

5.3: PART 2- WHAT IS THE PATH OF A NEW YORK CRIMINAL CASE FROM ARREST TO APPEAL?

1. FILING OF THE ACCUSATORY INSTRUMENT:

The filing of an accusatory instrument is the official beginning of the criminal proceeding. It can occur before or after an arrest. If no accusatory instrument is filed, the court does not have jurisdiction over the case. It is this instrument which formally accuses the suspect of a crime. These accusatory instruments are called:

- An information; or
- A simplified information; or
- A prosecutor's information; or
- A misdemeanor complaint; or
- A felony complaint; or
- A felony indictment.

2. ARREST

The terms "custody" and "arrest" are often used interchangeably. A person is under arrest when his freedom of movement is materially restricted. In other words, when a person legitimately feels they are not free to just leave the scene. The circumstances surrounding the stop of the suspect, as well as the actions of the police officers, dictate whether or not the suspect is under arrest by the police.

Frequently a suspect is arrested by the police before the accusatory instrument is filed. The arrest can occur either before such filing (assuming that probable cause exists) or after the filing. Commonly, if the accusatory instrument is filed first, the police request the local criminal court to issue a warrant for the suspect's arrest. It is the filing of the accusatory instrument, not the arrest that officially commences the criminal proceeding. For many non-violent crimes, no arrest actually occurs. The Court where the accusatory instrument is filed issues a summons to appear, and this summons is sent to the defendant to advise him of the date he is to appear in court.

3 . BOOKING:

Once the suspect is arrested and/or appears in court, he will be "booked." This includes fingerprinting and being photographed, which is often referred to as a mug shot. This data is then sent to the New York State Division of Criminal Justice Services' computerized criminal record index where a fingerprint report, (sometimes referred to as a rap sheet) is compiled. This report will show the accused person's prior criminal record, if one exists.

4. ARRAIGNMENT (CPL §§ 170.10, 180.10)

The arraignment is the first appearance of the defendant before a judge. It will occur in the local criminal court which has geographic jurisdiction over the crime, and therefore the defendant. At this arraignment, the defendant will:

Be told what crime he/she is charged with.

Perhaps be given the opportunity to post bail.

Will be advised that he/she has the right to counsel. If it is determined the defendant cannot afford counsel, one may be appointed at this time.

Will be informed by the judge of their basic rights.

If charged with a felony, the defendant is informed of his/her right to a preliminary hearing or a grand jury indictment. If the defendant is being held in custody, the hearing must be held within 120-144 hours of arrest depending on whether the time period includes a weekend.

a) FELONY COMPLAINT:

While the defendant is initially arraigned in a local court, regardless of seriousness of the charge, (referred to as an inferior court), the local court does not have the jurisdiction to try felony cases. Therefore, if the defendant is being charged with a felony, the prosecution will have to obtain an indictment from a grand jury within six months for the case to proceed. If the

grand jury indicts the defendant, the case will be moved to a superior court which outside of NYC is a county or supreme court.

b) PRELIMINARY HEARING: (For felony cases only, CPL § 180.60.)

The purpose of a preliminary hearing is to determine whether the evidence against the defendant is sufficient to hold the defendant before the grand jury can hear the case. If the judge presiding over the preliminary hearing finds there is reasonable/probable cause to believe that the defendant committed a felony, the judge can decide whether to incarcerate the defendant pending the grand jury, or set bail for the defendant's release. The preliminary hearing is held in the local criminal court in which the suspect is arraigned. At this hearing, the District Attorney must establish reasonable grounds to believe that a felony has been committed and that the accused committed it. There is no jury present for a preliminary hearing. The D.A. need not establish proof beyond a reasonable doubt.

c) PROBABLE CAUSE, REASONABLE CAUSE, AND REASONABLE SUSPICION:

In NYS, probable cause and reasonable cause mean the same thing. The Court of Appeals has defined probable cause as being "... at least more probable than not that a crime has taken place and that the one arrested is its perpetrator, for conduct equally compatible with guilt or innocence will not suffice" *People v. Carrasquillo*, 54 NY2d 248, 254 (1981). CPL Section 70.10(2) defines reasonable cause as follows: "'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. Except as otherwise provided in this chapter, such apparently reliable evidence may include or consist of hearsay. Reasonable suspicion is a lower standard. It only requires a strong suspicion, even if based on less information of a less-reliable nature, that a person is involved in criminal activity or may be armed and dangerous.

