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Manual for Police

PREPARED AND PUBLISHED BY
THE NEW YORK STATE POLICE

MANUAL FOR POLICE

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In the State of New York

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GOVERNOR

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Prepared and published by the New York State Police
as a service to Law Enforcement in the
State of New York

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Introduction

The duties of today's law enforcement officer are so varied and complex that only a well-trained officer possessed of a wide range of knowledge is equipped to fulfill his responsibilities in today's society.

The police officer is regularly confronted with emergencies requiring immediate decisions and prompt action. At any moment he may be called upon to handle any one or more kinds of law enforcement situations. He must, therefore, be prepared to make decisions on the spot, rapidly, and correctly, with the confidence which comes from thorough professional knowledge.

This Manual is designed to make available in one handbook the basic information a police officer needs to carry out his duties. It does not cover all details of law enforcement or the law enforcement process but it does contain information the officer needs to know to perform his duties properly on a day-to-day basis.

The first edition of this Manual for police in the State of New York was published in June, 1966. The second (and completely revised) edition became necessary because of our new Penal Law, effective September 1, 1967.

The value of the first edition was proven in practical use. Therefore, the same general approach has been used in the second edition. The basic topics of crimes and police techniques are again the major divisions of the Manual, each treated as concisely and directly as possible, without sacrifice of essential features, and including the elements of each crime in a way which should facilitate study and understanding.

It is recommended that officers using this Manual carefully review the Table of Contents to become familiar with what is in the Manual. For ready reference the criminal topics and police techniques are arranged in alphabetical order. Headings at the top of each page show the topic and section number. A detailed index at the back of the book will be of value in locating specific subject matter and information.

This second edition of the Manual was prepared by the New York State Police, as was the first edition, as a cooperative service for the local law enforcement officer in the State of New York.

Arthur Cornelius, Jr.
Superintendent
New York State Police

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1. REFERENCES AND CITATIONS

One of the functions of the Judicial branch of the government is to interpret the law. This may be done by a Justice in a Court of Special Sessions or by the Court of Appeals. In either case their decision and the reasoning behind it may be written out in an "opinion" and published in case reports. The case reports are always referred to by name of case, then by the volume, the name of the reports, and the page in the volume where the case begins. Thus, the citation "People vs. Jones, 121 NY 423" would mean that an opinion in the case of People vs. Jones may be found in the 121st volume of "New York Reports" at page 423. Such opinion, of course, would be pertinent to the topic on which it is cited in this Manual and would be "authority" on the subject, since the decisions of courts are binding in almost the same way as specific statutes and a decision of the highest court is equally as binding as a statute.

The Court of Appeals is New York's highest court and its cases are reported in the "New York Reports." The Appellate Divisions of the Supreme Court are the next highest courts under the Court of Appeals. There is one Appellate Division in each of the four Judicial Departments of the State. Appellate Division reports are cited "App. Div.," thus: "121 App. Div. 310."

The cases reported from any New York court other than the Court of Appeals or the Appellate Divisions are found in "Miscellaneous Reports," cited thus: "121 Misc. 310."

The numbers of the many volumes containing the "New York," "Appellate Division," and "Miscellaneous" reports rose to high figures. For this reason, the publishers in recent years began renumbering the reports by beginning a "second series" of each, starting with volume number one, "second series."

Thus, New York, Appellate Division, or Miscellaneous reports may be either the first series (cited 1 NY 10, 3 App. Div. 70, 4 Misc. 90 etc.) or second series (cited 1 NY2d, 10, 3 App. Div. 2d, 70, 4 Misc. 2d, 90 etc.).

Citations of laws set out in the Manual are merely the abbreviated name of the law and the law section (and subdivision if pertinent). A typical citation would be "P.L. Sec. 100.05" referring to Section 100.05 of the Penal Law.

The abbreviations of names of laws used in the Manual are:

Agriculture and Markets Law	Agr. & Mkts. L.
Alcoholic Beverage Control Law	ABC
Civil Practice Law and Rules	CPLR
Civil Rights Law	Civ. Rts. L.
Code of Criminal Procedure	CCP
Conservation Law	Conserv. L.
Correction Law	Corr. L.
County Law	County L.
Domestic Relations Law	Dom. Rel. L.
Education Law	Educ. L.
Executive Law	Exec. L.
Family Court Act	FCA
General Business Law	Genl. Bus. L.
General City Law	Genl. City L.
General Construction Law	Genl. Constr. L.
General Obligation Law	Genl. Oblig. L.
Judiciary Law	Judic. L.
Justice Court Act	J. C. A.
Labor Law	Labor L.
Membership Corporation Law	Member. Corp. L.
Mental Hygiene Law	Ment. Hyg. L.

Military Law	Mil. L.
Multiple Dwelling Law	Mult. Dw. L.
Navigation Law	Navig. L.
New York City Criminal Court Act	N.Y.C. Crim. Ct. Act
New York Codes, Rules, Regulations	N.Y.C.R.R.
Penal Law	P. L.
Public Health Law	Publ. H. L.
Railroad Law	Railroad L.
Second Class Cities Law	Sec. Cl. Cit. L.
Social Welfare Law	Soc. Welf. L.
Town Law	Town L.
Unconsolidated Laws	Unconsol. L.
Uniform Commercial Code	Unif. Comm. C.
Uniform District Court Act	Unif. DCA
Uniform Justice Court Act	UJCA
Vehicle and Traffic Law	V & T
Village Law	Vill. L.

An additional citation used is "Op. Atty. Gen." which refers to opinions of the Attorney General of the State of New York, formally delivered and published. They are cited by volume and page, like the Judicial reports. Some old cases dating from years before the "NY," "App. Div.," and "Barb," (Barbour) and "Park Crim." (Park Criminal Reports). "Misc." reports bore the name of the reporter and are so cited: "Hun,"

United States Supreme Court cases are cited as "U.S." reports, (e.g. 282 U. S. 344). Decisions of the lower Federal courts are cited as "F2d" (for Federal Second), "Fed." (for Federal) and "F.Supp." (for Federal Supplement). They include Federal District Court and Federal Courts of Appeals decisions.

2. NEW YORK STATE POLICE

The New York State Police is a Division in the Executive Department of the State of New York. The Governor is the head of the Executive Department.

The New York State Police is a law enforcement agency with general criminal jurisdiction. The law provides that: "It shall be the duty of the superintendent of the state police and of members of the state police to prevent and detect crime and apprehend criminals." (Exec. L. Sec. 223).

State Headquarters, Troop Headquarters and areas, and Zone Headquarters within Troops are as follows:

DIVISION (STATE) HEADQUARTERS

Office of Superintendent Administration Communications Counsel Field Command (Uniform, BCI, Special Investigatory Unit and Traffic Section) Inspection and Planning Personnel Pistol Permit Section Public Relations Scientific Laboratory Training and New York State Police Academy	**BUILDING 22** **(Public Security Building)** **State Campus, Albany, N. Y. 12226**

TROOP A

Troop Headquarters:	Batavia.
Zone Headquarters:	Athol Springs, Falconer, Lewiston, and Wellsville.
Troop Area:	Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, and Wyoming Counties.

TROOP B

Troop Headquarters:	Malone.
Zone Headquarters:	Canton, Plattsburgh, and Saranac Lake.
Troop Area:	Clinton, Essex, Franklin, Hamilton (northern part), and St. Lawrence Counties.

TROOP C

Troop Headquarters:	Sidney.
Zone Headquarters:	Ferndale, Ithaca, Oneonta, and Vestal.
Troop Area:	Broome, Chenango, Delaware, Otsego, Schuyler, Sullivan, Tioga, Tompkins, Cortland and Ulster Counties.

TROOP D

Troop Headquarters:	Oneida.
Zone Headquarters:	New Hartford, Liverpool, and Watertown.
Troop Area:	Herkimer, Madison, Oneida, Onondaga, Oswego, Jefferson, and Lewis Counties.

TROOP E

Troop Headquarters:	Canandaigua.
Zone Headquarters:	Horseheads, Bath, Henrietta, and Auburn.
Troop Area:	Monroe, Wayne, Livingston, Ontario, Yates, Seneca, Cayuga, Steuben, Schuyler, and Chemung Counties.

TROOP G

Troop Headquarters:	Loudonville.
Zone Headquarters:	Brunswick, Fonda, Leeds, and South Glens Falls.
Troop Area:	Albany, Columbia, Fulton, Greene, Hamilton (southern part), Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren and Washington Counties.

TROOP K

Troop Headquarters:	Hawthorne.
Zone Headquarters:	Fishkill, Monroe, Putnam Valley, and Riverhead.
Troop Area:	Dutchess, Orange, Putnam, Rockland, Suffolk, and Westchester Counties.

TROOP T

Troop Headquarters:	Albany.
Zone Headquarters:	Albany, Buffalo, Syracuse, and Tarrytown.
Troop Area:	Governor Thomas E. Dewey Thruway.

STATE POLICE MANHATTAN

Headquarters:	New York City.
Assigned Area:	Bronx, Kings, Nassau, New York, Queens, and Richmond Counties.

It is anticipated that Troop F will be formed in 1968. Its assigned territory is expected to include Greene, Sullivan, Ulster, Orange and Rockland Counties. Troop F headquarters will be near Middletown, N. Y.

3. CIVICS AND GOVERNMENT

Civics is the study of government. Government is the exercise of authority in regulating the action of the state or its subdivisions.

BRANCHES OF GOVERNMENT: In a republic, the form of government existing in the United States and in the several states, the exercise of authority by the government is through three branches: (1) the Legislative (which makes the laws); (2) the Executive (which administers the government and enforces the laws); and (3) the Judicial (which interprets the law, decides disputes under the law, and punishes violators of the law).

LEGISLATIVE: The Legislative branch consists of representatives elected by the people, who meet at stated times to consider, enact, repeal, or amend laws.

EXECUTIVE: The Executive branch is headed by a chief executive (President, Governor, Mayor, etc.) and is made up of all persons whose duties have to do with administering and enforcing the law. To this branch belong peace officers and police officers.

JUDICIAL: The Judicial branch consists of the courts, the judges, and other court functionaries.

LAW GOVERNING THE CITIZEN: Persons everywhere in the United States are subject to at least three different governments and three different sets of laws: (1) civil and criminal laws of the United States, the "Federal" law; (2) civil and criminal laws of the states; (3) the local ordinances, rules, or regulations passed by subdivisions of the state (in New York, counties, cities, towns, villages, and some public authorities) under authority granted by state laws.

FEDERAL GOVERNMENT: The government of the United States is usually referred to as "the Federal Government." Its law making powers are only those expressly given to it by the Constitution of the United States. These powers are limited to such matters as are interstate in character, or which affect all of the people of the nation or have to do with the conduct of government affairs or dealings as a nation with foreign governments.

The individual states of the United States, under the Constitution, have the right to pass their own civil and criminal laws subject to the restriction that such laws may not conflict with the Constitution or with Federal laws in areas where the Federal Government may properly pass laws.

The law making body of the Federal Government is the Congress, consisting of the Senate and the House of Representatives. The members of the Senate and of the House are elected by the people in their respective states. They meet annually in Washington, D. C. for the purpose of considering, enacting, repealing, or amending Federal laws.

The Executive branch of the Federal Government consists of the President, the chief executive officer of the United States, and of the various Federal officials, including heads of the governmental departments (cabinet officers) and all other officials and employees concerned with administering or enforcing the laws, including personnel of law enforcing agencies, such as the F.B.I. in the Department of Justice; the Secret Service, Federal Bureau of Narcotics. Alcohol and Tobacco Tax Division, United States Customs Service and Internal Revenue Service in the Treasury Department, the United States Coast Guard; the Border Patrol; the Post Office Department's U. S. Postal Inspectors, and many others.

The Immigration and Naturalization Service of the Department of Justice is charged with the duty of investigating cases involving aliens. An alien is any person not a citizen of the United States. Aliens are classified as "Im-

migrants' (admitted for permanent residence) or "Nonimmigrants" (admitted temporarily for specific purposes and periods of time). Aliens may become subject to deportation if they (1) are convicted of certain crimes, (2) engage in subversive or immoral activity, or (3) become public charges.

NEW YORK STATE GOVERNMENT: The Legislative branch of the state government is "the Legislature," composed of the Senate and the Assembly. The members of the Legislature are elected by the citizens of New York from districts of the State apportioned on a basis of equal population. The Legislature meets at Albany once a year, beginning early in January (or oftener at the call of the Governor) to consider, enact, repeal, and amend the laws of the State.

The Executive branch of the State Government is headed by the Governor, the chief executive, and includes all other officers and employees having law administering or enforcing power or duties, but not including employees of the judicial or legislative branch of the government.

The Judicial branch of the State Government is made up of every judge, justice or magistrate of every court of the State, and the courts' functionaries.

LOCAL GOVERNMENT: By state law, local governmental subdivisions or municipalities (counties, cities, towns, and villages) and some public authorities are authorized to adopt local ordinances, or rules and regulations, to meet local needs. These local civil and criminal laws apply only within the boundaries of the governmental subdivision which passes them.

The law making or legislative bodies of local government are the Board of Supervisors in counties, the Common Council or Board of Aldermen in cities, the Town Board in towns, and the Village Board in villages.

4. POLICE RECORDS

Records are of vital importance to a law enforcement agency, whether large or small.

A records system should be centralized for a law enforcement agency as a whole. Separate sets of independent records in various sections or divisions of an agency or department are less useful and less desirable than centralized records. A uniformed patrolmen's initial report on a store burglary and a later investigative report on the same burglary prepared by the detective assigned to the case should be filed together, rather than in separate files in Uniform Division and Detective Division.

