

NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



CESAR A. PERALES
 Commissioner

[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.: 83 ADM-70
 [Family & Children Services]

TO: Commissioners

SUBJECT: Procedures to Guide Relationship of Child Protective Services to Law Enforcement

DATE: December 31, 1983

SUGGESTED DISTRIBUTION:

Directors of Services
 Child Protective Staff
 Legal Staff
 Directors of Societies for the Prevention of Cruelty to Children
 Law Enforcement Officials

CONTACT PERSON:

Questions concerning this release should be directed to: Fredric Cantlo, Metropolitan Regional Office at 1-800-342-3715, extension 131-3485; John O'Connor, Eastern Regional Office at 1-800-342-3715, extension 2-1095; Karen Schimke, Buffalo Regional Office at 716-882-4093; Linda Kurtz, Western (Rochester) Regional Office at 716-454-4272; and John Stupp, Office of Legal Affairs, 1-800-342-3715 extension 3-3272.

I. PURPOSE:

The purpose of this release is to define the roles and responsibilities of child protective services when cooperating with law enforcement on cases of child abuse and maltreatment, and to clarify issues that may arise from such cooperation.

II. BACKGROUND:

The New York Child Protective Services Act (1973), Title 6, Article 6 of the Social Services Law, provides for intervention in families where child abuse and maltreatment occurs. The Act emphasizes a social services approach to intervention to provide protection for the child and rehabilitative services for the family. The Act gives responsibility for investigating suspected cases of abuse and maltreatment to local child protective services.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous Reference
		Part 432	SSL Article 6 Title 6 FCA Article 10		

DSS-296 (REV. 8/82)

The Act provides that the District Attorney must receive immediate telephone notice and copies of reports involving the death of a child; the District Attorney may also receive copies of other reports of child abuse and maltreatment if a prior written request is made. Until recently, this latter provision was used only rarely. However, many child protective services in New York and across the country have begun to work more closely with law enforcement. Underlying this shift to combine a criminal justice approach with child protective services are years of experience in working with involuntary clients and recognition of the need for more authoritative intervention to engage the family in rehabilitative treatment and help the child. Also, actions constituting child abuse and maltreatment, in many cases, are crimes as defined under New York Penal Law. In particular, the definition of sexual abuse is contained in Section 130 of the Penal Law.

There are a number of reasons why law enforcement officers can and must be involved in the identification, reporting, investigation and treatment of child abuse and maltreatment. Law enforcement by its very nature is well known and available to all citizens 24 hours a day, seven days a week. Police officers and law enforcement officials are mandated reporters under Section 413 of Social Services Law and are required to report suspected cases of child abuse and maltreatment. In addition, New York's Social Services Law outlines specific roles and responsibilities for communication and coordination with law enforcement. Most important, law enforcement officers have the duty to uphold the law and provide protection to citizens. As stated in the National Center on Child Abuse and Neglect Manual, **The Role of Law Enforcement in the Prevention and Treatment of Child Abuse and Neglect (1979)**,* "Law enforcement officers are sworn to uphold the law and are responsible for the welfare of the citizens they serve... Even the youngest citizen is entitled to the law's protection, and it is the officer's responsibility that this protection is provided."

In view of the trend for child protective services and law enforcement to work together on child abuse and maltreatment cases, this Administrative Directive is issued to give direction to local districts for cooperating with law enforcement. Preserving the social services focus of intervention is intended, but use of the criminal justice system is often necessary to protect the child. The relationship of child protective services to law enforcement is difficult to interpret and this Administrative Directive may not cover all the related issues. If questions arise which require further interpretation of the child protective service relationship to law enforcement, local districts should contact the County Attorney or the Office of Legal Affairs at the New York State Department of Social Services.

The remainder of this background section contains a brief description of the child protective, law enforcement and court systems. Part III, Program Implications, outlines the roles and responsibilities of child protective services when cooperating with law enforcement on child abuse and maltreatment cases.