d) GRAND JURY

CPL Section 190.05 requires that the grand jury consists of a minimum of 16 and a maximum of 23 jurors. It also requires that the grand jury proceedings are to be conducted in secret. Besides the grand jurors themselves, the Assistant District Attorney, the witness, and a court stenographer are the only ones generally present. A grand jury may vote for a "True Bill of Indictment," which means that felony charges in an indictment will be brought against the accused, or the grand jury may return a "No Bill," which means that insufficient evidence has been presented to bring charges against the accused. If the grand jury finds that there is insufficient evidence to support a felony charge, but sufficient evidence has been presented to support a misdemeanor charge, the grand jury will then direct the District Attorney to file a "Prosecutor's Information" back in local criminal court pursuant to CPL Section 190.70.

e) ARRAIGNMENT IN SUPERIOR COURT (CPL § 210.15)

If the grand jury issues a true bill of indictment, the defendant must then be arraigned on the new accusatory instrument, which is now the indictment. This post indictment arraignment will now occur in a superior court, which outside of NYC is a county court or supreme court.

At this post indictment arraignment, the defendant is now advised of the charges contained in the indictment. They may be the same or different than those charged in the original felony complaint. The defendant is advised of his/her right to counsel. The issue of bail will also be revisited if necessary.

5. BAIL:

Bail is the amount of money or security that a judge places as a condition of release of a defendant after arraignment. It is set to guarantee of the defendant's appearance in court for a future date. Reasonable bail is a requirement of both the Eighth Amendment of the United States Constitution and Article I Section 5 of the New York Constitution. Defendants are presumed innocent until proven guilty. When setting bail, the judge may consider the defendant's residence, employment, education, past criminal record, previous compliance with court orders, previous failure to appear in court when required to do so, the seriousness of the crime, and possible sentence if convicted. Federal courts can deny bail if the defendant is considered a danger to society. This factor has been prohibited for consideration in NYS under the Criminal Procedure law since 1971.

Starting January 1, 2020, for most misdemeanors and nonviolent felonies, cash bail is no longer permitted to be imposed. Judges must release individuals charged with those crimes with no cash bail. Judges can release these individuals either on their own

recognizance (ROR) or with release conditions designed to ensure that the individual returns to court, such as pretrial supervision and text message reminders for court dates.

For those charged with the most serious crimes, including almost all violent felonies and certain nonviolent felonies, such as sex offenses and witness tampering, judges retain the option to set cash bail.

6. DISCOVERY: (As of January 1, 2020, CPL §245 replaces CPL §240)

Pursuant to the Bill of Rights, a defendant has a right to know of all the charges and evidence that will be presented at their criminal trial against them, so they can formulate a proper defense. Starting in 2020, NYS enacted legislation dramatically reforming the criminal discovery process. Discover is now automatic, and not by written “demands” or discovery motions. The new statute requires :”open file” discovery from the District Attorney. District Attorneys must disclose “*all items and information that relate to the subject matter of the case*” that are in the District Attorney’s or law enforcement’s possession. The law states that when interpreting the District Attorney’s discovery obligations, there is a presumption of openness and in favor of disclosure.

While there are some exceptions, generally District Attorneys must now supply the defense discovery materials within 15 days of the defendant’s arraignment on any accusatory instrument. The 15 day period can be extended an additional 30 calendar days if discoverable materials are exceptionally voluminous, or, despite diligent and good faith efforts, they are not in the District Attorney’s actual possession. If the court grants the District Attorney this extension, full discovery will be required 45 days after the defendants first appearance. The law also includes reciprocal discovery by the defense to the District Attorney 30 calendar days after service of the District Attorney’s “certificate of compliance” is issued by the District Attorney. The certificate of compliance is filed with the court and served on the defense by the District Attorney upon the completion their discovery obligations.