FILING: All reports, memoranda, letters, etc. should be filed with other documents relating to the same case or matter, in chronological order. By this means, the entire experience of the department in connection with any particular case or classification of cases or matters can be readily located for review and analysis, as desired. In addition, it simplifies locating reports when the names or subjects involved are unknown or have been forgotten.

In order to permit filing of reports, letters, memoranda and other documents in a logical, usable way (i.e. burglary cases in the burglary classification files, assaults in assault classification files, correpondence on police uniforms with similar correspondence, in the "uniforms" classification file, etc.) it is necessary to assign classications to reports and other documents to be filed. In order to do so, a list of "file classifications" and "file classification numbers" must be prepared and used. The classication list of each department will depend on size, specific needs, and on the variety of classifications assigned to administrative things (all police departments should have approximately the same classifications for crimes, since all are governed by the same Penal Law).

A usable classification system, for example, could begin with classifications such as: 1—Applicants, 2—Alcoholic Beverage Control Law, 3—Abortion, 4—Accidents, etc. The system should segregate crimes into classifications by kind of crime.

Each report, memorandum, letter or document to be filed should be assigned an unvarying classification number (e.g. anything to do with an abortion case would be marked "3"), followed by the number assigned the particular case or matter, and if desired a serial number.

Thus, a uniformed officer's report from an informant concerning possible abortions by a Dr. X, which would begin a new case, would be marked (on first page only, usually at lower right) with "3" for the classification abortion, followed by a dash and the number following the number of the last abortion case in file (e.g. "3—42").

If serial numbering is desired, the report would be marked "3—42—1". The next document filed would be "3—42—2", etc. The "1" shows the report is the first document put in file 3—42.

Files, of course, may be kept loose in individually numbered folders, or as documents permanently put together with patent fasteners of various kinds, or in files with covers, without covers, etc. A secure method should be adopted and used uniformly.

Where a classification system is used, it permits clerical filing "by the numbers," with accuracy, insuring that (for example) all abortion cases and correspondence or other material relating to them not only go in the same place in files, but that pieces of a particular case are filed in proper order with the case and not some place else where they have to be hunted and may be lost. Procedure should be the same for any classification, whether it is "ABC Law," "Supply of Uniforms," "Vehicle Maintenance," or anything else.

A complete system of filing by classification and case would thus have reports, letters, memoranda and other documents, identified, for filing and finding, by a series of three numbers (classification, file and serial number, in that order, e.g. 3—42—1).

1. **CLASSIFICATION NUMBER:** The first digit or digits of a ccomplete "file number." It identifies the classification. In the example given, the classification number "3" indicates the case reported relates to abortion.

2. **CASE NUMBER:** The second digit or digits of the file number. It identifies the particular case concerned. Case numbers should be assigned consecutively (to initial reports or documents of cases in the same classification as they are received). Once a case has been assigned a case number, all reports in that case should carry the same number. In the example given, the number 42 indicates that the case is the 42nd case reported in this particular classification.

3. Each classification should also have a zero (0) case file and a double zero (00) case file.

a. Zero (0) case file. The zero case file should contain material of a non-specific nature which relates to a particular classification but does not relate to any particular case in the classification. This will be material on which no cases need be opened.

b. Double zero (00) file. A double zero file should be used solely for rules and instructions relating to the particular classification (not pertaining to any specific case but to the classification generally).

4. **SERIAL NUMBER:** A serial number indicates the order in which the report or other document was received in relation to other

reports or documents in the same case-file. Serial numbers should be assigned consecutively, as the material is received for filing. They permit permanently accounting for all items put in file.

Reports should be classified and assigned their classification and case numbers as they are received. Reports should of course be reviewed by supervisory personnel for content, errors, etc. When corrections are required, they should be brought to the attention of the responsible officer for appropriate action. If a report is satisfactory, it may then be indexed, given a serial number and filed.

Files in each classification should be kept in numerical order, behind a divider which identifies the classification.

In the file room, names in the title or heading of the first report or document filed should be indexed. Thereafter only changes or additions need be indexed. Any other names which appear in an investigation or document which are desirable to index, should be underlined by the officer or reviewing supervisor (on file copy) in red ink or pencil, with a red check mark on the first page of the report as a flag to file room personnel that there is indexing required. Supervisors should be alert to ensure that all necessary indexing is marked on file copies before they are sent to the file room. The index cards in all instances must show the name of the person or item, and the file number (classification and case numbers). Brief identifying data may also be entered (e.g. "fem. born 8/12/41").

In cases where there are any exhibits or evidence in file which are not to be retained as a permanent part of the case a report should be placed in file showing the final disposition of them, Supervisors should ensure that evidence and exhibits are promptly disposed of when they have served their purpose. Appropriate receipts should be obtained when property is disposed of by means other than by destruction.

STATISTICS: All police agencies in New York must maintain certain crime and arrest statistics covering their jurisdiction (Corr. L. Sec. 617). They must submit these statistics to the Department of Correction every calendar month on forms supplied by the Department. No police agency is exempted by reason of its size or lack of personnel.

Statistics are required concerning felonies, misdemeanors and other offenses and on all persons arrested for such crimes and offenses, as specified by the Department of Correction in its statistical forms.

The statistics must show the number of offenses known to the police, how many were determined to be unfounded, and how many were "cleared by arrest." The data on arrested persons must include the county of arrest, the specific crime or offense charged, their sex, and their age. Forms and instructions may be secured directly from the Department of Correction at Albany.

The Federal Bureau of Investigation, U. S. Department of Justice, Washington, D. C., also collects crime statistics on a monthly basis, for the national Uniform Crime Reports. Police agencies not contributing should consider doing so. Necessary details, instructions, and forms may be secured by writing to the Director, Federal Bureau of Investigation, U. S. Department of Justice, Washington, D. C. or by contacting the nearest F.B.I. office.

In order to comply with state law and to provide the basic minimum records necessary, even the smallest department must maintain a record of complaints received and a notation of action taken thereon. It must also maintain a record of persons arrested.

Such records may be maintained in their simplest form in a "blotter" or other bound volume. They are better and more useful on a separate form for each complaint and for each arrest. Separate forms may be filed in

separate files by case and by classification, for various administrative uses and analyses. Such an arrangement is a bare minimum. Departments desiring to establish new and better record systems or to alter and improve old ones may obtain a "Manual of Police Records" from the Director, Federal Bureau of Investigation, U. S. Department of Justice, Washington, D. C., free of charge.

Data entered on complaint forms should always include notations as to the action taken, by whom taken, and the final disposition of the matter.

MOTOR VEHICLE ACCIDENTS: Sections 603 and 604 of the Vehicle and Traffic Law require all officers to investigate every motor vehicle accident involving a personal injury which is reported to them. They must make a report of their investigation to the Commissioner of Motor Vehicles at Albany on forms furnished by the Department of Motor Vehicles.

Public Officers Law, Section 66-a, requires that all reports and records of any accident (not alone motor vehicle) which are kept by the State Police or by the police force of any county, city, town, or village or other district of the State, shall be open to the inspection of any person having an interest therein or his attorney or agent, except that any report or reports may be withheld from inspection if their disclosure would interfere with the investigation or prosecution of a crime involved in or connected with the accident. All departments, therefore, must keep their accident files in proper order, so that the reports may be readily located when required. This may be done by numbering and indexing or by filing by place and date of accident.

UNIFORM TRAFFIC TICKETS: Under Section 207 of the Vehicle and Traffic Law and the Regulations of the Commissioner of Motor Vehicles, Subchapter G, Secs. 91-1-91.12 (15 NYCRR, Sec. 91.1 et seq.) all police must use the prescribed Uniform Traffic Ticket. In addition, they are required to maintain a file of Part IV of the uniform ticket. This is one of the copies delivered to the court by the issuing officer; on it the court notes the disposition and forwards it to the department of the issuing officer.

JUVENILE AND YOUTH POLICE RECORDS: All records of police relating to juvenile delinquents, persons in need of supervision or youthful offenders must be kept confidential. They may, however, be inspected upon order from the court wherein the subject was adjudged, or, without a court order, by the institution to which a youth has been committed (FCA Sec. 784, CCP Sec. 913-o).

Juvenile Delinquency and Persons in Need of Supervision police records must be kept by police in files separate and apart from similar files on adults. Youthful Offender files need not be separately maintained by police (CCP Sec. 913-o).

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5. POLICE ADMINISTRATION

A police agency exists primarily to prevent and to detect crimes and other violations of law and to apprehend law violators. It provides these services by performing certain basic duties, primarily patrol, investigation, and traffic work. In order to perform these duties efficiently and regularly, the department must be properly administered.

PRIMARY RESPONSIBILITY: The person primarily responsible for administration of any police agency is its chief (or sheriff). The size of the agency will determine whether he must personally handle all administration or whether he will be able to delegate some or most of this duty to one or more subordinates.

PLANNING: Planning is the key to good police administration. Planning must be continuous. It must look ahead to new problems, such as an influx of increased numbers of summer residents or patrolling new highways. It must look back to old problems—such as a years-old patrol system, an antiquated filing system, or old-fashioned budget request practices. All phases of the work of a department should be continually analyzed and plans made and adjusted as needed. Standing pat is improper police procedure. No community stays unchanged, and police agencies must always be ready to meet new conditions and problems. Planning permits this flexibility.

PLANNING BASICS: In planning police operations, it is essential to always consider: (1) personnel, (2) training, and (3) inspection. In other words, it must be determined who will do it, it must be made certain by training that he is able to do it, and inspection makes sure that it is being done.

PLANNING AREAS WHICH MAY BE NEGLECTED: There are certain basic areas of planning which often may fail to receive their proper share of attention but which are vital to successful police work—budget matters, news media, the public, and training.

BUDGET: Proper budget planning requires that factual data needed to determine equipment, personnel and other needs be obtained on a day-to-day basis, so that essential matters are not overlooked (as may happen when done only annually, at one time).

Proper budget planning requires an analysis and determination of the specific things connected with a department's police work, equipment usage, and supply needs which can be counted, measured or otherwise used to show a detailed and persuasive budget picture. Patrol car tire requirements, for instance, cannot be correctly estimated without specific figures as to mileage of patrol cars during specific periods and mileage use obtained from tires in the past. The necessity for planning ahead is clear, since many essential or desirable data are either not available or only available at the cost of unwarranted expenditures of time, if data are not tabulated as they occur. For example, tabulation of the kinds of repairs and the frequency of kinds of repairs to vehicles is easily recorded if done from day to day in a predetermined form, but becomes a time-consuming and difficult task if left to the year's end.

NEWS MEDIA: The term "news media" today is no longer restricted to newspapers and other printed publications as far as police are concerned. The radio newsman and the TV crew have broadened the term. All three are of importance to the police agency.

Proper police administration includes correct planning of news matters (see Section 6, "Public Relations," this Manual).

THE PUBLIC: All police agencies need a public attitude which is favorable to them. Without such an attitude, they cannot be as effective as they should be. Planning to create and maintain such a public attitude must be continuous. The first step is planning for police personnel to insure that the image they create in the public eye is a correct one—from correct personal appearance to correct manner of addressing members of the public.

TRAINING: New York State law forbids permanent appointment of any person as a policeman, or promotion of any officer to a first line supervisory position until he has undergone training approved by the Municipal Police Training Council. The Council maintains offices in Albany, New York. Its approved training schools are held throughout the State.

Additional "in-service" type training is available under auspices of the F.B.I., the New York State Sheriffs' Association, the New York State Association of Chiefs of Police, and other agencies such as the Red Cross (first aid and life saving).

ADMINISTRATION: Although planning is the key to good police administration, the actual running of a police agency requires that plans made be translated into action and become facts instead of mental images. This translating of plan into effective action is the "administration" an agency must have. Good administration requires: (1) the issuing of clear orders that can be carried out, (2) ensuring the orders are fully understood, and (3) careful and regular follow-up to ensure that the orders are being carried out. The most likely weakness in the administrative job is the "follow-up." All police officials should pay close attention to this part of their job. Sound inspection procedures are essential to administration of any department.

CRIME CONTROL COUNCIL: In April, 1967, the Governor signed into law a bill which created a Crime Control Council, to consist of the Chairman of the Narcotic Addiction Control Commission, the Director of the Division for Local Police of the Office for Local Government, the Superintendent of State Police, the Director of the Division for Youth, the Commissioner of Correction, the Chairman of the State Board of Parole, the Director of the State Identification and Intelligence System, and a chairman to be appointed by the governor, by and with the advice and consent of the Senate, and to hold office during the pleasure of the Governor. The chairman is director of the work of the council and shall be the Chief Executive Officer of the council. The Governor can also appoint the Chairman of the State Commission of Investigation, the Chairman of the Municipal Police Training Council, the State Administrator of the Judicial Conference and one District Attorney of the State, to be advisory members of the council (Exec. L. Sec. 642).

The council has the power and duty to:

1. Advise and assist the Governor re crime programs.
2. Prepare and adopt comprehensive plans.
3. Act as a central repository for crime proposals.
4. Act as agent for the State in contracting funds from the Federal Government re law enforcement.
5. Promote closer cooperation among agencies.
6. Act as a clearinghouse for crime information.
7. Undertake research on and studies of crime (Exec. L. Sec. 643).

ASSISTANCE TO CRIME CONTROL COUNCIL: The new law provides that the chairman of the Council may request and receive from any department, division, board, bureau, commission or other agency of the state or of any political subdivision of the state, or of any public authority, such assistance, information and data as will enable the Council to properly carry out its powers and duties (Exec. L. Sec. 647).

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6. PUBLIC RELATIONS

Public relations is, in its essentials, the development of understanding and respect for an organization and its work. The developed picture or "image" comes basically from two sources: (1) information distributed by the news media (press, radio, TV), and (2) the picture built up, person by person, through contacts of the public with the organization's facilities and personnel.