*Single copies are available without charge from the National Center on Child Abuse and Neglect, P.O. Box 1182, Washington, D.C., 20013.

Part IV lists Required Action by local districts. An Appendix gives information about the Penal Law as it relates to child abuse and maltreatment and provides an overview of the steps in the criminal justice system.

A. Child Protective Service Agencies

"Child Protective Agency" means any duly authorized society for the prevention of cruelty to children or the child protective service of the appropriate local department of social services or such other agencies with whom the local department has arranged for the provision of child protective services under the local plan for child protective services (Section 1012 (i), Family Court Act).

The child protective service is the sole public agency to receive and investigate reports, and to provide, arrange for, and monitor rehabilitative services for children and their families (Section 423.1, Social Services Law). Societies for the prevention of cruelty to children are private, not-for-profit incorporated agencies which perform child-protective functions. Officers and agents of the societies for the prevention of cruelty to children are also peace officers, and as such they cooperate with public officials in the investigation and prosecution of crimes committed by adults against children under 18 years.

B. Law Enforcement Agencies

Law enforcement agencies include police agencies and prosecutors offices.

The New York State Police is the single police agency in New York State with statewide jurisdiction. The agency is divided geographically into ten troop designations with each troop covering several counties. Uniform troopers and detectives from the Bureau of Criminal Investigations conduct investigation on criminal cases.

Local police departments are responsible for the majority of police work. At the County level, the primary agency is the Sheriff's Department. Within counties, cities, towns and villages, there are local police departments, and in some cases auxiliary police.

In New York State the authority to prosecute rests with: the State's Attorney General's Office; the local District Attorney in each county prosecutes crimes committed within the county jurisdiction. The organization of police departments and prosecutors' offices varies widely. Many localities have established special units to handle cases involving family violence, sex crimes, and juveniles.

C. "Criminal Courts" and Family Court

The "criminal courts" of New York State are comprised of superior courts and the local criminal courts. (Section 10.10, Criminal Procedure Law).

"Superior court" means the supreme court or a county court. "Local criminal court" means: district courts in Nassau and Suffolk Counties; or the New York City Criminal Court; or a city court; or a town court; or a village court; or a supreme court justice sitting as a local criminal court; or a county judge sitting as a local criminal court (Section 10.10, Criminal Procedure Law).

These courts may also have civil jurisdiction; however, a court does not act as a civil court when acting solely in the exercise of its criminal jurisdiction.

The Family Court is a statewide court which has one branch in each of the State's 62 counties. The Family Court has jurisdiction over child protective proceedings and also handles juvenile delinquency, support, paternity, custody and family offense proceedings. A chart of the New York State Court System appears in the Appendix.

The Family Court and the criminal courts have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, harassment, menacing, reckless endangerment, and attempted assault or assault in the second and third degrees between spouses or between parent and child or between members of the same family or household except if the respondent is not criminally responsible by reason of age (Section 30, Penal Law). In those proceedings, the Family Court shall have exclusive jurisdiction (Section 812, Family Court Act). The Family Court proceeding is a civil proceeding and is for the purpose of attempting to stop violence, ending the family disruption and obtaining protection. The proceeding in the criminal courts is for the purpose of prosecuting the offender and can result in criminal conviction of the offender.

Pursuant to Section 1014, Family Court Act, the Family Court may transfer a child protective case to a criminal court, and a criminal court may transfer to the Family Court a case involving any criminal complaint charging facts amounting to child abuse or maltreatment. Concurrent proceedings may be held in the Family Court and criminal court.