7. FORTY-FIVE DAY PRE-TRIAL MOTION PERIOD (CPL § 255.20)

After arraignment, the defense has forty-five days to bring what are called pre-trial motions before the court. These motions are often made to obtain clarification on factual issues of the case, have evidence suppressed, or even have the charges reduced or dismissed.

8 . PRETRIAL HEARINGS :

Once the defendant receives various discovery items from the prosecution, the defendant may believe that certain evidence is missing, or was improperly obtained or tested. The defendant may believe that the police did not follow proper procedures, or that the evidence being used against them is tainted or false. In these types of situations and many others, the defendant will request a pre-trial hearing before the court, with no jury present, to discern what should be done with this evidence, or testimony, or charges against the defendant. These various pre-trial hearings are often named after previous cases where this legal issue was decided and created or clarified the law.

The following are just a few of the common pre-trial hearings.

WadeHearing – A Wade hearing is a pretrial hearing to contest the validity of a prior identification procedure involving the accused such as an illegal line-up or photo array.

Huntley Hearing – A Huntley hearing is a pretrial hearing to determine whether a statement, confession, or admission made by a defendant to the police should be suppressed if such statement was taken in violation of the defendant’s constitutional rights.

Mapp Hearing – A Mapp hearing is a pretrial hearing to determine the admissibility of physical evidence seized by the government.

Dunaway Hearing – A Dunaway hearing is always held in combination with a Mapp, Huntley, or Wade hearing. It is a hearing where the defendant is seeking to suppress evidence obtained by the police that are the fruit of an unlawful arrest without probable cause.

8. JURY TRIAL :

a. JURY SELECTION:

Jury Selection is also known as Voir Dire. Jury selection begins with a panel of jurors randomly selected by the Commissioner of Jurors. The Commissioner of Jurors provides a standard background questionnaire to be completed by all prospective jurors and used by counsel as a tool to facilitate voir dire.

The following are the qualifications necessary to serve as a juror in NYS as set out in the Judiciary Law.

- The person must be a citizen of the United States, and a resident of the county.
- The person must be at least eighteen years of age.
- The person cannot have a felony record.
- The person is able to understand and communicate in the English language.

Pursuant the Judiciary Law, Article 16, § 519, employers cannot prohibit you from serving as a juror. They may or may not have to pay you depending on the number of employees of the company.

Challenges for cause are unlimited if the attorney can demonstrate a valid reason for such action. Some examples would be if a juror is related to a party or key witness, or if the juror exhibits some bias or prejudice which makes it impossible for them to be fair and impartial. Peremptory challenges are limited by statute because they do not require any specific reason for dismissing a juror from the panel. The more serious crimes have more peremptory challenges available. For example, class A felonies have twenty peremptory challenges, plus two for each alternative juror. Class B and C felonies only have fifteen and all other felonies have ten. As already mentioned, attorneys do not need a reason when using their peremptory challenges, except they cannot exclude a juror solely because of their race or gender. See *Batson v Kentucky*, 476 U.S. 79 (1986.) and *J.E.B. v. Alabama ex rel. T. B.*, 511 U.S. 127 (1994).

b. PRELIMINARY INSTRUCTIONS: (CPL § 260.30 (2))

Judges are required to give preliminary instructions to the jury. The judge will advise the jury of what is considered appropriate and inappropriate behavior during the trial. The judge will inform the jurors that they are required to keep open minds. That they must not deliberate until they have been given the law by the court at the end of the trial. They will be instructed that they are not to discuss the case with anyone until they begin their deliberations with their fellow jurors. They will be told that they are not to visit the scene of the crime, look for information about the case on the internet, or talk with the attorneys, the defendant, or any witnesses.

c. OPENING STATEMENTS: (CPL § 260.30 (3))

The District Attorney is required by New York law to make an opening statement to the jury and go first. The purpose is to give the outline of the case to the jury.

