his actual absence or disability.

6. "Law enforcement officer" means any public servant who is empowered by law to conduct an investigation of or to make an arrest for a designated offense, and any attorney authorized by law to prosecute or participate in the prosecution of a designated offense.

7. "Exigent circumstances" means conditions requiring the preservation of secrecy, and whereby there is a reasonable likelihood that a continuing investigation would be thwarted by alerting any of the persons subject to surveillance to the fact that such surveillance had occurred.

8. "Designated offense" means any one or more of the following crimes:

(a) A conspiracy to commit any offense enumerated in the following paragraphs of this subdivision, or an attempt to commit any felony enumerated in the following paragraphs of this subdivision which attempt would itself constitute a felony;

(b) Any felony defined in articles one hundred twenty, one hundred twenty-five, one hundred thirty, one hundred thirty-five, one hundred forty, one hundred forty-five, one hundred fifty, one hundred fifty-five, one hundred sixty, one hundred sixty-five, one hundred seventy, one hundred seventy-five, two hundred five, and two hundred sixty-five of the penal law;

(c) Any crime defined in articles two hundred twenty and two hundred twenty-five of the penal law;

(d) Commercial bribing, commercial bribe receiving, bribing a labor official, bribe receiving by a labor official, sports bribing and sports bribe receiving, as defined in article one hundred eighty of the penal law;

(e) Criminal usury, as defined in article one hundred ninety of the penal law;

(f) Bribery, bribe receiving, bribe giving for public office and bribe receiving for public office, as defined in article two hundred of the penal law;

(g) Bribing a witness, bribe receiving by a witness, bribing a juror and bribe receiving by a juror, as defined in article two hundred fifteen of the penal law;

(h) Promoting prostitution in the first degree, as defined in article two hundred thirty of the penal law;

(i) Riot in the first degree and criminal anarchy, as defined in article two hundred forty of the penal law;

(j) Eavesdropping, as defined in article two hundred fifty of the penal law.

§ 700.10 Eavesdropping warrants; in general

1. Under circumstances prescribed in this article, a justice may issue an eavesdropping warrant upon ex parte application of an applicant who is authorized by law to prosecute or participate in the prosecution of the particular designated offense which is the subject of the application.

2. No eavesdropping warrant may authorize or approve the interception of any communication for any period longer than is necessary to achieve the objective of the authorization, or in any event longer than thirty days.

§ 700.15 Eavesdropping warrants; when issuable

An eavesdropping warrant may issue only:

1. Upon an appropriate application made in conformity with this article; and

2. Upon probable cause to believe that a particularly described person is committing, has committed, or is about to commit a particular designated offense; and

3. Upon probable cause to believe that particular communications concerning such offense will be obtained through eavesdropping; and

4. Upon a showing that normal investigative procedures have been tried and have failed, or reasonably appear to be unlikely to succeed if tried, or to be too dangerous to employ; and

5. Upon probable cause to believe that the facilities from which, or the place where, the communications are to be intercepted, are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

§ 700.20 Eavesdropping warrants; application

1. An ex parte application for an eavesdropping warrant must be made to a justice in writing, and must be subscribed and sworn to by an applicant.

2. The application must contain:

(a) The identity of the applicant and a statement of the applicant's authority to make such application; and

(b) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an eavesdropping warrant should be issued, including (i) a statement of facts establishing probable cause to believe that a particular designated offense has been, is being, or is about to be committed, (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of the communications sought to be intercepted, and (iv) the identity of the person, if known, committing such designated offense and whose communications are to be intercepted; and

(c) A statement that such communications are not otherwise legally privileged; and

(d) A full and complete statement of facts establishing that normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ, to obtain the evidence sought; and

(e) A statement of the period of time for which the eavesdropping is required to be maintained. If the nature of the investigation is such that the authorization for eavesdropping should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter; and

(f) A full and complete statement of the facts concerning all previous applications, known to the applicant, for an eavesdropping warrant involving any of the same persons, facilities or places specified in the application, and the action taken by the justice on each such application.

3. Allegations of fact in the application may be based either upon the personal knowledge of the applicant or upon information and belief. If the applicant personally knows the facts

alleged, it must be so stated. If the facts stated in the application are derived in whole or part from the statements of persons other than the applicant, the sources of such facts must be either disclosed or described, and the application must contain facts establishing the existence and reliability of the informants or the reliability of the information supplied by them. The application must also state, so far as possible, the basis of the informant's knowledge or belief. Affidavits of persons other than the applicant may be submitted in conjunction with the application if they tend to support any fact or conclusion alleged therein. Such accompanying affidavits may be based either on personal knowledge of the affiant, or information and belief with the source thereof and the reason therefor specified.

§ 700.25 Eavesdropping warrants; determination of application

1. If the application conforms to section 700.20, the justice may require the applicant to furnish additional testimony or documentary evidence in support of the application. He may examine, under oath, any person for the purpose of determining whether grounds exist for the issuance of the warrant pursuant to section 700.15. Any such examination must be either recorded or summarized in writing.

2. If the justice determines on the basis of the facts submitted by the applicant that grounds exist for the issuance of an eavesdropping warrant pursuant to section 700.15, the justice may grant the application and issue an eavesdropping warrant, in accordance with section 700.30.

3. If the application does not conform to section 700.20, or if the justice is not satisfied that grounds exist for the issuance of an eavesdropping warrant, the application must be denied.

§ 700.30 Eavesdropping warrants; form and content

An eavesdropping warrant must contain:

1. The name of the applicant, date of issuance, and the subscription and title of the issuing justice; and

2. The identity of the person, if known, whose communications are to be intercepted; and

3. The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted; and

4. A particular description of the type of communications sought to be intercepted, and a statement of the particular designated offense to which it relates; and

5. The identity of the law enforcement agency authorized to intercept the communications; and

6. The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained; and

7. A provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to eavesdropping under this article, and must terminate upon attainment of the authorized objective, or in any event in thirty days; and

8. An express authorization to make secret entry upon a private place or premises to install an eavesdropping device, if such entry is necessary to execute the warrant.

§ 700.35 Eavesdropping warrants; manner and time of execution

1. An eavesdropping warrant must be executed according to its terms by a law enforcement officer who is a member of the law enforcement agency authorized in the warrant to intercept the communications.

2. Upon termination of the authorization in the warrant, eavesdropping must cease and any device installed for such purpose must be removed or permanently inactivated as soon as practicable. Entry upon a private place or premise for the removal or permanent inactivation of such device is deemed to be authorized by the warrant.

3. The contents of any communication intercepted by any means authorized by this article must, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any such communication must be done in such way as will protect the recording from editing or other alterations.

§ 700.40 Eavesdropping warrants; order of extension

At any time prior to the expiration of an eavesdropping warrant, the applicant may apply to the issuing justice, or, if he is unavailable, to another justice, for an order of extension. The

period of extension shall be no longer than the justice deems necessary to achieve the purposes for which it was granted and in no event longer than thirty days. The application for an order of extension must conform in all respects to the provisions of section 700.20 and, in addition, must contain a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results. The provisions of sections 700.15 and 700.25 are applicable in the determination of such application. The order of extension must conform in all respects to the provisions of section 700.30. In the execution of such order of extension the provisions of section 700.35 are applicable.

§ 700.45 Eavesdropping warrants; emergency authority

1. Notwithstanding any other provision of this article, an applicant may authorize a specially designated law enforcement officer to lawfully engage in eavesdropping when such applicant reasonably determines that:

(a) An emergency situation exists with respect to conspiratorial activities characteristic of organized crime that requires such action before an eavesdropping warrant authorizing such action can with due diligence be obtained; and

(b) There are grounds upon which an eavesdropping warrant could be issued under this article to authorize such eavesdropping.

2. When eavesdropping pursuant to subdivision one has commenced, an application for an eavesdropping warrant, approving such eavesdropping and/or authorizing its continuation, must be made pursuant to the provisions of this article as promptly as practicable thereafter. If application for such approval is denied, or in any other case where such eavesdropping is terminated without an eavesdropping warrant having been issued, the contents of any intercepted communication, or evidence derived therefrom, may not be received in evidence in any trial, hearing or proceeding.

3. In the absence of an eavesdropping warrant, eavesdropping pursuant to subdivision one must immediately terminate upon the earliest to occur of the following:

(a) When the communication sought is obtained; or

(b) When an application for an eavesdropping warrant is denied; or

(c) At the expiration of forty-eight hours from the commencement of such eavesdropping.

4. Within a reasonable time, but in no case later than ninety days after the denial of an application to approve eavesdropping conducted pursuant to subdivision one, the denying justice shall cause to be served on the persons named in the application, and such other parties to the intercepted communications as the justice may determine in his discretion is in the interest of justice, written notice of the fact and date of the denial of such application, and of the fact that communications were or were not intercepted. The justice, upon the filing of a motion by any person served with such notice, may in his discretion make available to such person or his counsel for inspection such portions of the application or the intercepted communication which he determines to be in the interest of justice. Notwithstanding the foregoing, the serving of the notice required by this subdivision may be postponed for a reasonable period of time on a showing of exigent circumstances to the denying justice. Renewals of an order of postponement may be obtained on a new showing of exigent circumstances.

§ 700.50 Eavesdropping warrants; progress reports and notice

1. An eavesdropping warrant may require reports to be made to the issuing justice showing what progress has been made toward achievement of the authorized objective and the need for continued eavesdropping. Such reports shall be made at such intervals as the justice may require.

2. Immediately upon the expiration of the period of an eavesdropping warrant, the recordings of communications made pursuant to subdivision three of section 700.35 must be made available to the issuing justice and sealed under his directions.

3. Within a reasonable time, but in no case later than ninety days after termination of an eavesdropping warrant, or expiration of an extension order, except as otherwise provided in subdivision four, written notice of the fact and date of the issuance of the eavesdropping warrant, and of the period of authorized eavesdropping, and of the fact that during such period communications were or were not intercepted, must be personally served upon the person named in the warrant and such other parties to the intercepted communications as the justice may determine in his discretion is in the interest of justice. The justice, upon the filing of a motion by any person served with such notice, may in

his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and warrants as the justice determines to be in the interest of justice.

4. On a showing of exigent circumstances to the issuing justice, the service of the notice required by subdivision three may be postponed by order of the justice for a reasonable period of time. Renewals of an order of postponement may be obtained on a new showing of exigent circumstances.

§ 700.55 Eavesdropping warrants; custody of warrants, applications and recordings

1. Applications made and warrants issued under this article shall be sealed by the justice. Any eavesdropping warrant, together with a copy of papers upon which the application is based, shall be delivered to and retained by the applicant as authority for the eavesdropping authorized therein. A copy of such eavesdropping warrant, together with all the original papers upon which the application was based, must be retained by the justice issuing the same, and, in the event of the denial of an application for such an eavesdropping warrant, a copy of the papers upon which the application was based must be retained by the justice denying the same. Such applications and warrants may be disclosed only upon a showing of good cause before a court and may not be destroyed except on order of the issuing or denying justice, and in any event must be kept for ten years.

2. Custody of the recordings made pursuant to subdivision three of section 700.35 may be wherever the justice orders. They may not be destroyed except upon an order of the justice who issued the warrant and in any event must be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subdivisions one and two of section 700.65 for investigations.

§ 700.60 Eavesdropping warrants; reports to the administrative office of the United States and the judicial conference

1. Within thirty days after the termination of an eavesdropping warrant or the expiration of an extension order, or the denial of a warrant approving an emergency interception, the issuing or denying justice must submit such report to the administrative office of the United States courts as is required by federal

law. A duplicate copy of such report must be forwarded to the judicial conference.