III. PROGRAM IMPLICATIONS

A. Reports to District Attorneys

Under Section 424.4 of the Social Services Law, the local child protective service gives immediate telephone notice to the District Attorney of reports involving the death of a child and forwards to the District Attorney a copy of reports involving the death of a child made pursuant to Article 6, Title 6 of the Social Services Law. The District Attorney may receive a copy of any or all other reports if a prior written request is made to the local child protective service. The request can be written so that it need only be made once to cover all subsequent reports, and it may specify receipt of certain categories of cases as identified on the DSS 2221 form. The District Attorney has access, without additional authority, to the information contained in the DSS 2221, 2221A, 2222, and 2223 reports involving fatalities and other reports where prior written request is made. Access to any other information must be obtained pursuant to court order, at the request of a grand jury, or with authorization of the subject of the report. A grand jury may obtain information contained in the case record upon finding that the information is necessary for the determination of charges before it (Section 422.4, Social Services Law).

The local child protective service makes a referral to the District Attorney or initiates a child protective proceeding in Family Court, or both, in those cases where the family has refused an appropriate offer of service and the child protective service determines, or if the service for any other appropriate reason determines, that the best interests of the child require criminal court or Family Court action (Sections 424.9 and 424.10, Social Services Law).

The decision to initiate criminal prosecution of a case of a child abuse and maltreatment is the responsibility of the District Attorney. The criminal investigation may be conducted through the District Attorney's office or by a designated police agency.

B. Police Escort/Intervention

The police, as set forth below, can serve as a supportive arm to child protective services and may be called into a child protective investigation. Child protective staff should use the police whenever necessary to protect themselves, children, family members or others.

The child protective service should request the police to accompany workers if:

- a child is in danger and the worker cannot enter the home or place where the child is located;
- there is possible danger to the worker;
- serious harm, or threat of serious harm to the child and family, suggests that police involvement is needed, for example, the child's life is in serious jeopardy or the child has died.

The child protective service should notify the police in these situations:

- in cases in which a crime is occurring;
- when the family makes itself inaccessible and there is reason to fear for the safety of the child;
- when speed is essential and police proximity to the child's location gives the police faster access than the child protective service.

C. Police Receipt of Information

Information contained in reports is confidential and may not be revealed except as the law expressly authorizes. The police are not expressly named as parties who may receive information contained in reports of child abuse and maltreatment. If police escort or intervention is requested by child protective services in the type of situation noted above in Section B, the child protective worker may share information with the police which will aid in providing immediate emergency assistance to the child, for example, nature and extent of injuries, family composition. Otherwise information contained in a report of child abuse or maltreatment may not be shared with the police unless:

- Police are investigating the case as designated agents of the District Attorney's office and the case has been referred first to the District Attorney because of the death of a child or a prior written request for reports has been made by the District Attorney; or
- the police have a child before them and must determine whether to take the child into protective custody; or
- the subject of the report authorizes police access; or
- pursuant to a court order.

The above limitations on sharing information with the police apply to sexual abuse cases. The New York State Department of Social Services has provided training to local districts based on a "0-3 day intervention" model * for handling child sexual abuse cases for child protective and law enforcement professionals. This model is predicated on having the District Attorney designate police officers as the District Attorney's agents to conduct a criminal investigation. Three-way communication among child protective services, the District Attorney's office and the police agency is required. Within the context of such a three-way communication, the training prepares child protective workers and police officers as sexual abuse specialists who respect and understand the role of one another and work cooperatively to protect the child.

D. Taking Protective Custody

Pursuant to the requirements and provisions of the Family Court Act, a peace officer, a law enforcement official, or an agent of a duly incorporated society for the prevention of cruelty to children or a designated employee of a city or county department of social services may take a child into protective custody. Any such person or any physician treating a child may keep a child in his custody without the consent of a parent or guardian whether or not additional medical treatment is required if the circumstances or condition of the child are such that continuing in his place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child's care presents an imminent danger to the child's life or health (Section 417.1, Social Services Law).

* This training program was developed by the Department and given statewide during 1982. It is now part of the NYS Child Protective Services Training Institute (CPSTI) of Cornell University. CPSTI gave the course in 1983 and will continue to do so in subsequent years. If local districts are interested in this training, they should check the schedule of course offerings in the annual program booklet for the New York State Child Protective Services Training Institute.