The defense attorney is not required to make an opening statement under the law. However, it is rare that they do not. Since the criminal defendant has no burden of proof, the defense attorneys opening statement may merely ask the jury to maintain open minds and not prejudge the case before all the evidence and testimony is presented. Defense attorneys will often take the opportunity during the opening statement to remind the jurors that the defense has no burden of proof and that the jurors agreed during voir dire questioning that they would be unbiased and fair. They may add something to the effect that they are sure at the conclusion of the trial that the jurors, based on everything presented at the trial, will find the defendant not guilty.

d. PRESENTATION OF EVIDENCE: (CPL § 260.30 (5))

i) Prosecution

Since the District Attorney has the burden of proof, they are required by law to present witnesses and evidence that proves all the elements of the crime(s) charged. This means the District Attorney is solely responsible for going forward with evidence.

ii) Defense

Usually at this point, the defense will make a motion to the court to have the case dismissed on the basis that the district attorney did not prove its case. It is not usual that that judges dismiss cases on these motions, but it does happen if the judge feels the district attorney did not present enough evidence to prove the case.

Since the defense does not have to prove anything, they are not required to put forth any evidence or proof unless they are claiming a) an alibi or b) pleading an affirmative defense. In those two instances, they do have the burden of proving

those, but generally only by a preponderance of the evidence. Otherwise, they can say and do nothing during the course of the entire trial.

However, what typically happens is that while they do not try to prove anything, they will still make efforts to persuade the jury by making effective use of cross-examination of the People's witnesses, most often to try to demonstrate that the People have not met their burden to prove all elements beyond a reasonable doubt. If the defendant does decide to put proof before the jury, the defendant can choose to take the stand (although the 5th Amendment provides that he cannot be required to do so), present his own witnesses and provide his own evidence.

e . REBUTTAL:

After the defense case is completed, the district attorney may then seek to offer evidence to refute what the defense has presented. This is called rebuttal. It is a response to the defense's evidence. After the district attorney is done with presenting its rebuttal evidence, the defense may then seek to offer evidence to rebut the district attorneys' rebuttal.

f.SUMMATION: (CPL § 260.30(8)(9))

At the end of a trial, after all the presentation of evidence and examination of witnesses by both the prosecution and the defense is done, the parties will tell the court that they rest. In other words, they are done presenting their side of the case. The next step in the process is called summation. This is where both attorneys get to summarize the evidence and their interpretation of the case to the jury in an attempt to persuade them. The defense counsel goes first, and the District Attorney goes last. Their summations are not evidence, and they are not allowed to summarize about or add information that was not presented as evidence or testimony during the trial. Neither the defense nor the prosecution is required to give a summation. However, it would be rare that they would not in a jury trial.

• JURY CHARGE:

After summations are completed, the judge delivers instructions to the jury about what law to apply to the evidence and testimony presented during the trial. This is called charging the jury or a jury charge. Judges are provided model jury instructions by the New York Unified Court System for all NYS penal law crimes. These model jury instructions will set out definitions of terms like what is reasonable doubt or what is a weapon. These model jury instructions also set out the required elements of each criminal charge that the district attorney was required to prove. Judges will typically read these instructions verbatim to the jury. The use of model jury instructions by judges throughout the state creates uniformity and fairness in the criminal justice court system. A charge to a jury in Albany will therefore be the same charge given to a jury in Brooklyn. In law, words matter so even a slight deviation in defining certain legal terms between judges can have an impact on a jury verdict.

• DELIBERATION:

After the jury has been charged by the judge, they begin what is called deliberations. This is where the jury will now review and evaluate the evidence presented to them during the trial, and determine whether the district attorney has proven the guilt of the defendant based on this evidence and the law to be applied beyond a reasonable doubt.

Typically, these deliberations take place in a private jury room. Deliberations can go on as long as required to reach a verdict. Juries are seldom sequestered. Jurors typically go home at the end of each day of deliberation and return the next day.

• VERDICT:

Criminal cases require a unanimous vote by the jury. If even one juror holds out and will not vote with the other jurors either to a guilty verdict or not guilty verdict, the jury is then called a "hung jury." At this point the judge may declare a mistrial. The jury is then released. The district attorney will then have to decide on whether to proceed with a retrial or not proceed any further with these charges.

If the defendant is found not guilty by a unanimous jury, the defendant will be released immediately. The defendant cannot be charged again for these same crimes. A verdict of not guilty is not the same as being innocent. While the defendant may be innocent, the jury verdict of not guilty is declaring that the district attorney did not prove its case beyond a reasonable doubt.