2. In January of each year, the attorney general and each district attorney must submit such report to the administrative office of the United States courts as is required by federal law. A duplicate copy of such report must be forwarded to the judicial conference.

§ 700.65 Eavesdropping warrants; disclosure and use of information; order of amendment

1. Any law enforcement officer who, by any means authorized by this article, has obtained knowledge of the contents of any intercepted communication, or evidence derived therefrom, may disclose such contents to another law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

2. Any law enforcement officer who, by any means authorized by this article, has obtained knowledge of the contents of any intercepted communication, or evidence derived therefrom, may use such contents to the extent such use is appropriate to the proper performance of his official duties.

3. Any person who has received, by any means authorized by this article, any information concerning a communication, or evidence derived therefrom, intercepted in accordance with the provisions of this article, may disclose the contents of that communication or such derivative evidence while giving testimony under oath in any criminal proceeding in any court or in any grand jury proceeding; provided, however, that the presence of the seal provided for by subdivision two of section 700.50, or a satisfactory explanation of the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any communication or evidence derived therefrom.

4. When a law enforcement officer, while engaged in intercepting communications in the manner authorized by this article, intercepts a communication which was not otherwise sought and which constitutes evidence of any crime that has been, is being or is about to be committed, the contents of such communications, and evidence derived therefrom, may be disclosed or used as provided in subdivisions one and two. Such contents and any evidence derived therefrom may be used under subdivision three when a justice amends the eavesdropping warrant to include such contents. The application for such amendment must be

made by the applicant as soon as practicable. If the justice finds that such contents were otherwise intercepted in accordance with the provisions of this article, he may grant the application.

§ 700.70 Eavesdropping warrants; notice before use of evidence

The contents of any intercepted communication, or evidence derived therefrom, may not be received in evidence or otherwise disclosed upon a trial of a defendant unless the people, not less than ten days before the commencement of the trial, furnish the defendant with a copy of the eavesdropping warrant, and accompanying application, under which interception was authorized or approved. This ten-day period may be waived by the trial court if it finds that it was not possible to furnish the defendant with such papers ten days before the trial and that the defendant will not be prejudiced by the delay in receiving such papers.

ARTICLE 710—MOTION TO SUPPRESS EVIDENCE

Section	
710.10	Motion to suppress evidence; definitions of terms.
710.20	Motion to suppress evidence; in general; grounds for.
710.30	Motion to suppress evidence; notice to defendant of intention to offer evidence.
710.40	Motion to suppress evidence; when made and determined.
710.50	Motion to suppress evidence; in what courts made.
710.60	Motion to suppress evidence; procedure.
710.70	Motion to suppress evidence; orders of suppression; effects of orders and of failure to make motion.

§ 710.10 Motion to suppress evidence; definitions of terms

As used in this article, the following terms have the following meanings:

1. "Defendant" means a person who has been charged by an accusatory instrument with the commission of an offense.

2. "Evidence," when referring to matter in the possession of or available to a prosecutor, means any tangible property or potential testimony which may be offered in evidence in a criminal action.

3. "Potential testimony" means information or factual knowledge of a person who is or may be available as a witness.

4. "Eavesdropping" means either "wiretapping" or "mechanical overhearing of a conversation," as those terms are defined in section 250.00 of the penal law.

5. "Aggrieved." An "aggrieved person" includes, but is in no wise limited to, an "aggrieved person" as defined in subdivision two of section forty-five hundred six of the civil practice law and rules.

§ 710.20 Motion to suppress evidence; in general; grounds for

Upon motion of a defendant who (a) is aggrieved by unlawful or improper acquisition of evidence and has reasonable cause to believe that such may be offered against him in a criminal action, or (b) claims that improper identification testimony may be offered against him in a criminal action, a court may, under circumstances prescribed in this article, order that such evidence be suppressed or excluded upon the ground that it:

1. Consists of tangible property obtained by means of an unlawful search and seizure under circumstances precluding admissibility thereof in a criminal action against such defendant; or

2. Consists of a record or potential testimony reciting or describing declarations or conversations overheard or recorded by means of eavesdropping, obtained under circumstances precluding admissibility thereof in a criminal action against such defendant; or

3. Consists of a record or potential testimony reciting or describing a statement of such defendant involuntarily made, within the meaning of section 60.45, to a public servant engaged in law enforcement activity or to a person acting under his direction or in cooperation with him; or

4. Was obtained as a result of other evidence obtained in a manner described in subdivisions one, two and three; or

5. Consists of potential testimony identifying the defendant as a person who committed the offense charged, which potential testimony would not be admissible upon the prospective trial of such charge owing to an improperly made previous identification of the defendant by the prospective witness.

§ 710.30 Motion to suppress evidence; notice to defendant of intention to offer evidence

1. Whenever the people intend to offer at a trial (a) evidence of a statement made by a defendant to a public servant, which

statement if involuntarily made would render the evidence thereof suppressable upon motion pursuant to subdivision three of section 710.20, or (b) testimony identifying a defendant as a person who committed the offense charged, to be given by a witness who has previously identified him as such, they must serve upon the defendant a notice of such intention, specifying the evidence intended to be offered.

2. Such notice must be served before trial, and upon such service the defendant must be accorded reasonable opportunity to move before trial, pursuant to subdivision one of section 710.-40, to suppress the specified evidence. For good cause shown, however, the court may permit the people to serve such notice during trial, and in such case it must accord the defendant reasonable opportunity to make a suppression motion during trial pursuant to subdivision two of section 710.40.

3. In the absence of service of notice upon a defendant as prescribed in this section, no evidence of a kind specified in subdivision one may be received against him upon trial unless he has, despite the lack of such notice, moved to suppress such evidence and such motion has been denied and the evidence thereby rendered admissible as prescribed in subdivision two of section 710.70.

§ 710.40 Motion to suppress evidence; when made and determined

1. A motion to suppress evidence must be made after the commencement of the criminal action in which such evidence is allegedly about to be offered, and, except as otherwise provided in section 710.30 and in subdivision two of this section, it must be made with reasonable diligence prior to trial.

2. The motion may be made for the first time during trial when, owing to previous unawareness of facts constituting the basis thereof or to other factors, the defendant did not have reasonable opportunity to make the motion before trial, or when the evidence which he seeks to suppress is of a kind specified in section 710.30 and he was not served by the people, as provided in said section 710.30, with a pre-trial notice of intention to offer such evidence at the trial.

3. When the motion is made before trial, the trial may not be commenced until determination of the motion; except that in the case of a pre-trial motion made in a local criminal court, such court must, upon request of the people, determine it during trial.

4. If after a pre-trial determination and denial of the motion the court is satisfied, upon a showing by the defendant, that additional pertinent facts have been discovered by the defendant which he could not have discovered with reasonable diligence before the determination of the motion, it may permit him to renew the motion before trial or, if such was not possible owing to the time of the discovery of the alleged new facts, during trial.

§ 710.50 Motion to suppress evidence; in what courts made

1. The particular courts in which motions to suppress evidence must be made are as follows:

(a) If an indictment is pending in a superior court, or if the defendant has been held by a local criminal court for the action of a grand jury, the motion must be made in the superior court in which such indictment is pending or which impaneled or will impanel such grand jury;

(b) If a currently undetermined felony complaint is pending in a local criminal court, the motion must be made in the superior court which would have trial jurisdiction of the offense or offenses charged were an indictment therefor to result;

(c) If an information, a simplied traffic information, a prosecutor's information or a misdemeanor complaint is pending in a local criminal court, the motion must be made in such court.

2. If after a motion has been made in and determined by a superior court a local criminal court acquires trial jurisdiction of the action by reason of an information, a prosecutor's information or a misdemeanor complaint filed therewith, such superior court's determination is binding upon such local criminal court. If, however, the motion has been made in but not yet determined by the superior court at the time of the filing of such information, prosecutor's information or misdemeanor complaint, the superior court may not determine the motion but must refer it to the local criminal court of trial jurisdiction.

§ 710.60 Motion to suppress evidence; procedure

1. A motion to suppress evidence made before trial must be in writing and upon reasonable notice to the people and with opportunity to be heard. The motion papers must state the ground or grounds of the motion and must contain sworn allegations of fact, whether of the defendant or of another person or

persons, supporting such grounds. Such allegations may be based upon personal knowledge of the deponent or upon information and belief, provided that in the latter event the sources of such information and the grounds of such belief are stated. The people may file with the court, and in such case must serve a copy thereof upon the defendant or his counsel, an answer denying or admitting any or all of the allegations of the moving papers.

2. The court must summarily grant the motion if:

(a) The motion papers comply with the requirements of subdivision one and the people concede the truth of allegations of fact therein which support the motion; or

(b) The people stipulate that the evidence sought to be suppressed will not be offered in evidence in any criminal action or proceeding against the defendant.

3. The court may summarily deny the motion if:

(a) The motion papers do not allege a ground constituting legal basis for the motion; or

(b) The sworn allegations of fact do not as a matter of law support the ground alleged; except that this paragraph does not apply where the motion is based upon the ground specified in subdivision three of section 710.20.

4. If the court does not determine the motion pursuant to subdivisions two or three, it must conduct a hearing and make findings of fact essential to the determination thereof. All persons giving factual information at such hearing must testify under oath. Upon such hearing, hearsay evidence is admissible to establish any material fact.

5. A motion to suppress evidence made during trial may be in writing and may be litigated and determined on the basis of motion papers as provided in subdivisions one through four, or it may, instead, be made orally in open court. In the latter event, the court must, where necessary, also conduct a hearing as provided in subdivision four, out of the presence of the jury if any, and make findings of fact essential to the determination of the motion.

6. Regardless of whether a hearing was conducted, the court, upon determining the motion, must set forth on the record its findings of fact, its conclusions of law and the reasons for its determination.

§ 710.70 Motion to suppress evidence; orders of suppression; effects of orders and of failure to make motion

1. Upon granting a motion to suppress evidence, the court must order that the evidence in question be excluded in the criminal action pending against the defendant. When the order is based upon the ground specified in subdivision one of section 710.20 and excludes tangible property unlawfully taken from the defendant's possession, and when such property is not otherwise subject to lawful retention, the court may, upon request of the defendant, further order that such property be restored to him.

2. An order finally denying a motion to suppress evidence may be reviewed upon an appeal from an ensuing judgment of conviction notwithstanding the fact that such judgment is entered upon a plea of guilty.

3. A motion to suppress evidence made pursuant to this article is the exclusive method of challenging the admissibility of evidence upon the grounds specified in section 710.20, and a defendant who does not make such a motion before or in the course of a criminal action waives his right to judicial determination of any such contention.

Nothing contained in this article, however, precludes a defendant from attempting to establish at a trial that evidence introduced by the people of a pre-trial statement made by him should be disregarded by the jury or other trier of the facts on the ground that such statement was involuntarily made within the meaning of section 60.45. Even though the issue of the admissibility of such evidence was not submitted to the court, or was determined adversely to the defendant upon motion, the defendant may adduce trial evidence and otherwise contend that the statement was involuntarily made. In the case of a jury trial, the court must submit such issue to the jury under instructions to disregard such evidence upon a finding that the statement was involuntarily made.