Information in the possession of the state or local department of social services shall be available to a person authorized to place a child in protective custody when such person has before him a child whom he reasonably suspects may be abused or maltreated and such person requires the information to determine whether to place the child in protective custody (Section 422.4 (b), Social Services Law).

If the child is taken into protective custody by any person authorized to do so, the child protective service worker is required to commence a child protective proceeding in the family court at the next regular week day session of the appropriate family court or recommend to the court at that time that the child be returned to his parents or guardian. (Section 417.2, Social Services Law). The child protective service worker is required to file a petition in Family Court on the next regular workday session of Family Court. Usually this implies 24 hours, but, if the child is taken into protective custody on a Friday night, the hold is authorized until Monday morning.

E. Information Contained in Reports

Information contained in reports of child abuse or maltreatment is outlined in Section 415 of the Social Services Law. When the District Attorney or police require information in reports as defined above in Sections A, B, C and D, the following may be shared:

".....the names and addresses of the child and his parents or other person responsible for his care, if known; the child's age, sex, and race; the nature and extent of the child's injuries, abuse or maltreatment, including any evidence of prior injuries, abuse or maltreatment to the child or his siblings; the name of the person or persons responsible for causing the injury, abuse or maltreatment, if known, family composition; the source of the report; the person making the report and where he can be reached; the actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner; and any other information which the commissioner may, by regulation, require, or the person making the report believes might be helpful in the furtherance of the purposes of this title." (Section 415, Social Services Law).

The District Attorney is also entitled to information in follow-up reports (DSS 2222 and 2223) under the circumstances defined above in Section A. Any other information in child protective records is only available to the police or District Attorney pursuant to court order, at the request of a grand jury or with authorization of the subject of the report. These restrictions on access to information are intended to preserve the confidentiality of information concerning the family and child reported to the New York State Child Abuse and Maltreatment Register.

F. CPS Access to Law Enforcement Information

Under Section 425 of Social Services Law, child protective services may seek access to information in records of the police and District Attorney. The law

provides that the commissioner ".....may request and shall receive from such departments, boards, bureaus, or other agencies of the state, or any of its political subdivisions or any duly authorized agency, or any other agency providing services under the local child protective services plan such assistance and data as will enable the department and local child protective services to fulfill their responsibilities properly." (Section 425, Social Services Law)

When the police report a suspected case of child abuse and maltreatment, they must provide information for the DSS 2221 reporting form for oral reports, and complete the DSS-2221A reporting form required for written reports. If the reporting forms are incomplete, the child protective service should contact the police for information to complete these forms. The child protective service should also contact the police when they are the source of the report to check whether additional information is available that may be useful to the child protective service in initiating its investigation.

Collateral contacts (including letters, telephone calls and personal interviews) with the police should be made to clarify and supplement information contained in the report and provide the caseworker with a better understanding of the child's condition or the family functioning. This information should be gathered throughout the investigation as circumstances require.

If criminal prosecution is initiated, child protective services should be informed of the significant decisions in the prosecution of the case (See Appendix - Steps in the Criminal Justice Process).

G. Social Worker/Client Privilege

The social worker-client privilege does not apply to Article 10 proceedings in Family Court (Section 1046 (a) (vii), Family Court Act). Child protective workers may be called as witnesses in child protective proceedings in Family Court to provide testimony that would otherwise be considered privileged information.

The social worker-client privilege is stated in Section 4508 of the Civil Practice Law and Rules as follows:

A person duly registered as a certified social worker under the provisions of article one hundred fifty-four of the education law shall not be required to disclose a communication made by his client to him, or his advice given thereon, in the course of his professional employment, nor shall any clerk, stenographer or other person working for the same employer as the certified social worker be allowed to disclose any such communication or advice given thereon; except

1. that a certified social worker may disclose such information as the client may authorize;
2. that a certified social worker shall not be required to treat as confidential a communication by a client which reveals the contemplation of a crime or harmful act;

3. where the client is a child under the age of sixteen and the information acquired by the certified social worker indicates that the client has been the victim or subject of a crime, the certified social worker may be required to testify fully in relation thereto upon any examination, trial or other proceeding in which the commission of such crime is a subject of inquiry;
4. where the client waives the privilege by bringing charges against the certified social worker pursuant to section seventy-seven hundred seven of the education law where such charges involve confidential communication between the client and certified social worker.