Good public relations begin with concern for the development of a public attitude favorable to the accomplishment of the police purposes of the law enforcement agency. This is not just an attitude favorable to the law enforcement officer, but an attitude against law violations and for the apprehension and punishment of violators.

It is not necessary that the law enforcement officer should have a lovable public image, but he should have the respect of the public. And it is necessary that the public understand that law enforcement is not engaged in a pleasant game of "catch me if you can" but is actually in the business of protecting life, limb, and property against destruction or loss, against a killing by a careless motorist as well as against a strangling by a mugger.

PUBLIC SUPPORT: Good public relations gets good public support. The effectiveness of any public agency is dependent in large measure on public support.

Officers must face the fact that numbers of citizens will have what seems to the citizen sufficient reason to be annoyed with or resentful of the officer, either because of his dealings with them or because of some fancied failure in his dealings with others. Law enforcement officers are engaged in the business of making citizens conform to the law. This is bound to irk large numbers of citizens.

The officer and his law enforcement organization cannot rely upon the public to be kind and not too critical. The officer must, therefore, make every effort to develop and continue a public relations program to offset adverse public reaction.

Trying to provide a superior service is not enough. There must be, in addition, a properly outlined, carefully supervised, and frequently evaluated public relations program. The program should have a place in the training and duty assignments of every officer.

PROGRAM GUIDE LINES: A good public relations program will inform the public as to the agency's organization, history, facilities, functions, objectives, progress, and what return the public is getting on its law enforcement dollar. All factual information which can be disseminated concerning the work that the agency is doing and the investigations and arrests it is handling should be promptly given out.

RESPONSIBILITY: Since a law enforcement agency exercises powers of interrogation and of arrest, it has a moral responsibility to keep the public as well informed as possible concerning its activities in making arrests and taking people into custody.

SUPERVISION: Public relations is properly a matter of major concern for the Chief, Sheriff, or other commanding officer of any law enforcement agency. He must give the proper initiative to specific planning, to establishing definite rules, and to providing personnel training in public relations matters. He must make specific assignment of areas of responsibility, down to and including the beat or patrol officer.

PLANNING CONSIDERATIONS: In planning a public relations program (or reviewing an established program), it should be borne in mind that public relations for law enforcement has two prime aspects: (1) news stories and (2) everything else involving public contact. All officers should be guided by the regulations, if any, of their departments in handling news matters. Careful adherence to departmental regulations are essential to a good public relations program.

The goal of every law enforcement agency should be a maximum flow of information to the public through the news media, with a minimum disruption of police activity, whenever any hot or spot news is occurring.

SPOT NEWS: Where news media representatives are at the scene, factual information should be promptly provided by the law enforcement officer in charge. He can provide the most accurate factual summary. He must carefully avoid guessing, making estimates or furnishing conclusions.

If an officer is alone, he should follow the same rule of furnishing only factual information, without drawing conclusions, giving "an educated guess" or otherwise departing from exact fact.

Officers must bear in mind that they are almost never the sole source of information to whom news media people can turn for information.

Officers on the scene should deal frankly and fairly with the representatives of the press, radio, and TV. It is well to let the newsmen be the judges of what is news. The officer must exercise judgment to ensure that information he furnishes is factual and will not hinder his official duties or in any way damage the case in which he may be engaged.

The officer on the scene must be prepared to recognize and overcome the effects of prejudice and misunderstanding in everyday situations. He must be trained to be on guard against letting himself be affected by prejudice or purely emotional aspects of police cases or problems.

NEWS RESPONSIBILITY AT HEADQUARTERS: Where news media representatives contact a law enforcement installation for news, there should be clearly fixed responsibility for handling such calls, whether made in person or on the telephone.

An officer should be assigned and responsible. He must be informed at all times on all matters which might be news.

Officers so assigned must be trained to know departmental policy and any special circumstances which would relate to the dissemination of each news item. The law enforcement agency should develop and put into effect policy based on experience, which would make it unnecessary for the officer assigned news contacts to "check" with anyone on news stories, or otherwise make a cumbersome project of a news story. The responsible officer should have a real desire to give out as much news as possible.

POLICY AND PROCEDURES: Every law enforcement agency must develop procedures for ensuring that newsworthy items are immediately brought to the attention of the responsible officer, so that he can take necessary action, including obtaining necessary added detail and locating news media representatives.

A basic news policy which is most useful is one insisting that all representatives of news media shall receive equal treatment and that no favoritism or discrimination shall be shown. Where one news representative has been furnished information on a story, all other news representatives in the pertinent area should be furnished the same information, even if the law enforcement agency must make an effort to contact them. A continuing policy of fair and equal treatment for all is a basic requirement of a good public relations program.

In preparing rules for releasing news, it is necessary to consider areas where parts of the news must be withheld for reasons of law (such as some details on a crash of a military aircraft carrying classified equipment) or for reasons of decency (such as notifying next of kin of a death in an automobile accident before releasing the identity of the deceased to the press).

As a basic rule, if the next of kin in death cases cannot be notified within a reasonable time, the reason should be determined and the news media then advised of the accident and the victims. The fact that a victim has not been identified or that next of kin has not been notified does not require withholding the fact that a fatal accident has occurred. However, the news media should be informed that the next of kin has not been notified when this is the case.

In furnishing identification data on deceased persons, persons with amnesia, and others unable to speak for themselves, the officer must use care to be precise as to facts and to give out only facts, without inserting conclusions or judgments.

A law enforcement agency must train its officers to understand that the agency properly deals only in facts. It is the job of the news media to make the "story."

SUGGESTED CRIMINAL CASE NEWS GUIDE LINES: There are certain freedoms and limitations as to what should be released by law enforcement agencies to news media. The following guide lines are suggested as of value in planning and considering news matters in criminal cases. They will protect against improprieties and statements which may prejudice cases in court. They will permit cooperation with news media in areas of legitimate news interest and permit them to fulfill their responsibility to the public. They will insure that law enforcement fulfills its duty to keep its actions public and not secret, where this is proper to do.

PRE-ARREST PROCEDURE: When a crime occurs, news media may be furnished all pertinent facts relating to the crime itself. Items of evidence, which if disclosed would be prejudicial to the solution of the case, should not be made public.

Photographs of a person accused by indictment or warrant, without any police identification material on the photographs may be furnished.

Where the identity of a suspect has not been established, it may be desirable to publicize descriptions, artists' sketches or other information which could lead to the identification and arrest of the suspect.

Suspects who are interviewed **but not charged** should not be identified.

The finding of physical evidence such as weapons or proceeds of the crime, the issuance and service of a search warrant and the positive or negative results of the search, may be released. Information as to how a weapon or proceeds of the crime were located should be withheld, if it involves data which are prejudicial.

Fugitive cases may require wide publicity. However, in some fugitive cases it may be necessary to withhold information when its publication would be harmful to the apprehension of the wanted person. Common sense should dictate the manner in which fugitive cases are handled, with a positive view toward the public interest and safety and the protection of other law enforcement agencies in the case of possibly dangerous, armed, psychotic and similar fugitives.

Fugitives who have a history of being armed, or a propensity for violent acts, should be characterized as dangerous, so that an arresting officer will be well aware of any dangerous aspects involved in an apprehension of the fugitive.

NEWS PROCEDURES ON ARREST: Personnel authorized to deal with news media should supply any relevant information on an arrest, provided it could not be construed as prejudicial to a fair trial. Information which may properly be given out includes:

1. Defendant's name, age, residence, employment, marital status and similar background information.

2. Substance or text of charge on which the arrest was made (and the identity of the person preferring the charge, if such information will not cause danger or embarrassment to the complainant).

    a. Identification of persons preferring charges should always be withheld when the person is a victim of a sex crime and publication of the identity would be a matter of serious embarrassment to the victim.

3. Identity of the investigating and arresting agency, police personnel involved, duration of the investigation and aspects of the investigation of a nonprejudicial nature.

4. Circumstances surrounding arrest, including time and place, resistance (if any), pursuit, possession and use of weapons and a description of items seized at the time of arrest.

5. Photographs of a defendant, without police identification data in them, may be furnished to news media. Officers should not assist in posing prisoners for news or television cameramen, nor hinder their efforts in taking pictures during the course of any normal movement of prisoners which expose them to public view.

6. Where there is any question in an officer's mind as to whether an item should be released, he should follow the general principle that information should be made available unless it could reasonably be construed as prejudicial to the prisoner or harmful to a later prosecution or defense of the prisoner.

POST-ARREST STATEMENTS TO NEWS MEDIA: To avoid the possibility of jeopardizing prosecution of a criminal matter by prejudicing the right of a defendant to a fair trial, statements should not be made to news media in the period between arrest and trial, relating to the following:

1. The character or reputation of a suspect or the existence, if any, of a prior criminal record.

2. The existence of a confession, admission or statement by an accused person, or the absence or such.

3. A re-enactment of a crime or the fact that a defendant may have shown investigators where a weapon, loot or other evidence was located.

4. Gratuitous references to a defendant as (for example) "a sex maniac," a "depraved character," a "typical gangster," etc.

5. Examination or tests which the defendant may have taken or have refused to take

   a. Since the V&T Law gives the privilege of declining to take an alcohol test in Driving While Intoxicated or Driving While Ability is Impaired cases, and embodies this in the crime or infraction, press inquiries as to taking such a test (but not its results) may be answered.

6. The guilt or innocence of a defendant.

7. The identity, credibility or testimony of prospective witnesses.

8. Any information of purely speculative nature.

NEWS OTHER THAN CASES AND INVESTIGATIONS: A very considerable number of things connected with law enforcement, other than cases and investigations, are newsworthy. It takes training, attention, and a fixing of responsibility to ensure that the news in such items is recognized, fully developed, and made available to news media.

The responsible (press) officer must be fully informed of plans and activities in all parts of his agency. He must also have adequate authority to permit him to develop the added detail and additional facts which experience will teach him are necessary.

A discussion of this kind of news and a constant refresher on its value should regularly be on the agenda of staff meetings or conferences of ranking officers. Newsmen will be good guides as to what is news and what detail will be required, but it will take constant attention and thought on the part of the law enforcement agency to recognize and pull out the things which may develop into usable stories.

CORRESPONDENCE: Correspondence is a major area of public contact for any law enforcement agency. Proper handling of correspondence is of first importance to a good public relations program. Two things must be stressed: (1) prompt reply to all correspondence and (2) responsible replies, specifically answering the questions raised in the correspondence. Delayed replies or replies which evade the issue raised by a piece of correspondence are very damaging to the "image" of any law enforcement agency and must be avoided. This requires specific policy as to when correspondence received must be answered (within 24 hours is suggested) and who may answer correspondence. It also requires that a top ranking officer review and approve outgoing correspondence to insure that it is responsive, accurate, and correct.

CONTACTS OF PUBLIC WITH LAW ENFORCEMENT: "Appearance" and "civility" are the key words for good public contacts. A poor appearance or lack of civility can do more to engender poor public relations than an uncaught burglar. People expect that not all burglars will be caught. They do not expect that their law enforcement facilities or officers will have a poor appearance. They do expect that their officers will be entirely civil.

The appearance of facilities must be cared for by fixing responsibility for physical condition and maintenance and by inspections to ensure that such responsibility is carried out. The appearance of personnel and equipment must be cared for by adequate training, adequate rules, and adequate inspections.

Civility is an absolute requirement for any law enforcement officer, but an excess of courtesy is not required and may often be misunderstood.

Much of the public relations value from contacts with citizens depends on the officer's civility and his display of interest in the citizen and his problem.

An officer who gives close and civil attention to the complainant and handles the complaint in a mediocre way does a far better public relations job than the officer who is apparently indifferent to and bored with the citizen's problem, but who handles the problem promptly and superbly. Each officer should, of course, handle every problem to the best of his ability. But excellent handling will not overcome a poor personal contact with the citizen.

Sarcasm, flippancy, brusqueness or being overbearing lose officers more respect than failure to solve a serious case.

PUBLIC RELATIONS DEVICES: All law enforcement administrators should give considerable thought to other public relations devices, such as pamphlets to be issued by the law enforcement agency, sponsorship by the agency of youth activity, such as athletics or Christmas shows, exhibits to be prepared and shown at school and public events, and similar "self-starting" types of things. These are all useful and desirable, but require considerable initiative or "self-starting" on the part of the law enforcement agency and its top officials. For example, a pamphlet on parking facilities and techniques in a downtown area, with references to pertinent laws and ordinances, is obviously an undertaking requiring time, effort and "push," although it need not be costly. This type of public relations device is well worthwhile.

COMPLAINTS AGAINST OFFICERS: A basic ingredient of a good public relations program for law enforcement is a procedure for handling complaints against officers.

Complaints should be regarded as signals calling attention to possible misconduct, or dereliction of duty, or public misunderstanding or misconception, or perhaps to mere inefficiency.

The rules of the agency must insure that every person complaining about an officer receives fair and civil treatment and is thoroughly interviewed, with a written report being made thereafter to the chief, sheriff, or commanding officer. In addition to being good public relations, a good complaint procedure is an essential element of self-defense. A law enforcement agency must defend itself against the unfit or misdirected officer as well as against the ill-informed or misdirected citizen.

SPEECHES AND PUBLIC APPEARANCES: It should be policy to make officers available to business, civic, fraternal, professional, social, religious, youth, and educational organizations to discuss the law enforcement agency and explain its theory, functions, facilities, and work.

In view of the usual work load and multiple responsibilities which the modern law enforcement officer faces, acceptance of speech requests may well be subject to a set policy and conditioned on receipt of a written request a stipulated time in advance. Discretion should be exercised to assure full consideration being given to exceptional cases, where acceptance on shorter notice would be in the best interests of the agency.

Appearances or speeches before political organizations, controversial groups, groups before whom controversial subjects may be discussed, and groups whose primary objective is to raise funds should be avoided. A law enforcement agency must maintain a position of strict impartiality.