TITLE U—SPECIAL PROCEEDINGS WHICH REPLACE, SUSPEND OR ABATE CRIMINAL ACTIONS

ARTICLE 720—YOUTHFUL OFFENDER TREATMENT

Section
720.05 Youthful offender treatment; definitions of terms.
720.10 Youthful offender treatment; in general.
720.15 Youthful offender treatment; sealing of accusatory instrument.
720.20 Youthful offender treatment; when accorded.
720.25 Youthful offender treatment; youthful offender information.
720.30 Youthful offender treatment; arraignment upon youthful offender information.
720.35 Youthful offender treatment; the plea; pre-pleading and pre-trial procedure.
720.40 Youthful offender treatment; the trial.
720.45 Youthful offender treatment; verdict.
720.50 Youthful offender treatment; procedure from verdict through sentence.
720.55 Youthful offender treatment; sentence.
720.60 Youthful offender treatment; post-judgment motions and appeals.
720.65 Youthful offender treatment; privacy of proceedings.
720.70 Youthful offender treatment; effect of adjudication; records, finger-prints and photographs.

§ 720.05 Youthful offender treatment; definitions of terms

As used in this article, the following terms have the following meanings:

1. "Youth" means a person charged by indictment or information with a crime who was at least sixteen years old and less than nineteen years old at the time of his alleged commission of such crime.

2. "Eligible youth" means a youth who is eligible for youthful offender treatment. Every youth is so eligible unless he (a) is charged by indictment with a class A felony, or (b) has a previous judgment of conviction for a felony.

3. "Youthful offender information" means an instrument defined in section 720.25.

4. "Youthful offender verdict" means a decision of a court after a trial of a youthful offender information pronouncing the

defendant guilty or not guilty of being a youthful offender as charged in such information or a count thereof.

5. "Youthful offender conviction" means the entry of a plea of guilty to or a verdict of guilty upon a youthful offender information or a count thereof.

6. "Youthful offender adjudication" means or consists of a youthful offender conviction and the sentence imposed thereon.

7. "Youthful offender treatment" means the substitution of a youthful offender information for an indictment or an information, and the prosecution of such youthful offender information to adjudication or other final disposition.

8. "Information." Unless the context indicates that the term is being used solely as defined in subdivision one of section 100.10, an "information" means (a) an information which charges a misdemeanor, or (b) a simplified traffic information which charges a misdemeanor, or (c) a prosecutor's information which charges a misdemeanor, or (d) a misdemeanor complaint.

§ 720.10 Youthful offender treatment; in general

Under circumstances prescribed in this article, a person charged with a crime by indictment or information may, instead of being prosecuted criminally thereon, be accorded youthful offender treatment.

§ 720.15 Youthful offender treatment; sealing of accusatory instrument

When an indictment, information or felony complaint against an eligible or apparently eligible youth is submitted to a court, the court must order that it be filed as a sealed instrument, though only with respect to the public, pending a determination whether the defendant is to be accorded youthful offender treatment.

§ 720.20 Youthful offender treatment; when accorded

1. Upon arraignment of a defendant who is an eligible youth upon an indictment or an information, the court, in addition to informing the defendant of his rights with respect to the criminal action, as required by sections 170.10 and 180.10, must inform him that he is eligible for youthful offender treatment, and the court must, in the absence of a waiver of such instructions by a defendant represented by counsel, explain to him the nature, consequences and significance of youthful offender treatment.

The court must then ask the defendant whether he requests youthful offender treatment instead of criminal prosecution. The defendant may make such request at any time before entry of a plea to the accusatory instrument. If the defendant does not so request, the criminal action upon the indictment or information must proceed. If the defendant does request youthful offender treatment, the action must proceed as prescribed in either subdivision two or subdivision three or subdivision four, depending upon which of the following categories applies to the defendant:

(a) One who neither (i) is charged with a felony in the case under prosecution nor (ii) has previously been convicted of a crime or of being a youthful offender;

(b) One who either (i) is charged with a felony in the case under prosecution but has not previously been convicted of a crime or of being a youthful offender, or (ii) has previously been convicted of a crime or of being a youthful offender but is not charged with a felony in the case under prosecution;

(c) One who both (i) is charged with a felony in the case under prosecution and (ii) has previously been convicted of a crime or of being a youthful offender.

2. If the defendant is included within the category specified in paragraph (a) of subdivision one, the court must either:

(a) Grant the request for youthful offender treatment; or

(b) Order an investigation of the defendant and, upon completion thereof, either grant or deny the request for youthful offender treatment.

3. If the defendant is included within the category specified in paragraph (b) of subdivision one, the court must order an investigation of the defendant and, upon completion thereof, either grant or deny the request for youthful offender treatment.

4. If the defendant is included within the category specified in paragraph (c) of subdivision one, the court must either:

(a) Order an investigation of the defendant and, upon completion thereof, either grant or deny the request for youthful offender treatment; or

(b) Deny the request without ordering any investigation.

5. Upon ordering an investigation of the defendant pursuant to this section, the court may direct that it include a physical and mental examination of the defendant. Notwithstanding any oth-

er provision of this section, if the defendant does not consent to such an examination as so directed the court may retract its order of investigation and summarily deny the request for youthful offender treatment.

6. No statement made by a defendant in the course of an examination or investigation ordered pursuant to this section is admissible as evidence against him in any criminal action or other legal proceeding; provided that upon any subsequent sentencing of the defendant, either as a youthful offender or upon a conviction of an offense, either in the action being prosecuted or in a subsequent action, the sentencing court may take such a statement into consideration.

§ 720.25 Youthful offender treatment; youthful offender information

1. Upon ordering that a defendant be accorded youthful offender treatment, the court must, as prescribed in subdivision three, cause the filing of a youthful offender information against the defendant, and the filing thereof constitutes a dismissal of the original indictment or information.

2. A youthful offender information is a written instrument charging a youth with being a youthful offender by reason of having engaged in designated conduct which, though not charged as such in the instrument, constitutes a crime. The factual allegations charging such conduct must be the same as or equivalent to those of the indictment or information from which the youthful offender information is derived, or if the latter was a multiple count instrument, the same as or equivalent to the factual allegations of at least one count thereof which charged a crime. A youthful offender information derived from a multiple count indictment or information may, in the manner of the latter, contain two or more counts, each charging the defendant with being a youthful offender. It may also charge two or more defendants jointly pursuant to the rules governing joinder of defendants in a single indictment or information.

3. The methods by which the court may cause the filing of a youthful offender information, and the forms in which such instrument may be filed, are as follows:

(a) The court may direct the district attorney to file with the court a youthful offender information, subscribed by himself as the accuser in the manner of a prosecutor's information, and otherwise conforming to the requirements prescribed in subdivision two.

(b) If the original accusatory instrument is a regular information, as defined in subdivision one of section 100.10, or a misdemeanor complaint, the court may cause a copy thereof to be changed by altering the label thereof to "youthful offender information," by substituting a charge of being a youthful offender for every charge of misdemeanor contained in the accusatory part of the instrument, and by deleting every count, if any, which charges a petty offense. In such form, the changed copy of the original accusatory instrument constitutes a youthful offender information and may be filed as such.

§ 720.30 Youthful offender treatment; arraignment upon youthful offender information

1. Upon the filing of the youthful offender information, the defendant must be arraigned thereon. Upon such arraignment, the court must furnish him with a copy of the youthful offender information. If the defendant is not represented by counsel, the court must remind him, by instructions equivalent to those required upon arraignment upon the original indictment or information, of his rights to the aid of counsel, to an adjournment for the purpose of obtaining counsel to communicate with persons for such purpose and to assignment of counsel in case of financial inability to obtain the same.

2. Upon such arraignment, the court must issue a securing order either releasing the defendant on his own recognizance or fixing bail. The provisions of title P of this chapter, governing, with respect to criminal actions and proceedings, the issuance of securing orders, applications for recognizance or bail, the fixing of bail, forms of bail and bail bonds and other such matters, are, whatever appropriate, applicable to prosecutions of youthful offender informations. With respect to such matters, the youthful offender prosecution is deemed a continuation of the criminal action from which it is derived, and the court's order of recognizance or bail upon arraignment on the youthful offender information may be in the form of a direction continuing the effectiveness of the last previous order of recognizance or bail issued during the pendency of the criminal action upon the indictment or information, and in such case a bail bond posted in satisfaction of a previous order which fixed bail remains effective during the youthful offender prosecution unless it is revoked or vacated prior to the termination thereof or unless the terms of such bond expressly limits its effectiveness to the purely criminal phases of the action.

§ 720.35 Youthful offender treatment; the plea; pre-pleading and pre-trial procedure

1. The following pleas may be entered to a youthful offender information:

(a) Not guilty; or

(b) Guilty; or

(c) In the case of a multiple count instrument, guilty upon one or more, but not all, of the counts contained therein, provided that the court approves and the people consent to the entry of such plea.

2. All pre-pleading and pre-trial motion practice and procedure applicable to criminal prosecutions of indictments and informations is, where appropriate, applicable to prosecutions of youthful offender informations.

§ 720.40 Youthful offender treatment; the trial

A trial of a youthful offender information must be conducted by one judge of the court in which it is pending, without a jury. Such trial must be conducted pursuant to the rules of evidence applicable to criminal proceedings, as prescribed in article sixty, and, where appropriate, pursuant to the same motion practice and general procedure applicable to a non-jury trial of an indictment or a non-jury single judge trial of an information, as prescribed in sections 320.20 and 350.10.

§ 720.45 Youthful offender treatment; verdict

1. Upon the trial of a youthful offender information, the court must render a verdict of guilty or not guilty separately and specifically upon each count remaining therein and with respect to each defendant if there be more than one.

2. A verdict of guilty upon a count of a youthful offender information must be based upon proof beyond a reasonable doubt that the defendant engaged in conduct alleged therein which constitutes a crime, whether it be the greatest crime supported by the factual allegations of such count or some lesser included crime.

§ 720.50 Youthful offender treatment; procedure from verdict through sentence

The provisions of this chapter governing procedure in criminal actions upon indictments from verdict through sentence are, wherever appropriate, applicable to youthful offender actions conducted pursuant to this article.

§ 720.55 Youthful offender treatment; sentence

1. Upon a youthful offender conviction, the court must impose one of the following sentences prescribed by the penal law:

(a) A sentence of probation;

(b) A sentence of conditional discharge;

(c) A sentence of unconditional discharge;

(d) A reformatory or alternative local reformatory sentence of imprisonment;

(e) A sentence of imprisonment authorized for a class B misdemeanor;

(f) Where otherwise authorized, a sentence of certification to the care and custody of the narcotic addiction control commission.

2. For the purposes of determining the period of the sentence, the criteria to be used, the conditions to be imposed, the manner of revocation, the place of commitment and other such incidents of sentence, the sentences provided in paragraphs (a), (b), (c), (d) and (f) of subdivision one are governed by the penal law provisions applicable in the case of a sentence for a felony.

§ 720.60 Youthful offender treatment; post-judgment motions and appeals

The provisions of title M of this chapter, governing the making and determination of post-judgment motions and the taking and determination of appeals in criminal cases, apply to post-judgment motions and appeals with respect to youthful offender actions and proceedings conducted pursuant to this article wherever such provisions can reasonably be so applied.

§ 720.65 Youthful offender treatment; privacy of proceedings

1. Upon the filing of a youthful offender information pursuant to this article, all proceedings thereon may, in the discretion of the court, be conducted in private.

2. When an eligible or apparently eligible youth is initially arraigned upon an accusatory instrument, such arraignment and all proceedings in the action from the time thereof to the time such defendant is accorded or denied youthful offender treatment may, in the discretion of the court, be conducted in private.

§ 720.70 Youthful offender treatment; effect of adjudication; records, finger-prints and photographs

1. A youthful offender adjudication is not a judgment of conviction for a crime or any other offense, and does not operate as a disqualification of any person so adjudged to hold public office or public employment or to receive any license granted by public authority.