H. Civil and Criminal Investigations

Police officers conduct criminal investigations. Child protective service workers conduct civil investigations. The child protective service investigation cannot be delegated to the police. As considered above, there are circumstances where police involvement is often necessary; however, requirements contained in Sections 422.4 and 424.4 of the Social Services Law concerning the sharing of information control.

Child protective service staff should cooperate with the police officers when they are conducting a criminal investigation as agents of the District Attorney. As noted before and within the statutory restrictions, cooperation may take the form of providing the police with information contained in reports or of working as a team on the investigation and conducting joint interviews with family members.

There are several benefits to the team approach combining child protection and law enforcement. Conducting a joint interview with the child victim helps reduce trauma to the child by eliminating the need for the child to repeat details of the alleged abuse and maltreatment to the worker and police officer on separate occasions. Where authorized, informing each other of actions taken during the initial stages of their respective civil and criminal investigations, the worker and police officer can make decisions in concert that provide protection for the child. Cooperation with the prosecutor can also assist the child protective service in carrying out its intervention: a criminal court may issue an order of protection, an order for treatment of the offender as an alternative to a jail sentence, or as a condition of probation. The Family Court may issue an order of protection and an order of supervision including a requirement for treatment of the child and other family members. A team creates a coordinated approach to intervention in the family, and facilitates accomplishment of both the child protective and law enforcement tasks.

If questions arise over the team approach, case decisions, and the respective duties of child protective workers and law enforcement officers, local districts should consult with their County Attorney or the Office of Legal Affairs at the New York State Department of Social Services.

I. CPS Responsibility Irrespective of Law Enforcement Involvement

Although the local child protective service may cooperate with law enforcement on the investigation of child abuse and maltreatment cases, the CPS role exists irrespective of action taken by the District Attorney and police. Sections 422 and 424 of Social Services Law outline the duties of the local child protective services. Whether or not the District Attorney and police become involved in a case and conduct a criminal investigation, CPS duties must be carried out. Of paramount concern to child protective services is protection of the child. In order to avoid possible conflict between law enforcement and child protection, communication is necessary. It is important that law enforcement and child protective services both know that each other is involved on the case, what their respective duties are and when significant decisions are made, for example, decision to dismiss criminal charges or close the case.

J. Expungement

If the child protective service determines that there is no credible evidence of the alleged abuse or maltreatment; the report shall be determined to be unfounded and expunged from the NYS Central Register, the local child protective service register, and all identifying information in the case record shall be expunged. The purpose is to protect innocent parties from having a record of child abuse or maltreatment for which there is not some credible evidence to sustain.

The New York State Child Abuse and Maltreatment Register shall serve a written notice of any expungement or amendment of any record made pursuant to the provisions of Article 6, Title 6 of the Social Services Law. The local child protective service, upon receipt of such notice, shall take the appropriate similar action in regard to the local child abuse and maltreatment register and inform, **for the same purpose**, the society for the prevention of cruelty to children or other duly authorized child protective agency or the District Attorney if the District Attorney has received a report pursuant to a fatality or written request for such reports (Emphasis added, Section 422.9, Social Services Law). In other words, the local child protective service must tell the society for the prevention of cruelty to children and the District Attorney to expunge their records on an unfounded case.