It is ordinarily advantageous to address the "service" clubs, such as Rotary, Kiwanis, Lions, etc., whose members are usually leaders in the community and in a position to render helpful service to law enforcement and to influence others to the same end.

In all instances, it is advisable to require that the officer assigned to an appearance or speech furnish his superior with a written outline of his proposed speech for review and approval.

Only qualified officers should receive such assignments. Where desirable, the officer may be required to give his speech on a trial basis before superior and fellow officers, and all agencies should consider the advisibility of training selected officers for public speaking. A cadre of officers qualified as speakers is an invaluable public relations aid.

PERSONAL CONTACTS: Chiefs, sheriffs, commanding officers, and ranking supervisory officers should maintain a continuous program of personally visiting their local newspapers, radio stations, TV stations, area law enforcement agencies, the district attorney, judges, justices, and individual citizens in important business and professional fields. The program should include personal contact with the heads of such establishments or the highest ranking personnel available, in order to maintain and promote good relationship, to discretly determine whether the person contacted feels that the law enforcement agency's personnel is performing in a satisfactory manner and whether there are any areas in which services or relations with the public may be improved.

Individuals in various business categories should be considered for developments as contacts. These are persons who, upon request of a ranking officer, are able to furnish confidential information or special assistance or facilities required by some phase of law enforcement work, such as information concerning financial standing, location of accounts, travel accommodations for official business, etc.

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7. THE NEW PENAL LAW

INTRODUCTION. An entirely new Penal Law was passed by the Legislature and signed by the Governor in 1965, to become effective September 1, 1967. Officers will find many unfamiliar things in this new law. It is

recommended that officers study the outline of the new law at the end of this section, to firmly fix in their minds the form and divisions of the new law and to gain familiarity with the way specific violations are grouped in the law.

CHANGES IN THE NEW LAW. Approximately one-third of the sections which used to be in the Penal Law have been transferred to other parts of the Consolidated Laws and are no longer part of the Penal Law. Violations of the transferred laws are still crimes. Examples of such laws are the provisions relating to "Billiard and Pocket Billiard Rooms" which were formerly Sections 344 through 355 of the Penal Law. They were transferred to and are now part of the General Business Law, Article 28-c, Sections 460-472.

1. In some instances, old sections of the Penal Law were completely omitted from the new law. These include the old law sections on abandonment, libel, seduction, and some others. In view of such changes all officers shall carefully check the provisions of the new Penal Law set out in this Manual, and of the offenses not in the Penal Law (use Table of Contents and/or Index) to make certain that a particular violation exists and what its elements may be, if it does exist.

NEW CRIME NAMES: Officers will find some new kinds of criminal laws set out in the new Penal Law. They have unfamiliar names—such as "Criminal Solicitation," "Menacing," "Consensual Sodomy," "Custodial Interference," "Reckless Endangerment" and others. All officers shall familiarize themselves with the elements of the new offenses set out in this Manual. Such offenses can be readily identified by reviewing the Table of Contents of the Manual or the outline of the Penal Law set out at the end of this Manual section. Officers shall also carefully review the elements of the offenses whose names are familiar to the officer. There are changes throughout the law.

1. For example, to have an assault violation under the new Penal Law it is necessary that there be an actual injury. There is no longer any assault without a battery. The assaults which were crimes under the old Penal Law without injury or battery may now be found to be the crime of "Menacing" (P.L. Sec. 120.15) or "Reckless Endangerment" (P.L. Secs. 120.20, 120.25).

SECTION NUMBERS OF THE NEW LAW. In citing sections of the new Penal Law, officers shall note that the old Penal Law system of numbering sections from "1" straight on through to "2502" was completely abandoned and the new law uses a decimal number system.

1. The section numbers of the new Panel Law all consist of decimal number with one, two or three digits before the decimal point and two digits after it (e.g. 1.05, 10.00, 120.15).

a. The digits before the decimal point show what article of the new Penal Law the section is in.

b. The two digits after the decimal point show the section number in that article (e.g. Section 125.25 is in Article 125, "Homicide, Abortion and Related Offenses").

c. It will be found that the two digits after the decimal point do not run in straight numerical order—there are gaps. Most section numbers are multiples of five.

2. In citing new Penal Law sections, all digits of the section number must always be used.

a. Thus, for Murder, the proper section citation is "Section 125.25," not "Section 25 of Article 125."

b. Proper citation of the section number will make it unnecessary to cite, in addition the Article and Title, (i.e. Section 125.25, falls in Article 125 which is part of Title H).

c. A correct habit of fully citing the new Penal Law section number eliminates the possibility of error in citing either a title or an article, as well as eliminating the need for seeking out and verifying such additional parts of the citation.

CITING OFFENSES UNDER THE NEW LAW. All officers, in citing offenses under the new law, whether the offenses are violations, misdemeanors, or felonies, should cite the full and correct name of the offense, the complete section number (as explained in the previous paragraph) and the words "Penal Law."

1. Examples, proper citations:

a. ". . . the crime of Criminal Tampering in the First Degree, in violation of Section 145.20 of the Penal Law."

b. ". . . charged with Assault in the Third Degree, Section 120.00, Penal Law."

c. ". . . complaint of Burglary in the First Degree, Section 140.30 of the Penal Law."

2. In proper instances, such as non-legal correspondence, citations may be abbreviated in the manner illustrated by the following:

a. Criminal Tampering First, Section 145.20, Penal Law.
b. Crim. Tampering 1st., Sec. 145.20 P.L.
c. Assault 3rd., Sec. 120.00 P.L.
d. Assault 3d., s. 120.00 P.L.
e. Burglary 1st., s. 140.30 Penal Law.

3. The form of citation described in 1 and 2 herein should be followed when citing any offense under other State laws showing name of offense, then "section," the number and the name of the chapter of laws in which the section is contained.

4. Federal laws should be cited by showing name of offense, title number, "U.S. Code" and section number (e.g. Bank Robbery, Title 18 U.S. Code, Section 2113).

PURPOSES OF THE PENAL LAW (P.L. Sec. 1.05).

1. The purposes of the Penal Law are:

a. **FORBIDDING:** To proscribe (forbid) conduct which, unjustifiably and inexcusably, causes or threatens substantial harm to individual or public interests.

b. **WARNING:** To give warning to all persons of the nature of the conduct which is forbidden and of the punishment (sentences authorized) upon conviction.

c. **DEFINING:** To define the act or omission and the accompanying mental state (intent, recklessness, etc.) which constitute each offense.

d. **DISTINGUISHING:** To differentiate, on reasonable grounds between serious and minor offenses, and to prescribe proportionate penalties for each.

e. **INSURING:** To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences which the law authorizes, the rehabilitation of persons convicted under the law, and their confinement when required in the interest of protecting the public.

CONSTRUCTION OF THE LAW: The provisions of the Penal Law must be construed according to the fair meaning of their terms, to promote justice and effect the objects of the law. The general rule of legal construction that a penal statute is to be strictly construed does not apply to the new Penal Law (P.L. Sec. 5.00).

OFFENSES AFTER THE NEW LAW: The new Penal Law governs all offenses defined in it which were committed after the effective date of the law. The effective date was September 1, 1967 (P.L. Sec. 500.10). A calendar day includes the time from midnight to midnight (Genl. Constr. L. Sec. 19). Accordingly, the new Penal Law went into effect the first instant after midnight of August 31, 1967.

OFFENSES BEFORE THE NEW LAW: Any offense committed up to and including midnight, August 31, 1967, is governed by the law in effect prior to the new Penal Law (P.L. Sec. 5.05, subd. 3).

OFFENSES OUTSIDE THE PENAL LAW: The provisions of the new Penal Law govern the construction of and punishment for any offense defined by laws outside the new Penal Law committed after the effective date of the new Penal Law, unless the outside law expressly provides otherwise or unless its context requires a different treatment. Thus, a misdemeanor defined in another law, without a specified punishment, would have its punishment determined under the provisions of Section 55.10 (Designation of Offenses) of the new Penal Law.

LIMITATIONS ON APPLICABILITY OF THE NEW PENAL LAW: Unless the Penal Law should specifically provide otherwise the procedure concerning the accusation (complaint or information), prosecution, conviction and punishment of offenders is regulated by the Code of Criminal Procedure (P.L. Sec. 5.10, subd. 1).

1. The new Penal Law does not affect any power conferred by law on any court-martial or other military authority or officer to prosecute and punish conduct and offenders violating military code or laws (P.L. Sec. 5.10, subd. 2).

2. The new Penal Law does not in any way affect any right or liability to damages, penalty, forfeiture or other remedy which the law authorizes recovery of or enforcement of in a civil action. This is true regardless of whether the conduct involved in the civil action constitutes an offense under the new Penal Law (P.L. Sec. 5.10, subd. 3).

OUTLINE OF THE PENAL LAW (CHAPTER 1030, LAWS OF 1965)

(CHAPTER 40 OF THE CONSOLIDATED LAWS)

(EFFECTIVE SEPTEMBER 1, 1967)

PART ONE—GENERAL PROVISIONS

TITLE A—GENERAL PURPOSES, RULES OF CONSTRUCTION, AND DEFINITIONS

TITLE B—PRINCIPLES OF CRIMINAL LIABILITY

TITLE C—DEFENSES

PART TWO—SENTENCES

TITLE E—SENTENCES

PART THREE—SPECIFIC OFFENSES

TITLE G—ANTICIPATORY OFFENSES

TITLE H—OFFENSES AGAINST THE PERSON INVOLVING PHYSICAL INJURY, SEXUAL CONDUCT, RESTRAINT AND INTIMIDATION

TITLE I—OFFENSES INVOLVING DAMAGE TO AND INTRUSION UPON PROPERTY

TITLE J—OFFENSES INVOLVING THEFT

8. CULPABILITY, PARTIES TO CRIME

Officers may take the word "culpability" to mean guilt or liability to blame and punishment.

The Penal Law sets out the following definitions relating to culpability. Officers should study these definitions carefully and must keep them in mind when considering the possible criminal liability or guilt of an alleged offender:

1. **ACT:** a bodily movement (P.L. Sec. 15.00, subd. 1).

a. **Voluntary Act:** a bodily movement performed consciously as a result of effort or determination, and includes the possession of property if the actor was aware of his physical possession or control thereof for a sufficient period to have been able to terminate it (P.L. Sec. 15.00, subd. 2).

2. **OMISSION:** a failure to perform an act as to which a duty of performance is imposed by law (P.L. Sec. 15.00, subd. 3).

a. A duty imposed by law means a duty imposed by statute (Brinkerhoff vs. Bostwick 99 N. Y. 185). The statute need not be a Penal Law.

3. **CONDUCT:** An act or omission and its accompanying mental state (P.L. Sec. 15.00, subd. 4).

4. **TO ACT:** Either to perform an act or to omit to perform an act (P.L. Sec. 15.00, subd. 5).

5. **CULPABLE MENTAL STATE:** Intentionally, knowingly, recklessly, or with criminal negligence (P.L. Sec. 15.00, subd. 6).

a. **Intentionally:** A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct (P.L. Sec. 15.05, subd. 1).

b. **Knowingly:** A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists (P.L. Sec. 15.05, subd. 2).

c. **Recklessly:** A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists.

(1) The risk must be of such nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

(2) A person who creates such a risk but is unaware of it solely by reason of voluntary intoxication also acts recklessly with respect thereto (P.L. Sec. 15.05, subd. 3).

d. **Criminal Negligence:** A person acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists.

(1) The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation (P.L. Sec. 15.05, subd. 4).

CRIMINAL LIABILITY

CRIMINAL LIABILITY: The minimum required for criminal liability (on the part of anyone) is the performance by a person of conduct which includes:

1. A voluntary act, or
2. Omission to perform an act which the person is physically capable of performing (P.L. Sec. 15.10, first sentence).

KINDS OF CRIMINAL LIABILITY: Criminal liability may be either a strict liability or may require mental culpability.

1. **STRICT LIABILITY:** If the performance of conduct involving either a voluntary act or an omission to perform an act is all that is required for commission of a particular offense, the offense is one of strict liability. An offense is one of strict liability in any instance where the offense or some material element of it does not require a culpable mental state (P.L. Sec. 15.10, second sentence).

   a. An offense of strict liability, by definition, involves no culpable mental state—in other words, it is an offense which can be committed without intent or knowledge, and without recklessness or negligence. Thus, a violation of P.L. Sec. 265.25 (failure by physician treating a bullet wound to report the wound to police) requires no specific intent or culpable mental state and is a crime of strict liability. It does not matter whether the physician intentionally failed to report, or merely omitted to report it if he could have reported.

2. **MENTAL CULPABILITY:** If a culpable mental state is required with respect to every material element of an offense, the offense is one of mental culpability (P.L. Sec. 15.10, third sentence). Most offenses are offenses of mental culpability.

   a. An offense of mental culpability, by definition, involves either intent, or acting knowlingly, recklessly or negligently. Burglary, for example, is a crime of mental culpability because to commit burglary it is necessary that a person enter or remain unlawfully in a building "with intent to commit a crime therein" (P.L. Secs. 140.20, 140.25, 140.30).

CONSTRUING LIABILITY IN CRIMINAL LAWS: A statute defining a crime, whether in the Penal Law or any other law, must be construed as defining a crime of "mental culpability" unless the statute clearly indicates a legislative intent to impose strict liability (P.L. Sec. 15.15, subd. 2, second sentence).

When the commission of an offense or some element of an offense defined in the Penal Law requires a particular culpable mental state, the mental state is ordinarily designated in the statute defining the offense by such terms as "intentionally," "knowingly," "recklessly," "criminal negligence," or terms such as "with intent to defraud" and "knowing it to be false," describing a specific kind of intent or knowledge.