2. All official records and papers, whether on file with the court, a police agency or the New York state identification and intelligence system, relating to a case involving a youth who has been accorded youthful offender treatment, are confidential and may not be made available to any person or public or private agency, other than an institution to which such youth has been committed, except where specifically required or permitted by statute or upon specific authorization of the court.

ARTICLE 730—MENTAL DISEASE OR DEFECT EXCLUDING FITNESS TO PROCEED

Section

730.10 Fitness to proceed; definitions.
730.20 Fitness to proceed; generally.
730.30 Fitness to proceed; order of examination.
730.40 Fitness to proceed; local criminal court accusatory instrument.
730.50 Fitness to proceed; indictment.
730.60 Fitness to proceed; procedure following custody by commissioner.
730.70 Fitness to proceed; procedure following termination of custody by commissioner.

§ 730.10 Fitness to proceed; definitions

As used in this article, the following terms have the following meanings:

1. "Incapacitated person" means a defendant who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense.

2. "Dangerous incapacitated person" means an incapacitated person who is so mentally ill or mentally defective that his presence in an institution operated by the department of mental hygiene is dangerous to the safety of other patients therein, the staff of the institution or the community.

3. "Order of examination" means an order issued to an appropriate director by a criminal court wherein a criminal action

is pending against a defendant, directing that such defendant be examined for the purpose of determining if he is an incapacitated person.

4. "Commissioner" means the state commissioner of mental hygiene.

5. "Director" means (a) the director of a state hospital operated by the department of mental hygiene, or (b) the director of a hospital operated by any local government of the state that has been certified by the commissioner as having adequate facilities to examine a defendant to determine if he is an incapacitated person, or (c) the director of community mental health services.

6. "Qualified psychiatrist" means a physician who is certified as a qualified psychiatrist under section twenty-seven of the mental hygiene law.

7. "Certified psychologist" means a person who is registered as a certified psychologist under article one hundred fifty-three of the education law.

8. "Psychiatric examiner" means a qualified psychiatrist or a certified psychologist who has been designated by a director to examine a defendant pursuant to an order of examination.

9. "Examination report" means a report made by a psychiatric examiner wherein he sets forth his opinion as to whether the defendant is or is not an incapacitated person, the nature and extent of his examination and, if he finds that the defendant is an incapacitated person, his diagnosis and prognosis and a detailed statement of the reasons for his opinion by making particular reference to those aspects of the proceedings wherein the defendant lacks capacity to understand or to assist in his own defense. Where an order of examination has been issued by a superior court, the psychiatric examiner must also set forth his opinion as to whether the defendant is or is not a dangerous incapacitated person, and if he finds that the defendant is a dangerous incapacitated person, he must set forth a detailed statement of the reasons for his opinion. The judicial conference and the commissioner must jointly adopt the form of the examination report; and the judicial conference shall prescribe the number of copies thereof that must be submitted to the court by the director.

§ 730.20 Fitness to proceed; generally

1. The appropriate director to whom a criminal court issues an order of examination must be determined in accordance with

rules jointly adopted by the judicial conference and the commissioner. Upon receipt of an examination order, the director must designate two qualified psychiatrists, of whom he may be one, to examine the defendant to determine if he is an incapacitated person, except that if the director is of the opinion that the defendant may be mentally defective, he may designate one qualified psychiatrist and one certified psychologist to examine the defendant. In conducting their examination, the psychiatric examiners may employ any method which is accepted by the medical profession for the examination of persons alleged to be mentally ill or mentally defective. The court may authorize a psychiatrist or psychologist retained by the defendant to be present at such examination.

2. When the defendant is not in custody at the time a court issues an order of examination, because he was theretofore released on bail or on his own recognizance, the court may direct that the examination be conducted on an out-patient basis, and at such time and place as the director shall designate. If, however, the director informs the court that hospital confinement of the defendant is necessary for an effective examination, the court may direct that the defendant be confined in a hospital designated by the director until the examination is completed.

3. When the defendant is in custody at the time a court issues an order of examination, the examination must be conducted at the place where the defendant is being held in custody. If, however, the director determines that hospital confinement of the defendant is necessary for an effective examination, the sheriff must deliver the defendant to a hospital designated by the director and hold him in custody therein, under sufficient guard, until the examination is completed.

4. Hospital confinement under subdivisions two and three shall be for a period not exceeding thirty days, except that, upon application of the director, the court may authorize confinement for an additional period not exceeding thirty days if it is satisfied that a longer period is necessary to complete the examination. During the period of hospital confinement, the physician in charge of the hospital may administer or cause to be administered to the defendant such emergency psychiatric, medical or other therapeutic treatment as in his judgment should be administered.

5. Each psychiatric examiner, after he has completed his examination of the defendant, must promptly prepare an examination report and submit it to the director. If the psychiatric examiners are not unanimous in their opinion as to whether the

defendant is or is not an incapacitated person, the director must designate another qualified psychiatrist to examine the defendant to determine if he is an incapacitated person. Upon receipt of the examination reports, the director must submit them to the court that issued the order of examination. The court must furnish a copy of the reports to counsel for the defendant and to the district attorney.

6. When a defendant is subjected to examination pursuant to an order issued by a criminal court in accordance with this article, any statement made by him for the purpose of the examination or treatment shall be inadmissible in evidence against him in any criminal action on any issue other than that of his mental condition, but such statement is admissible upon that issue whether or not it would otherwise be deemed a privileged communication.

7. A psychiatric examiner is entitled to his reasonable traveling expenses and a fee of fifty dollars for each examination of a defendant but not exceeding two hundred dollars in fees in any one case; except that if such psychiatric examiner be an employee of the state of New York he shall be entitled only to reasonable traveling expenses. Such fees and traveling expenses and the costs of sending a defendant to another place of detention or to a hospital for examination, of his maintenance therein and of returning him shall, when approved by the court, be a charge of the county in which the defendant is being tried.

§ 730.30 Fitness to proceed; order of examination

1. At any time after a defendant is arraigned upon an accusatory instrument other than a felony complaint and before the imposition of sentence, or at any time after a defendant is arraigned upon a felony complaint and before he is held for the action of the grand jury, the court wherein the criminal action is pending must issue an order of examination when it is of the opinion that the defendant may be an incapacitated person.

2. When the examination reports submitted to the court show that each psychiatric examiner is of the opinion that the defendant is not an incapacitated person, the court may, on its own motion, conduct a hearing to determine the issue of capacity, and it must conduct a hearing upon motion therefor by the defendant or by the district attorney. If no motion for a hearing is made, the criminal action against the defendant must proceed. If, following a hearing, the court is satisfied that the defendant is not an incapacitated person, the criminal action against him must

proceed; if the court is not so satisfied, it must issue a further order of examination directing that the defendant be examined by different psychiatric examiners designated by the director.

3. When the examination reports submitted to the court show that each psychiatric examiner is of the opinion that the defendant is an incapacitated person, or when the examination reports submitted to the superior court show that each psychiatric examiner is of the opinion that the defendant is a dangerous incapacitated person, the court may, on its own motion, conduct a hearing to determine the issue of capacity or dangerousness and it must conduct such hearing upon motion therefor by the defendant or by the district attorney.

4. When the examination reports submitted to the court show that the psychiatric examiners are not unanimous in their opinion as to whether the defendant is or is not an incapacitated person, or when the examination reports submitted to the superior court show that the psychiatric examiners are not unanimous in their opinion as to whether the defendant is or is not a dangerous incapacitated person, the court must conduct a hearing to determine the issue of capacity or dangerousness.

§ 730.40 Fitness to proceed; local criminal court accusatory instrument

1. When a local criminal court, following a hearing conducted pursuant to subdivision three or four of section 730.30, is satisfied that the defendant is not an incapacitated person, the criminal action against him must proceed. If it is satisfied that the defendant is an incapacitated person, or if no motion for such a hearing is made, such court must issue a final or temporary order of observation committing him to the custody of the commissioner for care and treatment in an appropriate institution for a period not to exceed ninety days from the date of the order. When a local criminal court accusatory instrument other than a felony complaint has been filed against the defendant, such court must issue a final order of observation; when a felony complaint has been filed against the defendant, such court must issue a temporary order of observation, except that, with the consent of the district attorney, it may issue a final order of observation.

2. When a local criminal court has issued a final order of observation, it must dismiss the accusatory instrument filed in such court against the defendant and such dismissal constitutes a bar to any further prosecution of the charge or charges contained in

such accusatory instrument. When the defendant is in the custody of the commissioner at the expiration of the period prescribed in a temporary order of observation, the proceedings in the local criminal court that issued such order shall terminate for all purposes and the commissioner must promptly certify to such court and to the appropriate district attorney that the defendant was in his custody on such expiration date. Upon receipt of such certification, the court must dismiss the felony complaint filed against the defendant.

3. When a local criminal court has issued an order of examination or a temporary order of observation, and when the charge or charges contained in the accusatory instrument are subsequently presented to a grand jury, such grand jury need not hear the defendant pursuant to section 190.50 unless, upon application by defendant to the superior court that impaneled such grand jury, the superior court determines that the defendant is not an incapacitated person.

4. When an indictment is filed against a defendant after a local criminal court has issued an order of examination and before it has issued a final or temporary order of observation, the defendant must be promptly arraigned upon the indictment, and the proceedings in the local criminal court shall thereupon terminate for all purposes. The district attorney must notify the local criminal court of such arraignment, and such court must thereupon dismiss the accusatory instrument filed in such court against the defendant. If the director has submitted the examination reports to the local criminal court, such court must forward them to the superior court in which the indictment was filed. If the director has not submitted such reports to the local criminal court, he must submit them to the superior court in which the indictment was filed.

5. When an indictment is timely filed against the defendant after the issuance of a temporary order of observation or after the expiration of the period prescribed in such order, the superior court in which such indictment is filed must direct the sheriff to take custody of the defendant at the institution in which he is confined and bring him before the court for arraignment upon the indictment. After the defendant is arraigned upon the indictment, such temporary order of observation or any order issued pursuant to the mental hygiene law after the expiration of the period prescribed in the temporary order of observation shall be deemed nullified. Notwithstanding any other provision of law, an indictment filed in a superior court against a defendant for a crime charged in the felony complaint is not

timely for the purpose of the subdivision if it is filed more than six months after the expiration of the period prescribed in a temporary order of observation issued by a local criminal court wherein such felony complaint was pending. An untimely indictment must be dismissed by the superior court unless such court is satisfied that there was good cause for the delay in filing such indictment.

§ 730.50 Fitness to proceed; indictment

1. When a superior court, following a hearing conducted pursuant to subdivision three or four of section 730.30, is satisfied that the defendant is not an incapacitated person, the criminal action against him must proceed. If it is satisfied that the defendant is an incapacitated person or a dangerous incapacitated person, or if no motion for such a hearing is made, it must adjudicate him an incapacitated person or a dangerous incapacitated person, and must issue a final order of observation or an order of commitment. When the indictment does not charge a felony or when the defendant has been convicted of an offense other than a felony, such court (a) must issue a final order of observation committing the defendant to the custody of the commissioner for care and treatment in an appropriate institution for a period not to exceed ninety days from the date of such order and (b) must dismiss the indictment filed in such court against the defendant, and such dismissal constitutes a bar to any further prosecution of the charge or charges contained in such indictment. When the indictment charges a felony or when the defendant has been convicted of a felony, it must issue an order of commitment committing the defendant to the custody of the commissioner for care and treatment in an appropriate institution for a period not to exceed one year from the date of such order. Upon the issuance of an order of commitment, the court must exonerate the defendant's bail if he was previously at liberty on bail.