If the defendant is found guilty of a felony by a unanimous jury, the case will be adjourned for sentencing. The judge will set a date for pre-sentence proceedings and sentencing. The crime the defendant is now guilty of will determine whether the defendant will be remanded immediately into custody at the local jail or be released pending the sentencing date. Under certain

circumstances, where a pre-sentence investigation is not required, the judge may sentence the defendant immediately after the verdict.

SUMMARY OF A JURY TRIAL PROCEEDING PURSUANT TO CPL § 260.30:

- **Jury Selection:** The jury must be selected and sworn.
- **Preliminary Instructions:** The court must deliver preliminary instructions to the jury.
- **Opening Statements:** The people must deliver an opening address to the jury.
- **Opening Statements:** The defendant may deliver an opening address to the jury.
- **Presentation of Evidence:** The people must offer evidence in support of the indictment.
- **Presentation of Evidence:** The defendant may offer evidence in his defense.
- **Rebuttal:** The people may offer evidence in rebuttal of the defense evidence
- **Rebuttal:** The defendant may then offer evidence in rebuttal of the people's rebuttal evidence.
- **Summation:** At the conclusion of the evidence, the defendant may deliver a summation to the jury.
- **Summation:** The people may then deliver a summation to the jury.
- **Jury Charge:** The court must then deliver a charge to the jury.
- **Deliberation:** The jury must then retire to deliberate.
- **Verdict:** The jury, if possible, may render a verdict.

9. POST-TRIAL MOTIONS AND PROCEEDINGS:

After the jury verdict, if the defendant is found guilty, the defense will typically make a motion to have the verdict set aside by the judge. If the judge does set aside the verdict, some or all of the charges against the defendant can be dismissed or a new trial ordered.

If the defendant is found guilty and has been convicted of a previous felony in the last ten years, the court will initiate proceedings to determine whether the defendant is a predicate or violent predicate felony offender. A finding that the defendant is a predicate or violent predicate felony offender may extend the amount of incarceration time of the defendant at sentencing.

10. SENTENCING :

Judges have several options for the sentencing of a defendant after conviction. The following are some common sentencing dispositions. They are often used in combination. For example, a defendant may be fined and sentenced to probation with a conditional discharge. The New York Penal Law allows for ten possible sentencing dispositions of a defendant.

- **Unconditional Discharge:** The judge sentences the defendant and the defendant's release — has no conditions attached to it.
- **Conditional Discharge:** A defendant is sentenced and released with certain conditions attached to the release. If the conditions are not met, the defendant can be re-sentenced.
- **Fine:** A specific amount to be paid by the defendant. The maximum amount to be paid is usually set by statute. In some circumstances, the defendant is given the option of paying a fine or spending a certain amount of time incarcerated if they cannot or choose to not pay the fine. NOTE: A Fine is a state-imposed fee and is NOT designed to assist the victim. See below for Restitution which seeks to help victims recover for expenses/injuries.
- **Conditional Discharge plus a Fine:** The defendant is sentenced to pay a fine in conjunction with the conditional discharge.
- **Probation:** Not to be confused with parole, (which is the early release from prison after incarceration) probation is generally an alternative to incarceration. A defendant is sentenced to probation for a certain length of time in which they will be under the supervision of the Department of Probation. Probation can be used in combination with other sentencing options such as a fine and a conditional discharge.
- **A Fine plus Probation:** A defendant is sentenced to pay a fine in conjunction with probation.
- **Incarceration:** The defendant is sentenced to a certain amount of time in either jail or prison by the judge. The amount of time is set by statute.
- **Incarceration plus a Fine:** The defendant is sentenced to a certain amount of imprisonment time in conjunction with paying a fine.
- **Incarceration plus Probation:** A short sentence of incarceration is combined with probation. The defendant is sentenced to six months or less for a felony, or sixty days or less for a misdemeanor, and then released to probation. This is called a split sentence.
- **Incarceration plus a Conditional Discharge:** A short sentence of sixty days or less of imprisonment in conjunction with a conditional discharge.

Victim Impact Statement: NYS law allows victims or their families to address the court regarding the impact that the crime committed by the defendant has on them. These impact statements can be in writing and submitted or made in open court, both before the judge sentences the defendant.