When one and only one of such terms appears in the Penal Law, defining an offense, it is presumed to apply to every element of the offense unless an intent to limit its application clearly appears (P.L. Sec. 15.15, subd. 1).

Even if no culpable mental state is expressly designated in a statute defining an offense, either in the Penal Law or in any other statute; a culpable mental state may nevertheless be required for the commission of such offense, or with respect to some or all of its material elements, if the forbidden conduct necessarily involves such culpable mental state (P.L. Sec. 15.15, subd. 2, first sentence). For example, it is rape in the third degree for a male 21 years old or more to engage in sexual intercourse with

a female under 17 (P.L. Sec. 130.25, subd. 2). Although the law does not specify a culpable mental state, it is a crime of mental culpability, since the act forbidden must necessarily be done intentionally and knowingly.

IGNORANCE OR MISTAKE AS TO ACT: A person is not relieved of criminal liability for conduct because he engaged in such conduct under a mistaken belief of fact, except in the following cases (P.L. Sec. 15.20, subd. 1):

1. The factual mistake negatives the culpable mental state required (P.L. Sec. 15.20, subd. 1-a).
   a. As an example, it is petty larency to steal property (P.L. Sec. 55.25). A person who takes someone else's hat from a coat rack under the honest but mistaken belief that it is his own does not steal the hat or commit petit larceny.
2. The statute defining the offense or a statute related to it expressly provides that the factual mistake constitutes a defense or an exemption from liability (P.L. Sec. 15.20, subd. 1-b).
3. The factual mistake is of a kind that supports a defense of justification (P.L. Sec. 15.20, subd. 1-c).
   a. The defenses of justification are discussed in Section 11, "Defenses and the Use of Force," this Manual.

AGE OF CHILD: In spite of the use of the term "knowingly" in any section of the Penal Law which defines an offense, if the age of a child is an element of the offense it is not an element of the offense that the defendant knew the age of the child. It is not, (unless the Penal Law section should expressly provide that it is) any defense to a prosecution that the defendant did not know the child's age or believed the child's age to be the same as or greater than the age specified in the penal statute.

IGNORANCE OR MISTAKE AS TO THE LAW: A person is not relieved of criminal liability for conduct because he engaged in such conduct under a mistaken belief that it did not, as a matter of law, constitute an offense, except in the following cases (P.L. Sec. 15.20, subd. 2):

1. The mistaken belief is founded upon an official statement of the law contained in:
   a. A statute or other enactment (P.L. Sec. 15.20, subd. 2-a).
   b. An administrative order or grant of permission (P.L. Sec. 15.20, subd. 2-b).
   c. A judicial decision of a state or Federal court (P.L. Sec. 15.20, subd. 2-c).
   d. An interpretation of the statute relating to the offense, officially made or issued by a public servant, agency or body legally charged or empowered with the responsibility or privilege of administering, enforcing or interpreting such statute or law (P.L. Sec. 15.20, subd. 2-d).

INTOXICATION: Intoxication is not a defense to a criminal charge (P.L. Sec. 15.25). However, the defendant is permitted, in any prosecution for an offense, to offer evidence of his intoxication whenever it is relevant to negate an element of the crime charged.

CONDUCT OF ANOTHER

PRINCIPALS AND ACCESSORIES: Under the old Penal Law distinctions were made as to who was a principal in a felony and who was an accessory to it. In misdemeanors, all were principals, including those who would have been only accessories if the crime were a felony. The new

Penal Law sets a somewhat different rule as to criminal liability for conduct of another.

CRIMINAL LIABILITY FOR CONDUCT OF ANOTHER: When a person engages in conduct which constitutes an offense (whether felony, misdemeanor or lesser offense) criminal liability for such conduct also falls on anyone who:

1. Acting with the mental culpability required for commission of the offense, either
   a, Solicits, or
   b. Requests, or
   c. Commands, or
   d. Importunes (persistently or repeatedly urges), or
   e. Intentionally aids,
2. Such person to engage in such conduct (P.L. Sec. 20.00).

WHAT IS NOT A DEFENSE: In any prosecution where the defendant's criminal liability is based upon the conduct of another person, it is no defense:

1. That the other person is not guilty because of:
   a. Criminal irresponsibility or other legal incapacity or exemption (such as insane, under age of criminal responsibility, etc.), or
   b. Unawareness of the criminal nature of the conduct, or
   c. Unawareness of the defendant's criminal purpose, or
   d. Any other factor which precludes the mental state required for commission of the offense,
2. That the other person has not been prosecuted for or convicted of any offense based on the conduct in question,
3. That the other person has previously been acquitted of the conduct in question.
4. That the other person has legal immunity from prosecution for the conduct in question,
5. That the offense can be committed only by a particular class or classes of persons and that the defendant, not belonging to such class or classes, is for that reason legally incapable of committing the offense in an individual capacity for example:
   a. For example, the defendant is a private person and intentionally aided a public servant to obtain a bribe. The defendant not being a public servant could not, in his individual capacity, have been guilty of the bribe receiving. He can, however, be convicted on the basis of criminal liability for the conduct of the public servant he aided in receiving the bribe (P.L. Sec. 20.05).

EXEMPTION FROM LIABILITY FOR CONDUCT OF ANOTHER: A person is not criminally liable for conduct of another which constitutes an offense when the person's own conduct, although causing or aiding the commission of the offense, if of a kind that is necessarily incidental thereto (P.L. Sec. 20.10).

1. If the conduct constitutes a related but separate offense upon the part of the person, he is liable for that offense only and not for the conduct or offense committed by the other (P.L. Sec. 20.10).
2. As an example, in a commercial bribery case (P.L. Sec. 180.05), where a bribe is solicited, the victim paying the bribe is not criminally liable for the crime of "soliciting" a bribe committed by the person soliciting and to whom the bribe is paid. If the facts suited, the victim could, however, be independently guilty of commercial bribing for giving the bribe (P.L. Sec. 180.00).

CONVICTION FOR DIFFERENT DEGREES OF OFFENSE: Unless the law specifically provides otherwise in a particular case, if two or more persons are criminally liable for the same offense under Section 20.00, and the offense is divided into degrees, each person is guilty of the degree of the offense which fits his own culpable mental state and his own accountability for any aggravating fact or circumstance (P.L. Sec. 20.15). It is thus entirely possible to convict one person of an offense in one degree and another person also criminally liable for the same conduct in another degree of the same offense.

LIABILITY OF CORPORATIONS: A corporation is guilty of an offense when:

1. The conduct constituting the offense consists of omission to discharge a specific duty of affirmative performance imposed on corporations by law, or

2. The conduct constituting the offense is:
   a. Engaged in, or
   b. Authorized, or
   c. Solicited or requested, or
   d. Commanded, or
   e. Recklessly tolerated
   f. By the Board of Directors, or
   g. By a high managerial agent acting within the scope of his employment and in behalf of the corporation, or

3. The conduct constituting the offense is:
   a. Engaged in by an agent of the corporation acting within the scope of his employment and in behalf of the corporation, and

4. The offense is a misdemeanor or a violation, or the offense is one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation (P.L. Sec. 20.20, subd. 2).

A high managerial agent is an officer of a corporation, or any other agent of the corporation in a position of comparable authority, with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees. "Agent" means any director, officer or employee of a corporation, or any other person who is authorized to act in behalf of the corporation (P.L. Sec. 20.20, subd. 1).

LIABILITY OF AN INDIVIDUAL FOR CORPORATE CONDUCT: Any person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or on behalf of a corporation, to the same extent as if such conduct were performed in his own name or behalf (P.L. Sec. 20.25).

1. Thus, even though a high managerial agent or an agent of a corporation may subject the corporation to criminal liability he is also individually liable for the offense just as if he committed it entirely on his own.

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9. CLASSIFICATION OF OFFENSES

The term "offenses," as used in Title E of the Penal Law includes felonies, misdemeanors, violations and traffic infractions (P.L. Sec. 55.10).

1. The intent of the law is that provisions on sentencing under Title E of the Penal Law will apply to all kinds of offenses (see "Disposition of Offenders," Section 10, this Manual).

2. Under the new Penal Law all "crimes" are either felonies or misdemeanors and all the non-criminal offenses are "violations" or "traffic infractions" (P.L. Sec. 55.10).

CLASSIFICATION OF FELONIES AND MISDEMEANORS

The Penal Law provides for five classes of felonies and three classes of misdemeanors (P.L. Sec. 55.05). The classes govern the punishment (sentence) which the court can impose.

1. **FELONIES:** Felonies are divided into Class A, Class B, Class C, Class D and Class E (P.L. Sec. 55.05, subd. 1).

2. **MISDEMEANORS:** Misdemeanors are divided into Class A, Class B and "Unclassified" (P.L. Sec. 55.05, subd. 2).

DESIGNATION OF OFFENSES

FELONIES: The particular class of any felony is expressly set out in the Penal Law in the section or article defining the felony.

1. If a felony is defined by a law **other than** the Penal Law, and that law does not classify it as Class A, Class B, etc., it is automatically a Class E felony (P.L. Sec. 55.10, subd. 1).

a. If a criminal offense is defined by a law other than the Penal Law and is not specifically declared to be a felony, but is punishable by a term of imprisonment over one year, it is also automatically a Class E. felony (P.L. Sec. 55.10, subd. 1).

MISDEMEANORS: All the misdemeanors defined in the Penal Law are specifically designated as Class A or Class B by the section or article defining the misdemeanor (P.L. Sec. 55.10, subd. 2-a).

1. If a misdemeanor is defined by a law **other than** the Penal Law, and that law does not classify it as either Class A or Class B, (but does designate it a misdemeanor) and does not specify the punishment, it is automatically a Class A misdemeanor (P.L. Sec. 55.10, subd. 2-b).

2. If any offense is defined by a law other than the Penal Law, or an ordinance, and the law or ordinance defining it provides for punishment by imprisonment in excess of 15 days and not over one year, it is automatically an "Unclassified Misdemeanor" (P.L. Sec. 55.10, subd. 2-c), except when it was not previously a "crime."

VIOLATIONS: Officers should remember that the Penal Law defines a "violation" as **any** offense (**except** a traffic infraction) for which imprisonment in excess of 15 days cannot be imposed (P.L. Sec. 10.00, subd. 3).

1. All "violations" set out in the new Penal Law are specifically designated as "violations" (P.L. Sec. 55.10, subd. 3).

2. Offenses defined by a law or ordinance other than the Penal Law are automatically "violations" if punishment authorized is either imprisonment for 15 days, or less, or a fine only (P.L. Sec. 55.10, subd. 3-a).

a. This rule holds true even if the other law or ordinance specifically calls the offense a misdemeanor.

b. Where an offense **was not a crime** prior to the effective date of the new Penal Law, and violation is punishable by imprisonment **over** 15 days in accordance with a law or ordinance enacted before the effective date of the new Penal Law, the offense is automatically a "violation" (P.L. Sec. 55.10, subd. 3-b).

TRAFFIC INFRACTION: An offense which is defined as a "traffic infraction" is not a violation or a misdemeanor by virtue of the sentence prescribed therefor (P.L. Sec. 55.10, subd. 4).

1. A traffic infraction is any offense defined as a traffic infraction by V&T Sec. 155 (P.L. Sec. 10.00, subd. 2).

10. DISPOSITION OF OFFENDERS

Every person convicted of an offense must be sentenced under the provisions of Penal Law Article 60, "Disposition of Offenders" (P.L. Sec. 60.00). The possible sentences for individual persons are:

1. **DEATH** (P.L. Sec. 60.05).
   a. A death sentence may be given on recommendation of a jury after special hearing, under Penal Law Section 125.35 (Murder).
2. **IMPRISONMENT** (P.L. Secs. 60.05, 60.10, subd. 2).
   a. Imprisonment is mandatory for conviction of a Class A Felony, unless the death sentence is imposed.
   b. In case of conviction other than for a Class A Felony, imprisonment is discretionary with the court.
3. **IMPRISONMENT AND FINE** (P.L. Sec. 60.05).
   a. No fine is authorized for a Class A Felony.
4. **FINE** (P.L. Sec. 60.10, subd. 2-c).
   a. A fine alone may be the penalty for any conviction except Class A or Class B Felonies or dangerous drug Felony under Article 220 of the Penal Law.
5. **REFORMATORY** (P.L. Sec. 60.10, subd. 2-b).
6. **PROBATION** (P.L. Sec. 60.10, subd. 1).
   a. Probation cannot be granted on conviction of a Class A Felony.
7. **PROBATION AND FINE** (P.L. Sec. 60.10, subd. 1).
8. **CONDITIONAL DISCHARGE** (P.L. Sec. 60.10, subd. 1).
   a. Conditional discharge cannot be given on conviction of a Class A or Class B Felony or a dangerous drug felony under Article 220 of the Penal Law (P.L. Sec. 65.05, subd. 1).
9. **UNCONDITIONAL DISCHARGE** (P.L. Sec. 60.10, subd. 2-e).
   a. Unconditional discharge may be granted only when a sentence of conditional discharge could have been given (P.L. Sec. 65.20, subd. 1).
10. **CORPORATION:** When a corporation is convicted of an offense, the sentence may be:
    a. **FINE** (P.L. 60.25, subd. a).
    b. **CONDITIONAL DISCHARGE** (P.L. Sec. 60.25, subd. b).
       (1) In any case where a corporation has been sentenced to a period of conditional discharge and such sentence is revoked, the court must sentence the corporation to pay a fine (P.L. Sec. 60.25, subd. c).
    c. **UNCONDITIONAL DISCHARGE** (P.L. Sec. 60.25, subd. c).
11. **CIVIL PENALTIES:** The Penal Law does not deprive the courts of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Any appropriate order exercising such authority may be included as part of a judgment of conviction (P.L. Sec. 60.30).
12. **AUTHORIZED DISPOSITIONS; NARCOTIC ADDICT:** When a person is convicted of an offense, other than a Class A Felony, and has undergone a medical examination, and been found to be a narcotic addict the sentence of the court must be as follows:
    a. Where the conviction is a misdemeanor or of prostitution the sentence shall consist of certification to the care and custody of the Narcotic Addiction Control Commission.

b. Where the conviction is for a felony, the sentence shall, in the discretion of the court, consist of either:
(1) Certification to care and custody of the commission; or
(2) An indeterminate sentence and a fine (P.L. Sec. 60.15).