2. When a defendant is in the custody of the commissioner immediately prior to the expiration of the period prescribed in a temporary order of commitment and the superintendent of the institution wherein the defendant is confined is of the opinion that the defendant continues to be an incapacitated person or a dangerous incapacitated person, such superintendent must apply to the court that issued such order for an order of retention. Such application must be made within sixty days prior to the expiration of such period on forms that have been jointly adopted by the judicial conference and the commissioner. The superintendent must give written notice of the application to the defend-

ant and to the mental health information service. Upon receipt of such application, the court may, on its own motion, conduct a hearing to determine the issue of capacity or dangerousness, and it must conduct such hearing if a demand therefor is made by the defendant or the mental health information service within ten days from the date that notice of the application was given them. If, at the conclusion of a hearing conducted pursuant to this subdivision, the court is satisfied that the defendant is no longer an incapacitated person, the criminal action against him must proceed. If it is satisfied that the defendant continues to be an incapacitated person or is or continues to be a dangerous incapacitated person, or if no demand for a hearing is made, the court must adjudicate him an incapacitated person or a dangerous incapacitated person and must issue an order of retention which shall authorize continued custody of the defendant by the commissioner for a period not to exceed one year.

3. When a defendant is in the custody of the commissioner immediately prior to the expiration of the period prescribed in the first order of retention, the procedure set forth in subdivision two shall govern the application for and the issuance of any subsequent order of retention, except that any subsequent orders of retention must be for periods not to exceed two years each; provided, however, that the aggregate of the periods prescribed in the temporary order of commitment, the first order of retention and all subsequent orders of retention must not exceed two-thirds of the authorized maximum term of imprisonment for the highest class felony charged in the indictment or for the highest class felony of which he was convicted.

4. When a defendant is in the custody of the commissioner at the expiration of the authorized period prescribed in the last order of retention, the criminal action pending against him in the superior court that issued such order shall terminate for all purposes, and the commissioner must promptly certify to such court and to the appropriate district attorney that the defendant was in his custody on such expiration date. Upon receipt of such certification, the court must dismiss the indictment, and such dismissal constitutes a bar to any further prosecution of the charge or charges contained in such indictment.

§ 730.60 Fitness to proceed; procedure following custody by commissioner

1. When a local criminal court issues a final or temporary order of observation or an order of commitment, it must forward such order and a copy of the examination reports and the ac-

cusatory instrument to the commissioner, and, if available, a copy of the pre-sentence report. Upon receipt thereof, the commissioner must designate an appropriate institution operated by the department of mental hygiene in which the defendant is to be placed; provided, however, that when a defendant has been adjudicated a dangerous incapacitated person by a superior court, the commissioner may designate an appropriate institution operated by the department of correction in which the defendant is to be placed. The sheriff must hold the defendant in custody pending such designation by the commissioner, and when notified of the designation, the sheriff must deliver the defendant to the superintendent of such institution. The superintendent must promptly inform the appropriate director of the mental health information service of the defendant's admission to such institution. If a defendant escapes from the custody of the commissioner, the escape shall interrupt the period prescribed in any order of observation, commitment or retention, and such interruption shall continue until the defendant is returned to the custody of the commissioner.

2. Except as otherwise provided in subdivisions five and six, when a defendant is in the custody of the commissioner pursuant to a temporary order of observation or an order of commitment or an order of retention, the criminal action pending against the defendant in the court that issued such order is suspended until the superintendent of the institution in which the defendant is confined determines that he is no longer an incapacitated person. In that event, the court that issued such order and the appropriate district attorney must be notified, in writing, by the superintendent of his determination. The court must thereupon direct the sheriff to take custody of the defendant at such institution and bring him before the court, whereupon the criminal action against him must proceed.

3. When a defendant is in the custody of the commissioner pursuant to an order issued in accordance with this article, the commissioner may transfer him to any appropriate institution operated by the department of mental hygiene; provided, however, that when a defendant is in custody pursuant to an order of commitment or an order of retention and he has been adjudicated a dangerous incapacitated person, the commissioner may transfer him to any appropriate institution operated by the department of mental hygiene or the department of correction. When a defendant is in custody pursuant to a final or temporary order of observation, the commissioner may transfer him to an appropriate institution operated by the department of cor-

rection in the manner prescribed by section eighty-five or section one hundred thirty-five of the mental hygiene law. The commissioner may discharge a defendant in his custody under a final order of observation at any time prior to the expiration date of such order, or otherwise treat or transfer such defendant in the same manner as if he were a patient not in confinement under a criminal court order.

4. When a defendant is in the custody of the commissioner pursuant to an order of commitment or an order of retention, and he has not been adjudicated a dangerous incapacitated person, the superintendent of the institution in which the defendant is confined may, if he determines that the defendant is a dangerous incapacitated person, apply to the court that issued such order of commitment or retention for an order adjudicating the defendant a dangerous incapacitated person. Such application must be made on forms that have been jointly adopted by the judicial conference and the commissioner. The superintendent must give written notice of the application to the defendant and to the mental health information service. Upon receipt of such application, the court may, on its own motion, conduct a hearing to determine the issue of dangerousness, and it must conduct such hearing if a demand therefor is made by the defendant or the mental health information service within ten days from the date that notice of the application was given them. If, following a hearing, the court is satisfied that the defendant is a dangerous incapacitated person, or if no demand for a hearing is made, the court must adjudicate him a dangerous incapacitated person.

5. When a defendant is in the custody of the commissioner pursuant to an order of commitment or an order of retention, he may make any motion authorized by this chapter which is susceptible of fair determination without his personal participation. If the court denies any such motion it must be without prejudice to a renewal thereof after the criminal action against the defendant has been ordered to proceed. If the court enters an order dismissing the indictment and does not direct that the charge or charges be resubmitted to a grand jury, the court must direct that such order of dismissal be served upon the commissioner.

6. When a defendant is in the custody of the commissioner pursuant to an order of commitment or an order of retention, the superior court that issued such order may, after giving the district attorney and the commissioner an opportunity to be heard, dismiss the indictment upon motion of the defendant or upon

its own motion, when it is satisfied that (a) the defendant is a resident or citizen of another state or country and that he will be removed thereto upon dismissal of the indictment, or (b) the defendant has been continuously confined in the custody of the commissioner for a period of more than two years. Before granting a motion under this subdivision, the court must be further satisfied that dismissal of the indictment is consistent with the ends of justice and that custody of the defendant by the commissioner pursuant to an order of commitment or an order of retention is not necessary for the protection of the public and that care and treatment can be effectively administered to the defendant without the necessity of such order. If the court enters an order of dismissal under this subdivision, it must set forth in the record the reasons for such action, and must direct that such order of dismissal be served upon the commissioner. The dismissal of an indictment pursuant to this subdivision constitutes a bar to any further prosecution of the charge or charges contained in such indictment.

§ 730.70 Fitness to proceed; procedure following termination of custody by commissioner

When a defendant is in the custody of the commissioner on the expiration date of a final or temporary order of observation or an order of commitment, or on the expiration date of the last order of retention, or on the date an order dismissing an indictment is served upon the commissioner, the superintendent of the institution in which the defendant is confined may retain him for care and treatment for a period of thirty days from such date. The procedure governing the continued confinement of the defendant shall be as follows:

1. If the superintendent determines that the defendant is so mentally ill or mentally defective as to require continued care and treatment in an institution, he may, before the expiration of such thirty day period, apply for an order of certification in the manner prescribed in section seventy-three or section one hundred twenty-four of the mental hygiene law.

2. If the defendant is confined to an institution in the department of correction, and if the superintendent of such institution determines that the defendant is so dangerously mentally ill or dangerously mentally defective as to require continued care and treatment in an institution in the department of correction, he must, before the expiration of such thirty day period, apply for an order of certification in the manner prescribed in

section eighty-five or section one hundred thirty-five of the mental hygiene law.

[End of text of proposed law]

§ 2. An act of the legislature of the year in which this act shall have become a law which, in form, amends or repeals or purports to amend or repeal any provision or provisions of the former code of criminal procedure, as in force immediately prior to the date that this act shall take effect, shall be legally effective notwithstanding the repeal of such former code by this act and shall be construed as an amendment, or repeal, as the case may be, of the corresponding provision or provisions of this act irrespective of whether such provision or provisions are contained in this act in one or more than one article, section, subdivision or other part thereof and such corresponding provision or provisions shall be deemed and construed to be amended, modified, changed or repealed as though the same had been expressly and in terms so amended or repealed.

§ 3. An act of the legislature of the year in which this act shall have become a law which adds or purports to add a new article, section, subdivision or other provision of law to the former code of criminal procedure, as in force and effect immediately prior to the date that this act shall take effect, shall be legally effective notwithstanding the repeal of such former code by this act and shall be construed as having been added to this act and shall be given full effect according to its context as if the same had been added expressly and in terms to this act and shall be deemed and construed to have been inserted in this act in juxtaposition to and as modifying the effect of the corresponding provision or provisions of this act.

§ 4. Chapter four hundred forty-two of the laws of eighteen hundred eighty-one, entitled "An act to establish a code of criminal procedure," and all acts amendatory thereof and supplemental thereto are hereby repealed.

§ 5. This act shall take effect on the first day of September in the year next succeeding the year in which it shall have become a law.

Note.—This bill, which is intended to replace the Code of Criminal Procedure, is introduced at the request of its draftsmen, the Temporary Commission on Revision of the Penal Law and Criminal Code.

Section four of this bill repeals the Code of Criminal Procedure in its entirety.

DISTRIBUTION TABLE

The left column of this table lists each section of the Code of Criminal Procedure (CCP); the right column shows the disposition of each such section. The numbers in the right column refer to the appropriate section of the Criminal Procedure Law which specifically or generally covers the same or approximately the same subject matter.

The word "Omitted" indicates that the Code section has not been included in the revision because it has no further utility, or because it duplicates a provision in another body of law.

Sections of the Code that are to be relocated in other chapters of the Consolidated Laws are so designated.