IV. REQUIRED ACTION

Each local district shall have a written procedure which mandates:

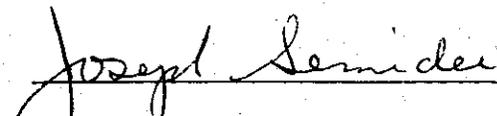
- o Procedures for notification and communication with the police and District Attorney on child abuse and maltreatment matters as defined in Part III, Section A through J, of this Administrative Directive.
- o Procedures for notification of the County Attorney or local Social Services District Attorney of any case which has been referred to the police or District Attorney.
- o Procedures for notification of the County Attorney or local Social Service District Attorney if the child protective service or worker is subpoenaed or called before a grand jury to testify to a matter arising in the scope of employment.
- o Procedures to receive information from the police and District Attorney concerning the status of child abuse and maltreatment cases which have been referred by child protective services.

Each local district shall keep a written list of: the name, office address and office telephone numbers of representatives of the child protective service, District Attorney's office and police agencies who will serve as liaisons to facilitate working relationships and cooperation on child abuse and maltreatment cases.

Each local district shall keep on file copies of these written procedures and list of representatives for review by local district staff and by regional staff of the New York State Department of Social Services.

V. EFFECTIVE DATE

This ADM will take effect November 1, 1983.



Joseph Semidei
Deputy Commissioner
Division of Family and Children
Services

Attachment



1. The first part of the document is a list of names and addresses of the members of the committee.

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APPENDIX

A. Types of Crimes

A criminal offense is conduct, by act or omission, punishable by imprisonment or fine as provided by state, local or administrative law. (Penal Law, Section 10.00) The basic categories of offenses are:

1. Petty offenses mean traffic infractions and violations. A violation is an offense other than a traffic infraction, for which imprisonment beyond 15 days cannot be imposed. (Criminal Procedure Law, Section 1.20 (39))
2. Crimes are divided into misdemeanors and felonies. Misdemeanors are offenses, other than a traffic infraction, for which imprisonment may be imposed in excess of 15 days but not over one year. Felonies are offenses in which imprisonment may exceed one year. (Penal Law, Section 10.00)

B. Specific Crimes Relating to Child Abuse and Maltreatment Cases

A district attorney may prosecute child abuse and maltreatment cases under one or more of the statutes in the New York State Penal Law. The following list, while not inclusive, contains acts that legally constitute crimes against children.

1. Assault and reckless endangerment - Penal Law, Article 120
2. Homicide, manslaughter and murder - Penal Law, Article 125
3. Sex offenses - Penal Law, Article 130
4. Incest - Penal Law, Section 255.25
5. Abandonment and endangering the welfare of a child - Penal Law, Article 260

C. Steps in the Criminal Justice Process*

The decision to institute prosecution is the sole responsibility of the District Attorney. Among the factors which the District Attorney considers are: the strength of the evidence, the seriousness of the harm caused by the offense, and the adequacy and availability of alternative remedies. The following is a brief overview of steps in the criminal justice process.

*Further information about material contained in this Appendix may be found in two following books: **Law Everyone Should Know**, Alan M. Petrillo, Ed., Charles Evans Hughes Press, Albany, New York (copyright 1982 by the New York Bar Foundation); and **The Courts of New York** by Alan M. Petrillo (1981) which is available from the New York State Bar Association, Public Relations Department, One Elk Street, Albany, New York, 12207. The book is \$3.00 plus sales tax for each copy, and \$2.50 each for ten or more prepaid.

1. **Pre Arrest** - If an officer observes a crime being committed in his/her presence, an arrest may be made immediately. In cases where there is reasonable suspicion that a crime is being committed or about to be committed, police officers conduct pre-arrest investigations. The scope of this investigation varies. The officer may ask the suspect his/her name, address, and or explanation of his/her conduct (without taking him/her into custody), examine the scene of the crime, or question other witnesses. Once sufficient information exists to show that a crime has been committed and there is reasonable cause to believe that a particular person is responsible for it, an arrest is made.
2. **Arrest** - Taking of a suspect into custody for the purpose of charging him/her with a crime. This means being detained by the police officer and being taken to the police station or other holding facility. Arrests may be made with or without a warrant, depending on the circumstances.

When an individual is taken into custody or deprived of his/her freedom in any significant way, the suspect must be informed of his/her legal rights, prior to questioning on any matters.