Restitution: The law now allows a judge to order direct restitution to be paid to the victim by the defendant in all sentencing dispositions. Restitution represents the victim's actual loss resulting from the crime such as medical expenses and damages to the victim's property.

Death Penalty: New York does not have the death penalty as a sentencing option. This is because the NY Court of Appeals has ruled the NY death penalty statute unconstitutional. (*People v. LaValle*, 3 N.Y.3d 88 (2004))

Determinate Sentence: Based on the crime, a defendant is convicted of a judge may impose a determinate sentence. This means the defendant is sentenced for a fixed length of time such as seven years. It may include post-release supervision by a parole officer.

Indeterminate Sentence: Based on the crime, the defendant is convicted of a judge may impose an indeterminate sentence. This means the defendant is sentenced to a minimum maximum sentence like seven to ten years. The behavior of the defendant while imprisoned will determine how much time the defendant actually serves.

Concurrent Sentence: When a person is convicted of more than one offense, a judge may order the sentences to run concurrently. This means the sentences run simultaneously.

Consecutive Sentence: When a person is convicted of more than one offense, a judge may order the sentences run consecutively. This means the sentences run one after the other. Judges may order a combination of concurrent and consecutive sentences.

Intermittent Sentencing: Pursuant to Penal Law Article 85, a judge may issue a sentence of intermittent imprisonment, which is a revocable sentence of imprisonment served on certain days or during certain periods of days, or both, specified by the court as part of the sentence. The court may impose an intermittent imprisonment sentence in any case where:

- (a) The court is imposing sentence, upon a person other than a second or persistent felony offender, for a class D or class E felony or for any offense that is not a felony; and
- (b) The court is not imposing any other sentence of imprisonment upon the defendant at the same time; and
- (c) The defendant is not under any other sentence of imprisonment with a term in excess of fifteen days imposed by any other court.

Non-Predicate Felony Offender: This means a person has not been convicted of another felony in the previous ten years. The minimum sentence may be one-third of the maximum.

Predicate Felony Offender: This means a person has been convicted of another non-violent felony besides the current felony in the previous ten years. The minimum sentence must be at least one-half of the maximum.

Violent Predicate Felony Offender: This means a person has been convicted of another felony in the previous ten years, and that both convictions were for violent felonies. Violent felonies are specifically defined in the Penal Law. The minimum sentence must be at least one-half the maximum. The minimum sentence for a violent predicate felon will be longer than that of a predicate felon, who in turn, will have longer minimum sentence than a non-predicate felon.

Persistent Felony Offender: This means a person has been convicted of at least two previous felonies. The designation of a persistent felony offender is discretionary, not mandatory. After a hearing on the issue by the court, a defendant may be categorized as a persistent felony offender if the court "is of the opinion that the history and characteristics of the defendant and the nature and circumstances of his criminal conduct indicate that extended incarceration and life-time supervision will best serve the public interest." Penal Law § 70.10(2). This may include life-imprisonment.

Persistent Violent Felony Offender: This means a person has been convicted of at least two previous violent felonies. After a hearing on the issue by the court, if the court determines that a person should be categorized as a persistent violent felony offender, the court must impose an indeterminate term of imprisonment with a maximum term of life.

Parole: Parole is often confused by the general public with probation. They are very different. As discussed above, probation is a sentence that is lieu of incarceration. Parole is the early release of a person who is incarcerated in the state

prison system. Parole is operated by the state's Parole Board. It allows for felony offenders in state prisons to be returned with certain conditions to the community under the supervision of a parole officer.

Jenna's Law: Passed in 1998, Jenna's Law requires a determinate sentence for violent felony offenses. It also eliminates discretionary parole for a first-time violent felony offender and requires a period of post release supervision following said release. It also allows a victim to demand notification of the escape, absconding, discharge, parole, conditional release, or release to post-release supervision of their offender.

The New York State DNA Databank Law: The NYS DNA Databank was established in 1994. Under the law in NYS, a person convicted of a felony or misdemeanor must submit a DNA sample to the DNA Databank. The law does not apply to children involved in a Family Court matter, to youthful offenders, or to first-time fifth-degree marijuana possession offenders.