Code of Criminal Procedure (CCP) Section	Disposition
1	1.00
2	Omitted
2–a	1.20
3	Omitted
4	Omitted
5	1.20(16)
5–a	Omitted
6	1.20(1)
7	1.20(1)
7–a	See CPLR 3403(a) (i)
8(1)	30.20
8(2)	170.10(3, 4, 6), 180.10(3, 4, 5) 210.15 (2, 3, 4)
8(3)	60.15, 670.10
8–a	60.35
9	Art. 40
10	50.20; see 190.40
10–a	Omitted
10–b	210.10(1), 560.10(1–a)
10–c	630.10, 630.20
10–d	Omitted
10–e	Omitted
10–f	Omitted
10–h	1.20(32)
11	10.10
11–a	Omitted
12–20	Transfer to Judiciary Law
22(1)	10.20(2)
22(2)	10.20(1)
22(3)	Omitted
22(4)	230.10, 230.20
22(5)	230.10
22(6)	230.10
22(7)	see 280.10, 330.50
22(8)	530.40; see 210.15(5), 530.30
22(9)	Omitted
22–a	Transfer to CPLR
24	Omitted
39(1)	10.20(2)
39(2)	10.20(1)
39(2–a)	230.40, see: 230.10
39(5)	Omitted

DISTRIBUTION TABLE

Code of Criminal Procedure (CCP) Section	Disposition
39(6)	Omitted
39(7)	Omitted
39(8)	Omitted
39(9)	Omitted
39(10)	530.40; see 210.15(5), 530.30
39(12)	190.80; see 210.20(1–g), 210.45(8, 9)
39(13)	Omitted
39(14)	See 280.10, 330.50
39(15)	Omitted
41	230.10
42	Omitted
44	Omitted
45	Omitted
46	Omitted
48	Omitted
50	Transfer to Judiciary Law
57	170.25
58	170.25(3)
59	170.20, 170.25
60	See 120.90(5), 140.20(1) (b), 170.15 (1, 3), 660.30(2–a); see, also, 40.20, 40.30
61	190.70
62	See 10.10(3, 5) and Title K
63	See 10.10(4)
74	See 10.10(6)
78	Omitted
82	Omitted
83	Omitted
84	Omitted
85	Omitted
86	Omitted
87	Omitted
88	Omitted
89	Omitted
90	Omitted
91	Omitted
92	Omitted
93	Omitted
94	Omitted
95	Omitted
96	Omitted
97	Omitted
98	Omitted
99	Omitted
100	Omitted
101	Omitted
102–117	To be treated elsewhere
117–a thru 117–f	Transfer to Agriculture and Markets Law
118 thru 131	Transfer to Judiciary Law
132	Transfer to Judiciary Law
133	Omitted
134	20.40(1–3)
134–a	20.40(2–b)
135	20.40(4–c)

DISTRIBUTION TABLE

Code of Criminal Procedure (CCP) Section	Disposition
135–a	20.40(4–e)
135–b	See 20.40(4–a)
136	20.40(4–h)
136–a	20.40(4–d)
137	20.40(4–f)
139	See 40.30(1)
140	40.20
141	30.10(2–a)
141–a	30.10(2–a)
142(1)	30.10(2–b, c, d)
142(2)	30.10(3–a)
142(3)	Transfer to Labor Law
143	30.10(4–a)
144	1.20(17). 100.05
144–a	30.10(4–b)
145(1)	1.20(4, 5, 6, 7, 8), 100.10
145(2)	Omitted
145–a	See 100.10(4, 5), 100.40(4), 170.70; see, also 70.10.(2)
146	Omitted; but see 10.10(3), 10.30(2, 3)
147	Omitted, but see 10.10(3)
147–a	1.20(5), 100.10(2)
147–b	See 100.25, 100.40(2)
147–c	100.25(1)
147–d	100.25(1)
147–e	100.25(1)
147–f	100.25(2)
147–g	100.25(2); see, also, 100.20
148	See 120.20
149	Omitted
150(1)	120.20(3). 130.10, 130.30, 130.40(1), see: 130.20
150(2)	120.20(1, 2), 130.50
150–a	100.30
150–b	100.30
151	120.10
151–a	Omitted
152	120.10(2)
153	120.10, 120.50
154	1.20(33)
154–a	1.20(34)
155	120.50, 120.70
156	120.50, 120.70
157	Omitted
158	120.90(1, 2, 5)
159	120.90(3, 4)
160	See 120.90(3, 4)
161	120.90(3, 4, 5)
162	Omitted
163	Omitted
164	120.90(5), 140.20
165	120.90
166	120.40; see 170.15(1)
167	Omitted
168	120.10, 140.05, 140.10, 140.25, 140.30
169	Omitted, but see P.L. 195.10

DISTRIBUTION TABLE

Code of Criminal Procedure (CCP) Section	Disposition
170	120.80(1)
171	See 120.80(2, 3), 140.15(2, 3), 140.25 (3), 140.35(2, 3)
172	120.80(3); see, also, 140.15(3), 140.25(3), 140.35(3)
173	120.80(2)
174	120.80(3)
175	120.80(4, 5)
176	See: 120.80(5)
177	140.10, 140.25(1, 2)
178	140.15(4), 140.25(3)
179	140.10(1, 3), 140.25(1, 2)
180	140.15(2), 140.25(3)
180–a	140.50
181	140.40
182	Omitted
182–a	140.10(2) (b), 150.40(4)
182–b	140.10(2) (a), (3) (b)
183	140.30(1)
184	140.35(2, 3)
185	140.40
186	Omitted
187	Omitted
188	170.10(3–6), 180.10(3–5)
190	180.10(2), 180.30, 180.60
190–a	180.40
191	180.60(10)
192	180.10(6)
193	Omitted
194	180.60(3–7); see 60.15, 610.20
195	180.60(2, 4)
196	180.60(6)
197	Omitted
198	Omitted
199	Omitted
200	Omitted
201	See 180.60(7)
202	Omitted
203	180.60(9)
204	Omitted
204–a	Transfer to Judiciary Law
205	See 180.70(1)
206	Omitted
207	180.70(4)
207–a	Omitted
208	180.70(1)
209	Omitted
210	Omitted
212	Omitted
213	See 180.10(6), 180.70(1), 530.20(2)
214	Omitted
215	Omitted; but see Art. 620
216	Omitted, but see Art. 620
218	Omitted, but see Art. 620
219	Art. 660

DISTRIBUTION TABLE

Code of Criminal Procedure (CCP) Section	Disposition
220	Transfer to Uniform Justice Court Act
221	See 180.70(1); see, also, 180.30(1)
221–a	See 520.20
221–b	Transfer to Judiciary Law
222	210.05
222–a	Omitted
222–b	Omitted
222–c	Omitted
222–d	190.80
223	190.05
224	190.05, 190.25(1)
225	190.10
225–a	190.10
226	190.10
226–a	190.20(6)
227	Omitted
228	Omitted
229	190.20(1)
230	See 190.20(2–b)
231	190.20(2–a)
232	See 190.20(2–b)
233	Omitted
234	Omitted
235	Omitted
236	Omitted
237	190.20(3)
238	Omitted; but, see 190.20(4)
239	190.20(4)
240	See 190.20(4)
241	190.25(5)
242	Omitted
243	190.20(3)
244	190.15
245	190.05, 190.55
246	190.25(2)
247	1.20(3), 200.10
248(1)	190.30(1); see Art. 60
248(2)	190.30(1), 670.20(2)
248(3)	190.30(2)
249	190.30(1)
250(1)	190.50(1, 3, 4), see: 190.25(5)
250(2)	190.50(5, 6), 210.20(1) (c), 210.35(4)
251	190.65(1)
252	Omitted
253(1)	Omitted; but see 190.55
253(2)	190.55(1)
253(3)	Omitted
253–a	190.85
254	Omitted
255(1)	190.25(6)
255(2)	190.25(3), (6)
255(3)	See 190.55(2)
256	100.25(3–d)
257	190.25(3–c)
258	190.25(4)

DISTRIBUTION TABLE

Code of Criminal Procedure (CCP) Section	Disposition
259	Omitted
260	Omitted
268	190.25(1), 200.50(8)
269	190.75(1)
270	190.75(3)
272	190.65(3), 210.10(3)
273	Omitted
274	Omitted
275	200.50(1, 2, 7)
275–b	200.60
276	See 200.50
277	See 200.70(1)
278	See 200.20(1)
279	200.20(2, 3, 4, 5)
279–a	Omitted; see 300.30–300.50
280	200.50(6)
281	200.70(1), 210.25(1)
282	Omitted
283	Omitted
284	See 200.50, 210.25
285	210.25(1)
286	Omitted
287	Omitted
288	Omitted
290	Omitted
291	Omitted
292	300.10(3), 310.50(1)
292–a	200.80
293	200.70
294	Omitted
295	Omitted
295–a thru 295–k	Omitted
295–l	250.20
296	210.10
296–a	See 210.10
297	210.10
298	210.10(1)
298–a	560.10(1–a)
298–b	560.10(1–a)
299	210.10(2)
300	Omitted
301	See 1.20(30), 530.70
302	Omitted
303	Omitted
304	530.70
305	Omitted
306	210.15(5), 530.40
307	210.10(2), 210.15(5)
308	210.15(2, 3, 4)
308–a	Omitted
309	See 1.20(9, 10), 210.15, 210.50, Art. 220
310	See 200.70
311	Omitted
312	210.20, 210.50
313(1)	210.20(1–a), 210.25(1)

DISTRIBUTION TABLE

Code of Criminal Procedure (CCP) Section	Disposition
313(2)	210.20(1–c), 210.35(5)
314	210.20(2)
315	See 210.20(2), 210.45
316	210.50
317	210.45(8)
318	210.45(9)
319	210.45(9)
320	210.20(4)
321	See 210.20(1–a), 210.25, 210.50, 220.10
322	210.20(1, 2), 210.50
323	210.25
324	210.45(1, 5)
325	210.45
326	210.45(4, 5, 6)
327	210.20(4)
328	210.45(8)
329	210.45(9)
330	210.50, 220.50(3)
331	210.20(2)
332	220.10
333	220.50
334	Omitted
335(1)	220.50, 340.20, 600.20
335(2)	Transfer to Vehicle & Traffic Law
335–a	Transfer to Vehicle & Traffic Law
335–b	Transfer to Vehicle & Traffic Law
335–c	Omitted
336	250.10. 340.30
337	220.60(4)
338	220.40
339	Omitted
340	See Art. 40
341	See Art. 40
342	220.50(3)
342–a	Omitted
343	Omitted
344	230.20(1. 2)
345	See 230.20
346	230.20(1, 2, 3)
347	230.30(1, 2)
348	230.30(3)
349	230.30(4)
350	Omitted
351	230.20(4)
352	230.20(2)
353	230.20(1, 2)
354	Omitted
355	Omitted
356	260.20
357	Omitted
358	270.05
358–a	270.30, 270.35
359	See 270.10, 270.15, 270.20
360	270.25(3)
361	270.10(1)

DISTRIBUTION TABLE

Code of Criminal Procedure (CCP) Section	Disposition
362	270.10(1)
363	270.10(2)
364	270.10(2)
365	270.10(2)
366	270.10(2)
367	270.10(2)
368	Omitted
369	See 270.15(2)
370	270.15(4)
371	270.25(1)
372	270.25(2)
373	270.20(1)
374	270.20(1)
375	270.20(1)
376	270.20(1)
377	270.20(1)
378	270.20(1)
379	270.20(2)
380	270.20(2)
381	270.20(2)
382	270.20(2)
383	270.20(2)
384	270.15(2)
385	Omitted
386	270.05(2)
387	260.30
388	70.20, 300.10(2)
389	70.20
390	200.40(1)
391	60.10, 60.20
392	Omitted
392–a	60.15(2); see, also, 300.10(2), 360.45
393	Omitted
393–a	60.25, 60.30
393–b	60.40(2)
393–c	610.50
394	60.45, 60.50
395	Omitted
396	Omitted
397	60.55
398–b	Omitted; but see 300.20
399	Omitted
400	Omitted
401	210.20(1–a), 210.25, 290.10(1)
402	Omitted
403	Omitted
404	Omitted
405	Omitted
406	Omitted
407	See 210.45(8, 9), 290.10(4)
408	See 210.45(9)
409	290.10
410	270.50
411	Omitted; but see 270.50
412	Omitted
413	

DISTRIBUTION TABLE

Code of Criminal Procedure (CCP) Section	Disposition
414	270.45
415	270.40
416	270.35
417	Omitted
418	Omitted
419	See 300.10(2)
420	See 300.10(2)
420–a	470.05(2)
421	310.10
422	See 530.40, 530.60
423	310.10
424	310.10
425	310.20(1)
426	Omitted
427	310.30
428	310.60(1)
429	Omitted
430	280.10, 280.20, 310.60(2), 310.70(2)
431	Omitted
432	Omitted
433	310.40
434	310.40(1)
435	310.40(2)
436	Omitted
437	See 310.50(1)
438	Omitted
439	Omitted
440	Omitted
441	Omitted
442	Omitted
443	Omitted
443–a	300.10(3), 310.50
444	40.20(2–d), 300.50, 310.50(1)
445	300.50, 310.50(1)
446	310.70
447	310.50(2)
448	310.50(2)
449	310.50(2)
450	310.80
451	310.80
452	330.10(1)
453	See 530.40
454	330.20
455	See 470.05(2)
456	460.70(1)
457	Omitted
458	Omitted; see 460.70(1)
459	Omitted
461	See 460.70(1)
460	Omitted
462	Omitted
463	Omitted
464	See 330.50(4)
465	330.30
466	330.30, 440.10(1–g)
467	330.30(1)