13. **AUTHORIZED DISPOSITIONS; TRAFFIC INFRACTION:** When a person has been convicted of a traffic infraction, sentence may be:
a. A period of Conditional Discharge or
b. Unconditional Discharge; or
c. A fine, or sentence to imprisonment, or both (P.L. Sec. 60.20).

PROBATION

A person may be sentenced to probation after conviction of any crime except a Class A Felony, if the following circumstances exist (P.L. Sec. 65.00, subd. 1):

1. Confinement of the defendant is not necessary for protection of the public;
2. The defendant is in need of guidance, training or other assistance which can be effectively administered through probation supervision;
3. Probation is not inconsistent with the ends of justice.

Periods of probation must be initially set by the court as follows (P.L. Sec. 65.00, subd. 3):

1. Felony—5 years.
2. Class A Misdemeanor—3 years.
3. Class B Misdemeanor—1 year.
4. Unclassified Misdemeanor
   a. If authorized sentence of imprisonment is over three months, probation must be 3 years.
   b. If authorized sentence of imprisonment is three months or less, probation must be one year.

The court is required to set conditions of probation which it deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so (P.L. Sec. 65.10, subd. 1). Permissible conditions relating to conduct, rehabilitation and supervision are set out in Penal Law Section 65.10.

Included in permissible conditions are restitution or reparation of loss or damage (P.L. Sec. 65.10, subd. 1-f).

CONDITIONAL DISCHARGE

A person may be sentenced to conditional discharge after conviction of any offense except a Class A or Class B Felony or a dangerous drug felony defined in Penal Law Article 220, if the following circumstances exist (P.L. Sec. 65.05, subd. 1):

1. Having regard to:
   a. The nature and circumstances of the offense, and
   b. The history, character and condition of the defendant;
2. The court is of the opinion that:
   a. Neither public interest nor the ends of justice;
   b. Would be served by a sentence of:
      (1) imprisonment, or
      (2) fine;
   c. And that probation supervision is not appropriate.

Whenever a sentence of conditional discharge is imposed for a felony the court must set forth in the record its reasons for giving such sentence.

When a sentence of conditional discharge is imposed it means that the defendant must be released without imprisonment, fine or probation but subject, during the period of conditional discharge, to such conditions as the court may determine. The conditions which may be imposed are the same as for probation.

The periods of conditional discharge permitted are (P.L. Sec. 65.05, subd. 3):

1. Felony—3 years
2. Misdemeanor—1 year
3. Violation—1 year

A sentence of conditional discharge is a final judgment of conviction (P.L. Sec. 60.10, subd. 1).

UNCONDITIONAL DISCHARGE

The court may impose a sentence of unconditional discharge in any case where a sentence of conditional discharge could be given, if the court is of the opinion that no proper purpose would be served by imposing any condition upon the defendant's release. If a sentence of unconditional discharge is imposed for a felony, the court must set forth in the record its reasons for such action (P.L. Sec. 65.20, subd. 1).

A sentence of unconditional discharge means that the defendant is released without imprisonment, fine or supervision.

A sentence of unconditional discharge is for all purposes a final judgment of conviction (P.L. Sec. 65.20, subd. 2).

IMPRISONMENT

Sentences of imprisonment on conviction of a felony must be indeterminate sentences with maximum and minimum, except that in case of a Class D or Class E Felony, if the court feels an indeterminate sentence would be too harsh, it can impose a definite sentence not exceeding one year (P.L. Sec. 70.00, 70.05).

Sentences of imprisonment on conviction of any misdemeanor or violation must be a definite, fixed term (P.L. Sec. 70.15).

TERMS ALLOWED—FELONY: The maximum and minimum term for each class of felony are as follows (P.L. Sec. 70.00):

Class of Felony	Maximum Term	Minimum Term
A	life imprisonment (cannot be less)	15-25 Years
B	3-25 years	At least one year, and up 1/3 of maximum if set by court. If not, as as determined by Parole Board.
C	3-15 years	" "
D	3-7 years	" "
E	3-4 years	" "

TERMS ALLOWED—MISDEMEANOR: There can be no indeterminate terms of imprisonment in regard to misdemeanors. All sentences

for conviction of a misdemeanor must be definite, within the following limits (P.L. Sec. 70.15):

Class of Misdemeanor	Maximum Term Allowed (There is no minimum)
A	1 year
B	3 months
Unclassified	As fixed by the court, in accordance with law or ordinance defining the crime.

TERMS ALLOWED—VIOLATION: A sentence of imprisonment for a violation must always be a definite term, to be fixed by the court, and not over 15 days in any case (P.L. Sec. 70.15, subd. 4).

1. In case of a violation specified by any law or ordinance outside the Penal Law, where the sentence is expressly specified in the law or ordinance defining it and consists solely of a fine, no term of imprisonment can be imposed at all (P.L. Sec. 70.15, subd. 4).

REFORMATORY SENTENCES

When a young adult is sentenced for a crime the court may, in place of any other sentence of imprisonment, impose a reformatory sentence.

1. A reformatory sentence of imprisonment is a sentence to a period of unspecified duration and the court cannot fix the minimum or maximum (P.L. Sec. 75.00, subd. 2).

2. A reformatory sentence can only be given to a "young adult." A "young adult" is a person who is more than 16 and less than 21 years of age at the time sentence is imposed (P.L. Sec. 75.00, subd. 1).

TERM OF REFORMATORY SENTENCE: A reformatory period begins when the young adult is received at the institution. It ends with discharge by the Parole Board or after four years, whichever is first. The four year period is not necessarily a calendar four years, as jail time, time served under vacated sentences and time out of custody may change the period.

LOCAL REFORMATORY: A reformatory sentence may be either to a state institution under the Department of Correction or to a local city or county reformatory. If to the local reformatory, the maximum term is three years (P.L. Sec. 75.20, subd. 4).

FINES

There is a basic distinction in the law as to fines for felonies and fines for misdemeanors and violations. Sentence can include a fine after conviction of a felony only if the defendant gained money or property through the commission of the crime for which convicted (P.L. Sec. 80.00, subd. 1), but a fine may always be levied on conviction of any misdemeanor or violation (P.L. Sec. 80.05).

Separate provisions relate to fines of corporations, as set out later in this Manual section (P.L. Sec. 80.00, subd. 4, 80.05, subd. b).

AMOUNT OF FINE—FELONY: A sentence of an individual to pay a fine for a felony must be a sentence to pay an amount not exceeding double the amount of the defendant's gain from the crime. The court must fix the amount (P.L. Sec. 80.00, subd. 2).

1. "Gain" means the amount of money or the value of property derived from the commission of the crime, less the amount of money

or the value of property returned to the victim of the crime, or seized by or surrendered to lawful authority prior to the time sentence is imposed (P.L. Sec. 80.00, subd. 3).

2. Whenever a court imposes a fine for a felony, it must make a finding as to the amount of the defendant's gain from the crime.

a. If the record does not contain sufficient evidence to support the finding as to gain, the court may conduct a hearing to determine it (P.L. Sec. 80.00, subd. 3).

AMOUNT OF FINE—MISDEMEANOR: All fines for misdemeanors must be a fixed amount and not more than shown in the following list, except that if a person gained money or property through the commission of a misdemeanor, the court may impose a fine of not over double the amount of defendant's gain; gain is determined in the same way as for a felony (P.L. Sec. 80.05):

Class of Misdemeanor	Maximum Fine
A	$1,000
B	$500
Unclassified	An amount fixed by the court in accordance with the law or ordinance defining the crime.

AMOUNT OF FINE—VIOLATION: A sentence to pay a fine for a violation must be a sentence to pay an amount fixed by the court not over $250 (P.L. Sec. 80.05, subd. 4).

1. In case of a violation defined by a law or ordinance other than the Penal Law, if the amount of the fine is expressly specified in the law or ordinance, the amount of the fine must be fixed in accordance with that law or ordinance (P.L. Sec. 80.05, subd. 4).

2. If the defendant in a violation case gained money or property by the violation, the court, in place of fixing a fine in accordance with the preceding rules, can sentence the defendant to pay an amount not over double the amount of his gain from the violation. The amount of gain is determined in the same way as for a felony (P.L. Sec. 80.05, subd. 5).

Multiple Offenses: Where a person is convicted of two or more offenses committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other, and the court imposes a sentence of imprisonment or a fine or both for one of the offenses, a fine cannot be imposed for the other (P.L. Sec. 80.15).

Fines for Corporations: A sentence to pay a fine imposed on a corporation for an offense defined in the Penal Law or any offense defined by another law or ordinance for which no special corporate fine is specified, must be an amount fixed by the court, with the following top limits (P.L. Sec. 80.10):

Offense	Maximum Fine
Felony	$10,000
Class A Misdemeanor	$5,000
Unclassified Misdemeanor for which term of imprisonment of an individual for over three months is authorized	$5,000
Class B Misdemeanor	$2,000
Unclassified Misdemeanor for which term of imprisonment of an individual for not over three months is authorized	
Violation	$500

In any instance where the corporation gained from the commission of the offense, the fine can be any amount not exceeding double the amount of the corporation's gain from the offense (P.L. Sec. 80.10, subd. 1-e). Gain is determined in the same way as for a felony (P.L. Sec. 80.10, subd. 3).

LAWS SPECIFYING FINE FOR CORPORATION: In case of an offense defined by a law or ordinance other than the Penal Law, where a special fine for a corporation is expressly specified in the law or ordinance that defines the offense, the fine must be either an amount within the limits specified in the law or ordinance that defines the offense or any higher amount not exceeding double the amount of the corporation's gain from the commission of the offense (P.L. Sec. 80.10, subd. 2-a, b). The amount of gain is determined in the same way as for a felony (P.L. Sec. 80.10, subd. 3).

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11. DEFENSES AND THE USE OF FORCE

DEFENSES

DEFENSES GENERALLY; BURDEN OF PROOF: When a defense defined by statute is raised at trial, the people have the burden of disproving such defense beyond a reasonable doubt (P.L. Sec. 25.00, subd.1).

1. This rule does not apply to "affirmative defenses." Affirmative defenses are specifically designated by the law as such (P.L. Sec. 25.00, subd. 1).

2. When a defense declared by statute to be an affirmative defense is raised at trial, the defendant has the burden of establishing it by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

DEFENSE OF INFANCY: A person less than 16 years old is not criminally responsible for any conduct (P.L. Sec. 30.00, subd. 1). In any prosecution lack of criminal responsibility by reason of infancy (being less than 16 years old) is a defense (P.L. Sec. 30.00, subd. 2).

DEFENSE OF MENTAL DISEASE OR DEFECT: A person is not criminally responsible for any conduct if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity to know or appreciate either:

1. The nature and consequence of such conduct; or
2. That such conduct was wrong (P.L. Sec. 30.05, subd. 1).

In any prosecution lack of criminal responsibility by reason of mental disease or defect, is a defense (P.L. Sec. 30.05).

DEFENSE OF JUSTIFICATION: In any prosecution, justification is a defense. The Penal Law defines various forms of justification (P.L. Sec. 35.00).

Conduct which would otherwise constitute an offense is justifiable and not criminal (unless inconsistent with Penal Law sections 35.10-35.30 on the use of force, or some other provision of Law) when:

1. It is required or authorized by a provision of law or a judicial decree, including:
   a. Laws defining duties and functions of public servants;
   b. Laws defining duties of private citizens to assist public servants in the performance of certain of their functions;
   c. Laws governing the execution of legal process;
   d. Laws governing the military services and the conduct of war;
   e. Judgments and orders of competent courts (P.L. Sec. 35.05, subd. 1), or

2. It "is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the actor, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding such injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue."

a. "The necessity and justifiability . . . may not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder."

b. "Whenever evidence relating to the defense of justification under this subdivision is offered by the defendant, the court shall rule as a matter of law whether the claimed facts and circumstances would, if established, constitute a defense." (P.L. Sec. 35.05, subd. 2).

c. This rule of justification of emergency measures applies to a limited class of case, such as where it may be necessary in an emergency to break into a house to use a telephone to summon aid to prevent a death or to warn of a catastrophe—the defense of justification would prevent prosecution for breaking into the house (which otherwise would be a criminal trespass).

USE OF FORCE

USE OF PHYSICAL FORCE: The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal as follows:

1. **MINOR AND INCOMPETENTS**—A parent, guardian or other person entrusted with the care and supervision of a minor or an incompetent person may use physical force on the minor or incompetent:

a. When and to the extent that he reasonably believes it necessary to:

(1) Maintain discipline, or

(2) Promote the welfare of the minor or incompetent.

b. The force cannot be deadly physical force (P.L. Sec. 35.10, subd. 1).

(1) Deadly physical force is physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury (P.L. Sec. 10.00, subd. 11).

2. **TEACHERS, SUPERVISORS**—A teacher or other person entrusted with the care and supervision of a minor for a special purpose may use physical force on the minor

a. When and to the extent that he reasonably believes it necessary to:

(1) Maintain discipline, or

(2) Promote the welfare of the minor.

b. The force cannot be deadly physical force (P.L. Sec. 35.10, subd. 1).