3. **Police Station** - Suspect is "booked," i.e., notation of the arrest is made in the police "blotter" or record, identifying information is recorded, fingerprints and photographs are taken for central police, state and national records. If the accused is arrested on a minor offense, an appearance ticket may be issued which releases the accused on condition he or she appear before a magistrate at a specified date. A magistrate is a judge or justice of a court.
4. **Arraignment** - Law enforcement officials are required to bring an arrested person before the court without delay. At arraignment, formal charges are made, counsel is retained or assigned, bail is set.
5. **Preliminary Hearing** - Persons charged with a felony by use of an accusatory instrument in a local criminal court have the right to request a preliminary hearing. This hearing determines whether there is reasonable cause to believe a crime was committed, and, if so, whether there is reasonable cause to believe the accused committed it. If reasonable cause is substantiated, the accused is held for action of the Grand Jury; if there is reasonable cause to believe that the accused committed an offense other than a felony, the court may reduce the charges and handle accordingly.

Upon application of a defendant against whom a felony complaint has been filed with a local criminal court, and who, since the time of his arrest or subsequent thereto, has been held in custody pending disposition of such felony complaint, and who has been confined in such custody for a period of more than one hundred-twenty hours or, in the event that a Saturday, Sunday or legal holiday occurs during such custody, one hundred forty-four 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:
 - (a) The district attorney files with the court a written certification that an indictment has been voted; or
 - (b) 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. (Section 180.80, Criminal Procedure Law)
6. **Accusatory Instruments** - Every prosecution must begin with the filing of an accusatory instrument either an information or an indictment. The accusatory instrument details the particular occurrence or transaction which constitutes the offense or offenses with which the accused is charged. An information is an accusatory instrument which serves as the basis for the commencement of prosecution for one or more non-felony offenses. An indictment is issued by a Grand Jury.
7. **Grand Jury** - A grand jury is a body consisting of not less than 16 nor more than 23 persons, impanelled by a superior court and constituting a part of such court, the functions of which are to hear and examine evidence concerning misconduct, nonfeasance and neglect in public office, whether criminal or otherwise, and to take action with respect to such evidence by indictment, directing the district attorney to file a prosecutor's information or a request for removal to family court, or dismiss the charge, or submit a grand jury report. Grand jury proceedings are secret and closed to the public. Any person believed to possess relevant information or knowledge may be called as a grand jury witness, and must give any evidence legally requested of him or her. Witnesses who give evidence receive immunity unless it is waived effectively, evidence is volunteered or consists only of books, papers, records or other physical evidence. (Article 190, Criminal Procedure Law)
8. **Pre-Trial Motions** - Before trial, motions may be made which attack the sufficiency of the charges, request information or ask the Court to suppress illegally obtained evidence.
9. **Trial and Judgment** - In New York State, trial of an indictment in superior court requires 12 jurors; a jury trial of an information in a local criminal court requires 6 jurors. The defendant is presumed innocent until proven guilty beyond a reasonable doubt. The jury renders a verdict of acquittal (not guilty) or conviction. The Court must pronounce sentence in

every case where a conviction is entered without unreasonable delay. Prior to sentencing, the probation department may conduct an investigation. Depending on the severity of the offense, the court may decide that the defendant should spend a minimum or specific time in a correctional facility, may split the defendant's time between jail and probation, impose a fine, or through probation provide an alternative to jail. Conditional discharges are similar to probation but the individual does not regularly report to a probation officer. Unconditional discharge acknowledges a crime has been committed but punishment or supervision is not imposed.

10. **Youthful Offenders** - A person charged as a juvenile offender or who was at least 16 but not older than 19 at the time of the crime may be adjudicated as a youthful offender if eligible. As such the individual may be penalized but there is no criminal conviction or record.
11. **Appeals** - Any person convicted of a crime has the right to file a notice of appeal, provided that she/he does so, within 30 days after the order, sentence or judgment being appealed is served.

Outline of New York State Court System