New York State Sex Offender Registry: In 1996, the New York State Sex Offender Registration Act (SORA) went into effect. All fifty states have a sexual offender registration. SORA is a classification not a sentence.

There are two components to SORA: Registration by the sexual offender with local law enforcement, and community notification that a sexual offender is residing or working in the community. The level of community notification is based on the classification level of the sexual offender. There are three sexual offender classification levels based on the likelihood that the perpetrator will commit the offense again. Level 1 offenders are considered low risk. Level 2 offenders are considered a moderate risk, and Level 3 offenders are considered a high risk for recidivism.

11. BENCH TRIAL:

A bench trial has all the characteristics of a jury trial without the jury. Without a jury present, many of the steps of a trial necessitated by the presence of a jury are no longer necessary and thereby eliminated such as voir dire and a jury charge. Often, opening statements and summations are also not necessary and can be eliminated at the judge's discretion. All violation trials are bench trials. This is because violations are technically not considered crimes. Since a defendant has the constitutional right to a jury trial in all misdemeanor and felony trials, in those instances, only the defendant can choose to waive that right and request a bench trial. The defendant cannot waive a jury trial in the case of first degree murder. CPL § 320.10(1)

12. APPEAL :

Every person convicted of a crime has a right to an appeal. If a person wishes to appeal their conviction, they must file a notice of appeal within thirty days of sentencing. Once this is done, the appellate attorney will request a transcript of the trial that will be submitted to the appellate court, along with the appellate attorney's written brief which sets out the legal grounds for the appeal. The district attorney cannot appeal an acquittal. This would be considered double jeopardy, which is not allowed under either the N.Y. or U.S. Constitutions.

There are three possible outcomes of an appeal. The appellate court could affirm, and thereby uphold, the lower court decision. The appellate court could reverse the lower court decision. If this happens, the appellate court could dismiss the case, vacate a guilty plea, or remand for a new trial. The third option is that the appellate court could modify the lower court decision in some manner and may send it back to the trial court for a hearing on a specific issue or matter of the case.

Appellate courts do not revisit the facts of a case. They take those as presented to them. They review whether the correct law was applied to the case, or was it applied correctly. They can also review whether there was due process, or if other constitutional protections were not adhered to. Regarding an appeal of the sentence, they appellate court can review whether the sentence is invalid as a matter of law or whether it is too harsh.

If a defendant is not satisfied with the appellate court's decision, the defendant can appeal to the Court of Appeals. Whether that court will hear an appeal is at their discretion.

PLEA BARGAINING:

Plea bargaining is a negotiated disposition of a case between the district attorney and the defendant with the approval of the court. It usually involves the reduction of a charge and sentence, in exchange for a guilty plea. It can occur anytime in the criminal case process before sentencing, even before an arraignment. The vast majority of defendants will accept a plea bargain, and therefore plead guilty without a trial. Only a small percentage of criminal cases ever make it to trial. A guilty plea that is a result of a plea bargain is the same as being found guilty after a trial. It is estimated that around ninety percent (or higher) of those charged with a crime will accept a plea bargain.

So, why is plea bargaining so prevalent? There are several reasons for this. First, the sheer volume of those being arrested and charged with a crime is overwhelming. The current state and federal court systems do not have the capacity to handle a trial for every arrest and charge made. Plea bargaining is therefore an administrative necessity. Another important reason is that plea bargaining gives all the parties certainty in the case's disposition. Typically, the district attorney will get a guaranteed conviction and the defendant will get to plea to reduced charge with a lower negotiated sentence.

What if the district attorney has a decent case, but there are weaknesses in the evidence that can be exploited by the defense? Does the district attorney want to take the chance that a case could be dismissed because of this? Or, perhaps the district attorney is more interested in convicting a more serious criminal defendant and needs the testimony and/or cooperation of another defendant to do so. In both of these instances, offering a plea bargain to a defendant makes sense.

A defendant, even an innocent one, may feel that accepting a plea bargain makes more sense for them than taking their chances with a jury or judge. It is not unusual for a sentence after a trial to be harsher than one offered in a plea bargain. It may also be less time consuming and expensive to take a plea than go all the way to trial.

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