3. **JAIL, PRISON, ETC.**—A warden or other authorized official of a jail, prison or correctional institution may, in order to maintain order and discipline, use such physical force as is authorized by the correction law (P.L. Sec. 35.10, subd. 2).

4. **COMMON CARRIER—PASSENGERS**—A person responsible for the maintenance of order in a common carrier of passengers, or a person acting under his direction, may use physical force when and to the extent that he reasonably believes it necessary to maintain order.

a. He may use deadly physical force only when he reasonably believes it necessary to prevent death or serious injury (P.L. Sec. 35.10, subd. 3).

5. **SUICIDES**—A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself may use physical force upon such person to the extent that he reasonably believes it necessary to thwart such result (P.L. Sec. 35.10, subd. 4).

6. **DOCTORS**—A duly licensed physician, or a person acting under his direction, may use physical force for the purpose of administering a recognized form of treatment which he reasonably believes to be adapted to promoting the physical or mental health of the patient if:

a. The treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his parent, guardian or other person entrusted with his care and supervision, or

b. The treatment is administered in an emergency when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent (P.L. Sec. 35.10, subd. 5).

7. **DEFENSE, SELF OR ANOTHER**—A person may use physical force upon another person in defending himself or a third person as prescribed in Penal Law Section 35.15 (see "Physical Force in Defense of a Person") (P.L. Sec. 35.10, subd. 6).

8. **DEFENSE, PROPERTY**—A person may use physical force upon another person in defending property as prescribed in Penal Law Sections 35.20 and 35.25 (see "Physical Force in Defense of Premises and Property") (P.L. Sec. 35.10, subd. 6).

9. **ARRESTS AND ESCAPES**—A person may use physical force upon another person in making an arrest or in preventing an escape, as prescribed in Penal Law Section 35.30 (P.L. Sec. 35.10, subd. 6).

PHYSICAL FORCE IN DEFENSE OF A PERSON: A person is justified in using physical force upon another person in order to defend himself or another from what he reasonably believes to be the use or imminent use of unlawful force by such other person.

1. A person may use the degree of force which he reasonably believes to be necessary for such purpose.

2. Deadly physical force cannot be used unless the user reasonably believes that such other person is:

a. Using or about to use unlawful deadly physical force, or

b. Using or about to use physical force against

(1) An occupant of a dwelling,

(2) While committing or attempting to commit a burglary of such dwelling, or

c. Committing or about to commit a kidnapping, robbery, forcible rape or forcible sodomy (P.L. Sec. 35.15, subd. 1).

3. Deadly physical force cannot justifiably be used upon another if the user knows that he can avoid the necessity of using such force, with complete safety:

a. By retreating.

(1) He is not required to retreat if he is in his dwelling and was not the initial aggressor.

(2) He is not required to retreat if he is a peace officer.

(3) He is not required to retreat if he is a private person assisting a peace officer at his direction and was acting pursuant to Penal Law Section 35.30, making an arrest or preventing an escape.

b. by surrendering possession of property to a person asserting a claim of right thereto.

c. By complying with a demand that he abstain from performing an act which he is not obligated to perform (P.L. Sec. 35.15, subd. 2).

4. Physical force cannot justifiably be used by person who:

a. With intent to cause physical injury or death to another person provoked the use of unlawful physical force by such other person, or

b. Was the initial aggressor

(1) The use of physical force by the initial aggressor is justifiable if he withdraws from the encounter and effectively communicates to such other person his intent to do so but the other person continues or threatens the use of unlawful physical force, or

c. The physical force involved was the product of a combat by agreement not specifically authorized by law (e.g. a duel, an unlawful prize fight, etc) (P.L. Sec. 35.15, subd. 3).

PHYSICAL FORCE IN DEFENSE OF PREMISES: Premises are defined as a building or any real property. A building, in addition to its ordinary meaning, includes any structure, vehicle or watercraft used for overnight lodging of persons, or used by person for carrying on business therein. Where a building consists of two or more units separately secured or occupied, each unit is deemed both a separate building in itself and a part of the main building (P.L. Secs. 35.20, 140.00, subd. 1, 2).

1. Any person:

a. In possession or control of premises, or

b. Licensed or privileged to be on premises,

2. Is justified in using physical force upon another person,

3. When and to the extent that he reasonably believes it necessary to prevent or terminate,

4. What he reasonably believes to be the commission or attempted commission of a criminal trespass by such other person in or on such premises.

5. Deadly physical force is justifiable under such circumstances only:

a. In defense of a person (as previously described in this Manual section, P.L. Sec. 35.15), or

b. When one reasonably believes it necessary to prevent what he reasonably believes to be an attempt by the trespasser to commit arson (P.L. Sec. 35.20).

PHYSICAL FORCE IN DEFENSE OF PROPERTY: A person is justified in using physical force upon another person in respect to property:

1. When and to the extent that he reasonably believes it necessary,

2. To prevent what he reasonably believes to be an attempt by such other person to commit:

a. Larceny involving the property, or

b. Malicious mischief involving the property.

3. Deadly physical force may only be used in defense of a person as previously described in this Manual section, P.L. Sec. 35.15 (P.L. Sec. 35.25).

PHYSICAL FORCE—ARRESTS OR ESCAPES: A peace officer is justified is using physical force upon another person when and to the extent that he reasonably believes it necessary:

1. To effect an arrest or to prevent the escape from custody of a person whom he reasonably believes to have committed an offense (unless he knows that the arrest is unauthorized), or

2. To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape (P.L. Sec. 35.30, subd. 1).

DEADLY PHYSICAL FORCE BY OFFICER: A peace officer is justified in using deadly physical force when he reasonably believes it necessary:

1. To defend himself of a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

2. To effect an arrest or to prevent the escape from custody of a person whom he reasonably believes:

a. Has committed or attempted to commit a felony involving the use or threatened use of deadly physical force; or

b. Is attempting to escape by the use of a deadly weapon; or

c. Otherwise indicates that he is likely to endanger human life or to inflict serious physical injury unless apprehended without delay (P.L. Sec. 35.30, subd. 2).

RECKLESS OR NEGLIGENT USE OF FORCE: Nothing contained in the preceding paragraphs constitutes justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody (P.L. Sec. 35.30, subd. 2-b-iii).

1. Under this provision, for example, an officer who would be justified in using a firearm against a felon would not be justified in using the firearm recklessly and thus shooting a bystander while intending to shoot the felon.

REASONABLE BELIEF: A reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense.

1. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of physical force to make an arrest or to prevent an escape from custody (P.L. Sec. 35.30, subd. 3).

WARRANTS: A peace officer who is effecting an arrest pursuant to a warrant is justified in using physical force unless the warrant is invalid and is known by the officer to be invalid (P.L. Sec. 35.30, subd. 3).

PRIVATE PERSON ASSISTING OFFICER: A person who has been directed by a peace officer to assist such officer to effect an arrest or to prevent an escape from custody is justified in using physical force when and to the extent that he reasonably believes it to be necessary to carry out such peace officer's direction, unless he knows or believes that the arrest or prospective arrest is not or was not authorized (P.L. Sec. 35.30, subd. 4).

1. A person who has been directed to assist a peace officer may use deadly physical force to effect an arrest or to prevent an escape from custody only when:

a. 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; or

b. he is directed or authorized by such peace officer to use deadly physical force and does not know (if such happens to be the case) that the peace officer himself is not authorized to use deadly physical force under the circumstances (P.L. Sec. 35.30, subd. 5).

PRIVATE PERSONS INDIVIDUALLY: A private person acting on his own account is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person whom he reasonably believes to have committed an offense and who in fact has committed such offense.

He is justified in using deadly physical force for such purpose only when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force (P.L. Sec. 35.30, subd. 6).

OFFICERS IN DETENTION FACILITIES: A guard or other peace officer employed in a detention facility is justified in using physical force when and to the extent that he reasonably believes it necessary to prevent the escape of a prisoner from such detention facility (P.L. Sec. 35.30, subd. 7).

1. A detention facility is any place used for confinement pursuant to court order of any person:

a. Charged with or convicted of an offense; or

b. Charged with being or adjudicated a Youthful Offender, Wayward Minor or Juvenile Delinquent; or

c. Held for extradition or as a material witness; or

d. Otherwise confined pursuant to an order of a court (P.L. Sec. 205.00).

DURESS

It is duress when a person engages in proscribed (legally forbidden) conduct because he was coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would have been unable to resist (P.L. Sec. 35.35, subd. 1).

1. Duress is always an affirmative defense (P.L. Sec. 35.35, subd. 1). If an affirmative defense is raised at a trial the defendant has the burden of establishing it by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

2. The defense of "duress" cannot be raised by a defendant who intentionally or recklessly placed himself in a situation in which it was probable that he would be subjected to duress (P.L. Sec. 35.35, subd. 2).

ENTRAPMENT

It is entrapment when a person engages in proscribed (legally forbidden) conduct under the following three circumstances:

1. Because he was induced or encouraged to do so by a public servant (or by someone acting in cooperation with a public servant),

2. Seeking to obtain evidence against him for purpose of criminal prosecution,

3. When the methods used to obtain such evidence were such as to create a substantial risk that the offense would be committed by a person not otherwise disposed to commit it (P.L. Sec. 35.40).

Inducement or encouragement in respect to entrapment means active inducement or encouragement (P.L. Sec. 35.40).

Conduct which merely affords a person an opportunity to commit an offense does not constitute entrapment (P.L. Sec. 35.40).

Entrapment is always an affirmative defense. (P.L. Sec. 35.40). This means that if the defendant raises it as a defense he has the burden of establishing it by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

RENUNCIATION

PROSECUTIONS GENERALLY: Renunciation is an affirmative defense to the kind of prosecution where a defendant's guilt depends upon his criminal liability for the conduct of another under Section 20.00 of the Penal Law (P.L. Sec. 35.45, subd. 1).

1. A person is criminally liable for the conduct of another when, acting with the mental culpability required for commission of an offense, he solicits, requests, commands, importunes or intentionally aids the other to engage in conduct constituting the offense (P.L. Sec. 20.00).

2. The defense of renunciation requires that:

a. Under circumstances manifesting a voluntary and complete renunciation of his criminal purpose;

b. The defendant withdrew from participation;

c. Prior to the commission of the offense;

d. And made a substantial effort to prevent the commission of the offense (P.L. Sec. 35.45, subd. 1).

3. Being an affirmative defense, renunciation must be established by the defendant by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

PROSECUTIONS FOR CRIMINAL FACILITATION: In prosecutions for criminal facilitation (P.L. Secs. 115.00-115.15) it is an affirmative defense of renunciation that:

1. Prior to the commission of the felony which he facilitated;

2. The defendant made a substantial effort to prevent the commission of such felony (P.L. Sec. 35.45, subd. 2).

PROSECUTIONS FOR ATTEMPTS: In any prosecution for an attempt to commit a crime (P.L. Sec. 110.00) it is an affirmative defense of renunciation that:

1. Under circumstances manifesting a voluntary and complete renunciation of his criminal purpose;

2. The defendant avoided the commission of the crime attempted;
3. By abandoning his criminal effort;
4. And if the mere abandonment was insufficient to accomplish avoidance of the commission of the crime;
5. By taking further and affirmative steps which prevented the commission of the crime (P.L. Sec. 35.45, subd. 3).

CRIMINAL SOLICITATION, CONSPIRACY: In any prosecution for criminal solicitation (P.L. Secs. 100.00-100.20) or conspiracy (P.L. Secs. 105.00-105.30), when the crime solicited or contemplated by the conspiracy was not in fact committed, it is an affirmative defense of renunciation that:

1. Under circumstances manifesting a voluntary and complete renunciation of his criminal purpose;
2. The defendant prevented the commission of the crime (P.L. Sec. 35.45, subd. 4).

VOLUNTARY AND COMPLETE RENUNCIATION: A renunciation is not voluntary and complete if it is motivated (either in whole or in part) by:

1. A belief that circumstances exist which:
   a. Increase the probability of detection or apprehension of the defendant or another participant in the crime; or
   b. Render more difficult the accomplishment of the criminal purpose (P.L. Sec. 35.45, subd. 5-a); or
2. A decision to postpone the criminal conduct until another time (P.L. Sec. 35.45, subd. 5-b); or
3. A decision to transfer the criminal effort to:
   a. Another victim; or
   b. Another but similar objective (P.L. Sec. 35.45, subd. 5-b).

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12. COURTS AND COURT PROCEDURE

The courts in New York which have original jurisdiction of criminal actions are the Court for the Trial of Impeachments, the Supreme Court, County Courts, inferior courts in cities expressly authorized to act in criminal matters ("police courts") Courts of Special Sessions, and the Criminal Court of the City of New York (CCP Sec. 11). The Court for the Trial of Impeachments has only jurisdiction to try public officers impeached by the Legislature (CCP Sec. 12).

TRIALS, INFORMATION AND INDICTMENTS: Crimes which may be tried by a Court of Special Sessions, a Police Court or a City Court require only that an information or complaint be filed and the court thus acquires jurisdiction to try the case (CCP Secs. 4, 144, 145). Such courts have jurisdiction of all misdemeanors and lesser offenses. (UJCA Sec. 2001 Secs. cl. Cit. L. Sec. 183, Vill. L. Sec. 182).

All felonies must be prosecuted by indictment (CCP Sec 4). A County Judge or New York Supreme Court Justice may require that any misdemeanor be prosecuted by indictment, by filing a certificate to this effect with the magistrate (CCP Sec. 57). Any defendant charged with a misdemeanor may request that his case be presented to the Grand Jury and this will be done if a certificate to that effect is filed by a County Judge or New York Supreme Court Justice with the magistrate (CCP Sec. 58).

Any Grand Jury may return an indictment for a crime triable by a Court of Special Sessions or a Police Court or City Court. Any district attorney may move to adjourn any misdemeanor case before such a court

for the purpose of presenting the case to a Grand Jury for indictment (CCP Sec. 59, UJCA Sec. 2003).