DISTRIBUTION TABLE

Code of Criminal Procedure (CCP) Section	Disposition
468	Omitted
469	330.30, 330.40
470	330.50
470–a	400.20
470–b	To be drafted as 60.60(3)
470–c	400.30
470–d	420.10
470–e	420.30
471	380.30
472	380.30
473	380.40(1, 2)
474	550.10(2–a)
475	550.10(2–b)
476	See 550.10(2–b)
477	See 1.20(30), 530.70
478	530.70(2)
479	530.70(2)
480	380.50
481	330.30, 730.30
482(1)	Omitted
482(2)	390.10, 390.20, 390.30
482(3)	430.10
482–a	60.60(1)
482–b	60.60(2)
485(1–7)	Omitted; see 460.70(1, 3)
485(8)	460.70(3)
485–b	Transfer to Judiciary Law
486	380.60
487	430.20(1)
488	430.20(4, 7), 430.30
489	380.60, 380.70
489–a	Transfer to Correction Law
490	Omitted
490–a	Omitted
491 thru 509	Transfer to Correction Law
515	Omitted
516	Omitted
517	450.10, 450.70
517–a	190.90
518	450.20, 450.80
518–a	450.50
519	450.90(1)
520(1)	460.20(1, 2)
520(2)	Omitted
520(3)	460.20(3–b)
520–a	Omitted
521	460.10(1, 2, 4)
521–a	460.30
522	460.10(1, 2, 4)
523	460.10(1–b, 4–c)
523–a	Transfer to Judiciary Law
524	460.10(1–c, 4–c)
524–a	460.10(5)
524–b	Omitted
524–c	460.10(5)
525	Omitted

DISTRIBUTION TABLE

Code of Criminal Procedure (CCP) Section	Disposition
526	460.40
527	460.50(1, 2)
528	460.60(1)
528–a	470.30(2)
529	460.50(2, 3, 4), 460.60(1, 2, 3)
530	Omitted; see 460.50(1), 460.60(1)
531	Omitted; see 460.50(1), 460.60(1)
533	470.60(1, 2)
534	470.60(1, 2)
535	460.70(1), 460.80
536	460.70(3), 460.80
537	460.70(1, 3), 460.80
537–a	470.60(2)
538	460.70(1, 3)
539	460.80
540	460.80
541	460.80
542	470.05(1)
543(1)	470.15(1, 2), 470.20, 470.30(1)
543(2)	470.15(2–a), 470.20(4), 470.30
543(3)	470.25(2–b)
543–a(1)	470.25(2–a)
543–a(2)	470.25(2–d)
543–a(3)	Omitted
543–a(4)	470.25(2–d)
543–b	470.40(2–b)
543–c	470.30(2)
544	See 470.55
545	470.45
546	460.50(5), 460.60(4), 470.20, 470.40 (2), 470.45
547	See 470.45
548	Omitted
549	See 470.45
550 thru 589	See, generally, Arts. 500, 510, 520, 530
590	530.80(1)
591	530.80(2)
592	530.80(3)
593	540.10(1)
594	540.10(2)
595	540.10(2, 3)
595–a	540.10(3)
596	540.10(2)
597	540.30
598	540.30(2)
599 thru 606	See, generally, 530.60, 530.70
607	610.10(2)
608	610.20(1)
609	610.20(2); see 190.50(2)
610	610.20(2)
610–a	See 610.10(2)
610–b	610.20(3)
611	Omitted
611–a	Omitted
612	Omitted

DISTRIBUTION TABLE

Code of Criminal Procedure (CCP) Section	Disposition
613	See 610.10(3)
614	610.40
615	610.40
615–a	See 610.40
616	610.50(1)
617	610.50(2)
618	610.30
618–a	640.10
618–b	Art. 620
618–c	650.10
619	Omitted
619–a	Omitted
619–b	Omitted
619–c	50.10, 50.20; see 190.35, 190.40
619–d(1)	50.30
619–d(2)	Omitted; see 50.20
619–e	See 190.45
620 thru 630	Art. 660
631	670.10
632	670.20
633	670.20(1)
634	660.40
635	Omitted
636 thru 657	Art. 680
658 thru 662–f	Art. 730
663	Omitted; but see 170.40
664	See 170.40
665	Omitted; see 40.30(1), 210.20(4)
666	Omitted
667	190.80
668	30.20
669	190.80, 210.15(5)
669–a	Omitted; see 30.20
669–b	580.20
670	170.45, 180.70(4), 210.45(8)
671	210.40
672	Omitted
673	210.20(4)
675 thru 681	See Art. 600
682	420.20
683	Omitted
684	Omitted; but see 210.25(1), 470.05(1)
684–a	Omitted
685 thru 691	To be treated elsewhere
692 thru 697	Transfer to Executive Law
699(1)	170.10(2, 3, 4–a, 6)
699(2)	170.10(2), 170.60; see 340.20(2–b)
699(3)	Omitted
699(4)	Omitted
699–a	See 170.10(7), 530.20(1)
700	340.20(1, 2)
701	340.40(1)
702	340.40(2, 4, 5, 6)
702–a(1)	Omitted
702–a(2)	170.15(3)
702–a(3)	Omitted

DISTRIBUTION TABLE

Code of Criminal Procedure (CCP) Section	Disposition
703	360.10
707	360.15(1), 360.20, 360.25, 360.30(2), 360.35
708	Omitted
709	Omitted
710	360.10(1)
711	See 360.20, 270.15(2)
712	See 360.40
713	See 360.55
714	See 360.55
715	See 360.55; see, also 310.60(1)
716	See 360.55; see, also 310.60(2)
717(1)	380.20, 380.30(1, 2)
717(2)	400.40
719	See 330.10(1), 360.55, 370.10
720	Omitted
721	380.60
722	380.60
723	Omitted
724	Omitted
725	430.30
726	To be treated elsewhere
727	To be treated elsewhere
728	To be treated elsewhere
729	610.20(1)
730	Omitted
731	Transfer to General Municipal Law
732	Omitted
733	See 170.10(7), 510.40, 530.20(1)
734	Omitted
735	Omitted
736	530.20(1)
737	See. generally, 140.20(3), 150.30, and Arts. 500, 510, 520, 530
738	540.20
739*	510.50, 530.60, 530.70, 550.10(2–b)
739**	540.10
740	540.30
740–a	Transfer to General Municipal Law
740–b	Omitted
740–c	Omitted
740–d	Omitted
749	450.60(3)
750	450.10, 450.20, 450.50, 450.60(3), 450.90, 460.20
751	460.10(2, 3)
753(1)	460.50
753(2)	Transfer to Vehicle & Traffic Law
754	Omitted
756	460.10(3–d)
757	460.10(3–e)
758	460.10(3–e)

* RE: Bench Warrant

** RE: Forfeiture of Undertaking

DISTRIBUTION TABLE

Code of Criminal Procedure (CCP) Section	Disposition
759	460.70(2–a)
760	460.70(2–c)
760–a	470.60(2)
762	460.80
763	See 460.10(3–d), 460.80
764	470.05(1); see 470.15, 470.20
764–a	440.20, 440.40
765	470.25
766	460.50(5)
767	470.20. 470.45
769	Omitted
791	690.05(2)
792	690.10
793	690.35(2–b, c), 690.40(2)
794	690.35(2–c), 690.40(1)
795	690.35(2–c)
796	690.40(2)
797	690.45
797–a	690.35
798	690.25
799	690.35(3–b), 690.40(2), 690.45(6), 690.50(1, 2)
800	Omitted
801	690.30(2), 690.35(3–a), 690.40(2), 690.45(5)
802(1)	690.30(1)
802(2)	Omitted
802–a	Transfer to Agriculture and Markets Law
803	690.50(4)
804	690.55
805	690.50(5)
806	Omitted
807	Omitted
808	Omitted
809	Omitted; see 710.70(1)
810	690.55(2)
811	Omitted
812	Omitted
813	Omitted
813–c thru 813–m	Art. 710
814	700.05
815	700.10
816	700.15
817	700.20
818	700.25
819	700.30
820	700.35
821	700.40
822	700.50
823	700.55
824	700.60
825	700.65
827 thru 859	570.02 thru 570.66
860	140.55
870 thru 876	Art. 730

DISTRIBUTION TABLE

Code of Criminal Procedure (CCP) Section	Disposition
913–a thru 913–dd	Omitted
913–c	720.05(1, 6)
913–f	720.15
913–g	720.20; see 720.25, 720.30, 720.35
913–h	720.40
913–i	720.20(6)
913–j	See 720.05(5), 720.35(1–b, c), 720.45
913–k	720.65
913–*l*	See 720.30(2)
913–m	720.55
913–n	720.70(1)
913–*o*	720.70(2)
913–p	720.05(1)
913–q	See 720.35(2), 720.40, 720.45(2), 720.50, 720.60
913–r	720.60
918	Omitted
919	Omitted
920	Omitted
921	Omitted
922	Omitted
922–a	Omitted
923	Omitted
924	Omitted
925	Omitted
926	Omitted
928	Transfer to Correction Law
929	Transfer to Correction Law
930	Transfer to Correction Law
931	See 390.30, 390.50, 390.60
932	410.10
933	410.20
933–a	See 410.80
934	410.90
934–a	410.30
935	410.40, 410.60, 410.70
936 thru 939	Transfer to Correction Law
940	160.10
941	160.20
942	160.30
942–a	See 160.40, 390.10, 530.20(2–b–ii)
943	See Art. 390
944	Omitted
950	Omitted
951	Omitted
952	Omitted
952–p thru 952–y	Transfer to Judiciary Law
953 thru 963	Omitted

*

DERIVATION TABLE

The left column of this table lists each section of the Criminal Procedure Law (CPL). The right column shows the corresponding section of the Code of Criminal Procedure (CCP) from which the CPL section is specifically or generally derived.

The word "New" indicates that there is no counterpart in the Code of Criminal Procedure.

Criminal Procedure Law (CPL) Section	Code of Criminal Procedure (CCP) Section
1.00	1
1.10	New
1.20	2–a
1.20(1)	6, 7
1.20(2)	New
1.20(3)	247
1.20(4)	145(1)
1.20(5)	147–a, See: 145(1)
1.20(6)	New, but see: 145(1)
1.20(7)	New, but see: 145(1)
1.20(8)	New, but see: 145(1)
1.20(9)	See: 309
1.20(10)	New
1.20(11)	New
1.20(12)	New
1.20(13)	New
1.20(14)	New
1.20(15)	New
1.20(16)	See: 5
1.20(17)	144
1.20(18)	New
1.20(19)	New
1.20(20)	New
1.20(21)	New
1.20(22)	New
1.20(23)	New
1.20(24)	New
1.20(25)	New
1.20(26)	New
1.20(27)	New
1.20(28)	New
1.20(29)	New
1.20(30)	See: 301, 477
1.20(31)	New
1.20(32)	See: 10–h
1.20(33)	154
1.20(34)	154–a
1.20(35)	New
1.20(36)	New
1.20(37)	New
1.20(38)	New, but see: PL § 210.00(1)
1.20(39)	New
1.20(40)	New
10.10	See: 11, 62, 63, 74
10.20	See: 22, 39
10.30	New
20.10	New

DERIVATION TABLE

Criminal Procedure Law (CPL) Section	Code of Criminal Procedure (CCP) Section
20.20	New
20.30	New
20.40(1)	New
20.40(2)	See: 134
20.40(3)	New
20.40(4)	134–a thru 137
20.50	New
30.10(1)	New
30.10(2–a)	141, 141–a
30.10(2–b)	142(1)
30.10(2–c)	142(1)
30.10(2–d)	See: 142(1)
30.10(3–a)	142(2)
30.10(3–b)	New
30.10(4–a)	143
30.10(4–b)	144–a
30.20	8(1), See: 668, 669–a
40.10	New
40.20	See: 9, 60, 139, 140, 340, 341, 444
40.30	See: 9, 60, 139, 140, 340, 341, 665
40.40	New
50.10	619–c
50.20	10, 619–c
50.30	See: 619–d
60.10	See: 392
60.15	See: 8(3), 393
60.20	See: 392
60.25	See: 393–b
60.30	See: 393–b
60.35	8–a
60.40	See: 393–c
60.45	395
60.50	394, 395
60.55	398–b
60.60	482–a, 482–b
70.10	New
70.20	389, See: 390
100.05	See: 144
100.10	See: 145(1), 145–a, 147–a
100.15	New
100.20	New
100.25	See: 147–b thru 147–g
100.30	See: 150–a, 150–b
100.35	New
100.40	New
100.45	New
100.50	New
100.55	New
110.10	New
120.10	151, 152. See: 153, 168
120.20	See: 148, 150
120.30	New
120.40	See: 166
120.50	See: 153, 155, 156
120.60	New
120.70	155, 156
120.70	155, 156
120.80	170 thru 176

DERIVATION TABLE

Criminal Procedure Law (CPL) Section	Code of Criminal Procedure (CCP) Section
120.90	See: 60, 158, 159, 160, 161, 164, 165
130.10	See: 150
130.20	See: 150
130.30	See: 150
130.40	See: 150
130.50	See: 150
130.60	New
140.05	See: 168
140.10	See: 168, 177, 179, 182–a, 182–b
140.15	See: 171, 172, 178, 179, 180
140.20	See: 60, 164
140.25	New, but see: 168, 171, 172, 177, 178, 179, 180
140.30	168, 183
140.35	See: 171, 172, 184
140.40	See: 181, 185
140.45	New
140.50	180–a
140.55	860
150.10 thru 150.70	New
160.10	See: 940
160.20	See: 941
160.30	See: 942
160.40	See: 942–a
170.10	See: 8(2), 188, 699, 699–a, 733, V&T § 1807
170.15	60, 702–a(2), see: 166
170.20	59
170.25	57, 58, 59
170.30	New
170.35	New
170.40	See: 663, 664
170.45	See: 670
170.50	New
170.55	New
170.60	See: 699
170.65	New
170.70	See: 145–a
180.10	See: 8(2), 188, 190, 213
180.20	New
180.30	190
180.40	190–a
180.50	New
180.60	See: 190, 191, 194, 195, 196, 201, 203
180.70	See: 205, 207, 208, 213, 221, 670
180.80	New
190.05	223, 224, see: 245
190.10	See: 225, 225–a, 226
190.15	244
190.20(1)	239
190.20(2)	See: 230, 231, 232
190.20(3)	237, 243
190.20(4)	See: 238, 239, 240
190.20(5)	See: 241
190.20(6)	226–a
190.25(1)	224, 268
190.25(2)	246
190.25(3)	255, 256, 257

Criminal Procedure Law (CPL) Section	Code of Criminal Procedure (CCP) Section
190.25(4)	256, 257, 258
190.25(5)	See: 250(1)
190.25(6)	255
190.30	See: 248, 249
190.35	619–c
190.40	619–c, see: 10
190.45	See: 619–e
190.50	See: 250, 609
190.55	See: 245, 253, 255
190.60	New
190.65	See: 251, 272
190.70	61
190.75	See: 269, 270
190.80	See: 39(12), 222–d, 667, 669
190.85	253–a
190.90	517–a
200.10	247
200.20	See: 278, 279
200.30	New
200.40	391
200.50	See: 268, 275, 276, 280, 284
200.60	275–b
200.70	See: 277, 281, 293, 310
200.80	292–a
200.90	New
210.05	222
210.10	See: 10–b, 272, 296, 296–a, 297, 298, 299, 307
210.15	See: 8(2), 22(8), 39(10), 297, 306, 308, 309
210.20(1)	See: 39(12), 250, 312, 313, 321, 402
210.20(2)	See: 314, 315, 322, 331
210.20(3)	New
210.20(4)	See: 320, 327, 665, 673
210.25	See: 281, 284, 313(1), 323, 402
210.30	New
210.35	See: 250, 313(2)
210.40	See: 671
210.45	See: 39(12), 315, 317, 318, 319, 324, 325, 326, 328, 329, 408, 409, 670
210.50	See: 309, 312, 316, 322, 330
220.10	See: 321, 332
220.20	New
220.30	New
220.40	338
220.50	See: 330, 333, 335(1), 342
220.60	See: 337
230.10	See: 22(4), 22(5), 22(6), 39(2–a), 41
230.20	See: 22(4), 344, 345, 346, 351, 352, 353
230.30	See: 347, 348, 349
230.40	See: 39(2–a)
240.10 thru 240.40	New
250.10	336
250.20	295–1
260.10	New
260.20	See: 356
260.30	See: 388

DERIVATION TABLE

Criminal Procedure Law (CPL) Section	Code of Criminal Procedure (CCP) Section
270.05	See: 358, 387
270.10	See: 359, 361 thru 368
270.15	See: 359, 370, 371, 380, 385, 711
270.20	See: 359, 374 thru 384
270.25(1)	372
270.25(2)	373
270.25(3)	360
270.30	358–a
270.35	See: 358–a, 416
270.40	See: 415
270.45	414
270.50	411, 412
280.10	New, but see: 22(7), 39(14), 430
280.20	New, but see: 430
290.10	New, but see: 402, 408, 410
300.10	See: 292, 389, 393, 419, 420, 443–a
300.20	See: 399
300.30	New
300.40	New
300.50	444, 445
310.10	421, 423, 424
310.20	See: 425
310.30	427
310.40	See: 433, 434, 435
310.50	See: 292, 437, 443–a, 444, 447, 448, 449
310.60	See: 428, 430
310.70	See: 430, 446
310.80	450, 451
320.10	New
320.20	New
330.10	See: 452
330.20	454
330.30	See: 465, 466, 467, 469, 481
330.40	See: 469
330.50	See: 22(7), 39(14), 464, 470
340.10	New
340.20	335(1), 699(2), 700
340.30	336
340.40	See: 701, 702
340.50	New
350.10	New
350.20	New
360.05	New
360.10	703, 710
360.15	See: 707
360.20	See: 707, 711
360.25	See: 707
360.30	See: 707
360.35	See: 707
360.40	See: 712
360.45	See: 393
360.50	New
360.55	See: 713, 714, 715, 716
370.10	See: 719
380.10	New
380.20	See: 717(1)
380.30	See: 471, 472, 717(1)

DERIVATION TABLE

Criminal Procedure Law (CPL) Section	Code of Criminal Procedure (CCP) Section
380.40	473
380.50	See: 480
380.60	See: 486, 489, 721, 722
380.70	See: 489
390.10	See: 482, 942–a, 943
390.20	See: 482
390.30	See: 482(2), 931
390.40	New
390.50	See: 931
390.60	See: 931, 943
400.10	New
400.20	470–a
400.30	470–c
400.40	717(2)
410.10	932
410.20	933
410.30	934–a
410.40	See: 935
410.50	See: Correction Law 628
410.60	See: 935
410.70	See: 935
410.80	See: 933–a
410.90	See: 934
420.10	470–d
420.20	682
420.30	470–c
430.10	See: 482(3)
430.20	See: 487, 488
430.30	See: 488, 725
440.10	See: 466
440.20	See: 764–a
440.30	New
440.40	See: 764–a
450.10	517, 750
450.20	518, 750
450.30	New
450.40	New
450.50	518–a, 750
450.60	See: 749
450.70	517
450.80	518
450.90	519, 750
460.10(1)	521, 522, 523, 524
460.10(2)	521, 522, 523, 751
460.10(3)	751, 756, 757, 758
460.10(4)	521, 522, 523, 524
460.10(5)	See: 524–a, 524–c
460.20	See: 520, 750
460.30	See: 521–a
460.40	526
460.50	See: 527, 529, 530, 531, 546, 753(1), 766
460.60	See: 528, 529, 530, 531, 546
460.70	See: 456, 458, 460, 485, 535, 536, 537, 538, 759, 760
460.80	See: 535, 536, 537, 539, 540, 541, 762, 763
470.05(1)	542, 684, 764

DERIVATION TABLE

Criminal Procedure Law (CPL) Section	Code of Criminal Procedure (CCP) Section
470.05(2)	420–a, 455
470.10	New
470.15	See: 543, 764
470.20	See: 543(1), 546, 764, 767
470.25	See: 543(3), 543–a, 765
470.30	See: 528–a, 543(2), 543–c
470.35	New
470.40	543–b, 546
470.45	See: 545, 546, 547, 549, 767
470.50	New
470.55	See: 544
470.60	See: 533, 534, 537–a, 760–a
500.10 thru 540.30	See generally: 22(8), 39(10), 301, 304, 306, 478, 479, 550 thru 606, 699–a, 736 thru 740
550.10	See: 474, 475, 476
560.10	10–b, 298–a, 298–b
570.02 thru 570.66	827 thru 859
580.10	New
580.20	669–b
580.30	New
590.10	New
600.10	See: 335(1), 675 thru 681
600.20	See: 335(1), 675 thru 681
610.10	See: 607, 610–a, 613
610.20(1)	608, 729
610.20(2)	609, 610
610.20(3)	610–b
610.30	See: 618
610.40	See: 614, 615, 615–a
610.50	394, 616, 617
620.10 thru 620.70	See: 618–b
630.10	10–c
630.20	10–c
640.10	618–a
650.10	618–c
650.20	New
650.30	New
660.10 thru 660.60	See: 60, 219, 620 thru 630, 634
670.10	See: 8(3), 631
670.20	See: 248(2), 632, 633
680.10 thru 680.80	See: 636 thru 657
690.05	See: 791
690.10	792
690.15	New
690.20	New
690.25	See: 798
690.30	See: 801, 802(1)
690.35	See: 793, 794, 795, 797–a, 799, 801
690.40	See: 793, 794, 796, 799, 801
690.45	797, 799, 801
690.50	See: 799, 803, 805
690.55	See: 804, 810
700.10 thru 700.65	814 thru 825
710.10 thru 710.70	See: 813–c thru 813–m
720.05	See: 913–e, 913–p
720.10	New
720.15	See: 913–f

DERIVATION TABLE

Criminal Procedure Law (CPL) Section	Code of Criminal Procedure (CCP) Section
720.20	See: 913–g, 913–i
720.25	New
720.30	See: 913–*l*
720.35	See: 913–j, 913–q
720.40	See: 913–h, 913–q
720.45	See: 913–j, 913–q
720.50	See: 913–q
720.55	See: 913–m
720.60	See: 913–q, 913–r
720.65	See: 913–k
720.70	See: 913–n, 913–*o*
730.10 thru 730.70	See: 658 thru 662–f, 870 thru 876