SUPREME COURT: Has original jurisdiction concerning any crime but in respect to minor crimes triable by lesser courts, only when the case is removed to the Supreme Court or an indictment is returned (CCP Sec. 22).

COUNTY COURT: Has same criminal jurisdiction as Supreme Court, except that the Supreme Court may remove a case from county court to Supreme Court when it deems proper (CCP Sec. 39). In practical criminals cases are usually tried in the county courts and the Supreme Court generally handles civil work.

COURTS OF SPECIAL SESSIONS: The Uniform Justice Court Act, effective September 1, 1967, covered all than existing town and village courts (UJCA, Sec. 2300, subd. b-1), and made them Town Justice Courts or Village Justice Courts (UJCA, Sec. 103) in civil matters and continued them as Courts of Special Sessions in criminal matters (UJCA Sec. 2001).

Under the Uniform Justice Court Act, any Court of Special Sessions in a town or village has original jurisdiction of all misdemeanors and all offenses and violations of a grade less than misdemeanor, including traffic infractions, committed at any place within the municipality (UJCA Sec. 2001). This jurisdiction is subject to removal to Supreme Court or County Court as previously described (UJCA Sec. 2002).

Any justice of a Justice Court may sit as a magistrate for the examination of persons charged with committing a felony anywhere in the county (UJCA Sec. 2004).

In criminal matters, any peace officer to whom any process or mandate of a Justice Court or Court of Special Session is delivered within the county or any adjoining county is an enforcement officer of the court as to that item. In acting as enforcement officer he has, within his municipality, all the powers of a town constable (UJCA Sec. 110, subd. b).

CODE OF CRIMINAL PROCEDURE: The Code of Criminal Procedure applies to the practice and procedure of the Courts of Special Sessions, unless a specific provision of the Uniform Justice Act is contrary (UJCA Sec. 2006).

JUSTICE OF THE PEACE AND VILLAGE JUSTICE: Under the Uniform Justice Court Act, the "JP" and the Village Justice still exist, with authority to hold Courts of Special Sessions as to any misdemeanor in their municipality and to hold arraignments ("examinations") in felony cases occurring anywhere in their county (not alone those in their municipality) (UJCA Secs. 2001, 2004).

The new law designated the Justice of the Peace as a "Town Justice" and a village justice continues to be a "Village Justice" (UJCA Sec. 103).

CITY CRIMINAL COURTS (POLICE COURTS): The Uniform Justice Court Act does not apply to the criminal jurisdiction of City Courts (UJCA Sec. 2300, subd. b-2-ii). Their criminal jurisdiction continues unchanged, with full jurisdiction over all misdemeanors and lesser offenses in the city (Sec. Cl. Cit. L. Sec. 183). These courts are ordinarily referred to, in respect to their criminal jurisdiction, as "police courts." New York City has its own special criminal court with similar jurisdiction, the Criminal Court of the City of New York (NYC Crim. Ct. Act Sec. 31).

DISTRICT COURTS: All judges of District Courts may sit as Courts of Special Sessions and when so doing have jurisdiction of all misdemeanors within the territorial jurisdiction of the District Court. They may also sit as magistrates and when so doing also have jurisdiction over all offenses of a grade less than misdemeanor within the territorial jurisdiction of the District Court.

Criminal jurisdiction of the District Court is concurrent with the jurisdiction of any Town or Village justice or City Court in the territory of the District Court (Unif. DCA, Sec. 2001).

COURTS OF RECORD: Courts of record are the highest courts of the state with powers not possessed by the Justice Courts, Police Courts and Courts of Special Sessions. Thus, only courts of record may try felonies. The courts of record in New York are the Court for the Trial of Impeachments, the Court on the Judiciary, the Court of Appeals, the Appellate Divisions of the Supreme Court, the Supreme Court, the Court of Claims, the County Courts, the Family Court, the Surrogates' Courts, the City Courts of Albany, Mt. Vernon, Rochester, Schenectady, Syracuse, Troy, Utica, and Yonkers, the District Courts and the Civil Court and the Criminal Court of the City of New York (Judic. L. Sec. 2).

APPEALS: Appeals may be taken from the judgment of one court to the next higher court. The possible appeals in New York are: from judgment in Special Sessions, Police Courts, etc. to the County Court; from judgments in the County or Supreme Courts to the Appellate Division of the Supreme Court or to the Court of Appeals; in certain cases involving constitutional questions, appeals may also be taken to the United States Supreme Court.

The policeman has no duty in regard to appeals and they are matters of concern primarily to the district and defendants' attorneys. However, all officers should note that proper preparation of cases and a correct presentation of testimony will assist in precluding the granting of appeals.

MAGISTRATES: When a defendant is charged with a crime, offense, infraction or violation of ordinance and is arrested, he must be brought (arraigned) before a magistrate. In New York, only the following are magistrates: Supreme Court Justices, judges of inferior City Courts authorized to act in criminal matters, County judges, Family Court Judges, judges of the Domestic Relations and Criminal Courts of the City of New York, justices of a town, village, mayors and recorders of cities, and District Court Judges (CCP Sec. 147).

All magistrates have power to issue a warrant of arrest (CCP Sec. 146).

ARRAIGNMENT: When a defendant is brought before a magistrate (whether upon a charge which the magistrate has jurisdiction to try or upon a charge triable only by indictment) the magistrate must, before any other thing is done in the case, inform the defendant of certain rights.

The magistrate must immediately inform the defendant of the charge against him. If the defendant appears without counsel, the magistrate must inform him that he has the right to the aid of counsel in every stage of the proceedings and that if he desires the aid of counsel and is financially unable to obtain counsel, then counsel will be assigned.

The defendant must be allowed a reasonable time to send for counsel and the arraignment must be adjourned for that purpose.

The defendant must be told by the magistrate that he is entitled to communicate free of charge, by letter, or telephone, in order to obtain counsel and in order to inform a relative or friend of his arrest.

COUNSEL FOR DEFENDANTS: If a defendant desires aid of counsel and is financially unable to obtain one, or if the magistrate is not satisfied that he knows the significance of his act in waiving counsel, the magistrate must assign counsel to the defendant (CCP Sec. 188, 699).

Under the provisions of Article 18B of the County Law, each county must provide defense counsel and pay for such counsel and necessary auxiliary services under any one of the several plans mentioned in the

statute. The law applies to counsel for any persons " . . . charged with a crime, who are financially unable to obtain counsel. . . ."

In addition, Article 18A of the County Law permits counties and cities to establish an office of Public Defender. The Public Defender would be required to represent, free of charge, at the request of a defendant or by court order with the consent of the defendant, any indigent defendant who is charged with a crime in the county.

The word "'crime" in the preceding two paragraphs includes not only felonies and misdemeanors but any breach of law or ordinance except a traffic infraction (County L. Sec. 722-a).

All officers should be fully informed as to the plan for and manner of obtaining counsel (or services of the public defender) in their jurisdiction. There is no statute authorizing officers to secure attorneys for subjects. Officers must be wary of possible violation on their part of Section 481 of the Judiciary Law ("Aiding, Assisting or Abetting the Solicitation of Persons or the Procurement of a Retainer for or on Behalf of an Attorney"), a Class A Misdemeanor (Judic. L. Sec. 485), in respect to counsel for defendants.

Section 481 provides that it is unlawful for any person in the employ of or in any capacity attached to any hospital, sanitarium, police department, prison or court, or for a person authorized to furnish bail bonds, to communicate directly or indirectly with any attorney or person acting on his behalf for the purpose of aiding, assisting or abetting such attorney in the solicitation of legal business or the procurement through solicitation of a retainer, written or oral, or any agreement authorizing the attorney to perform or render legal services.

It is most inadvisable for officers to attempt to determine a subject's financial status for the purpose of determining whether or not he can afford to hire an attorney.

TRAFFIC ARRAIGNMENTS: In traffic cases involving a New York resident the magistrate must also advise the defendant as follows, before accepting any plea:

"A plea of guilty to this charge is equivalent to a conviction after trial. If you are convicted, not only will you be liable to a penalty, but in addition your license to drive a motor vehicle or motorcycle, and your certificate of registration, if any, are subject to suspension, and revocation as prescribed by law" (CCP Sec. 335-a).

If this statement is printed on a summons or ticket issued to the defendant in bold red type of at least 12 point in size, the magistrate need not orally inform the defendant as above (CCP Sec. 335-a).

DEFENDANT ENTITLED TO ADJOURNMENT: The defendant should be informed by the magistrate, if his offense is one triable by a Court of Special Session, that he is entitled to an adjournment of not less than five and not more than ten days for the purpose of obtaining a certificate of a county judge or a supreme court justice that it is reasonable the charge be prosecuted by indictment, and he should be asked if he wishes such an adjournment (CCP Secs. 57, 58).

CASES TRIABLE ON INFORMATION, WITHOUT INDICTMENT: In cases which the magistrate has jurisdiction to try, after the magistrate informs the defendant of the charge against him and of his rights and when his counsel is present or after waiting a reasonable time for counsel (or when the defendant does not wish counsel) he must be required by the magistrate to plead to the charge. He may plead guilty, or not guilty, or that he was formerly tried for the same offense and was convicted or acquitted (CCP Secs. 335, 699, 700).

If he pleads guilty, the magistrate sentences him. If he pleads not guilty, the magistrate, now acting as a trial court, tries the case (CCP Sec. 701).

The defendant has a right to ask for a jury trial if the charge is for a crime. In Special Sessions Courts, a jury consists of six jurors (CCP Secs. 703, 708, 710; UJCA Sec. 1305). The jury verdict must be unanimous and if they cannot agree, they may be discharged and a new jury drawn for a new trial and so on until a verdict is rendered (CCP Secs. 714, 715; Op. Atty. Gen. 1934, 51 St. Dept. 46).

If the court finds the evidence insufficient to prove a crime or that the defendant committed it, the defendant is adjudged acquitted and must be immediately discharged from custody (CCP Sec. 719).

If the defendant is convicted on either his plea of guilty, or after being tried, the court must render sentence. The court may adjourn to a later date to impose sentence, to permit time for investigation of the defendant (CCP Sec. 717). A court can sentence a person to be imprisoned until a fine is paid but not more than 1 day per $1 of fine. A person can be sentenced to either fine or imprisonment or both but cannot be given such a sentence as "10 dollars or 10 days" since it is indefinite and neither a fine nor an imprisonment. The court may suspend imprisonment or fine, or put the subject on probation. The defendant may also be required to make restitution to the aggrieved party (CCP Secs. 717, 718).

CASES TRIABLE ONLY BY INDICTMENT (EXAMINATIONS): In cases which must be prosecuted by indictment, the defendant may waive examination and elect to give bail and will be admitted to bail if it is a bailable offense (CCP Sec. 190). If the defendant does not waive, the magistrate will proceed to hold the examination of the defendant (also referred to as a "hearing"). The examination should be completed at one session, but the magistrate may adjourn it for not more than two days at a time. The defendant can consent to or request a longer adjournment (CCP Sec. 191).

The examination consists of reading to the defendant the depositions of witnesses who were examined when the information was presented to a magistrate and calling these witnesses for cross-examination if the defendant requests it (CCP Sec. 194).

After the examination of witnesses, the magistrate must inform the defendant of his right to make a statement and must again state the nature of the charge and inform the defendant that his statement is designed to enable him if he sees fit to answer the charge and explain the facts alleged. He must tell the defendant that he can waive making a statement and that his waiver cannot be used against him in the trial of the case (CCP Sec. 196).

After the defendant's statement, or if he waives a statement, any witnesses for the defendant must be sworn and examined.

Officers should note that witnesses for the people or for the defendant cannot be present at the examination of the defendant. The magistrate may also order that the witnesses be kept separate and be kept from conferring with each other (CCP Sec. 202).

A magistrate may, if he wishes, exclude every one from an examination except the magistrate's clerk, the prosecutor and his counsel, the Attorney General, the District Attorney of the county, the defendant and his counsel and the officer having the defendant in custody (CCP Sec. 203).

On completion of the examination, the magistrate may hold the defendant for trial or may discharge him, depending on whether it appears a crime was in fact committed and there is sufficient cause to believe the defendant is guilty of it (CCP Secs. 207, 208).

If the defendant is not admitted to bail (or does not post bail if granted) the magistrate signs an order of commitment and under it the defendant must be delivered to the County Jail (CCP Secs. 208-210). In New York City the defendant is delivered to the custody of the Commissioner of Correction of the City of New York.

The officer must deliver a commitment with the prisoner (CCP Sec. 213) and the magistrate is required to furnish one to the officer. The form of such a commitment is shown in Section 214, Code of Criminal Procedure.

PROSECUTORS IN MINOR CASES: Where a District Attorney undertakes the prosecution of a misdemeanor (or lesser offense) it would be his duty to investigate and collect evidence, but this task is equally open to police officers, private individuals and lawyers who have a particular interest in the case. The prosecution of a case such as this may be done by a private individual or a lawyer hired by the complainant. A District Attorney has broad discretion in the handling of criminal matters in his county (Op. Atty. Genl. 1945, pages 157, 158).

It is no longer open to question that petty crimes or offenses may be prosecuted in Courts of Special Sessions by administrative officers other than the District Attorney (Peo. vs. Czajka, 11 NY 2d 253). A traffic case could properly be prosecuted by a Deputy Sheriff and the magistrate could properly question the witness in the absence of the District Attorney (People vs. De Leyden, 10 NY 2d 293). A criminal conviction need not be reversed solely because the lay complaining witness was allowed to conduct the prosecution (Peo. vs. Van Sickle, 13 NY 2d 61).

The Court of Appeals, in People vs. Van Sickle, on July 10, 1963, remarked that the District Attorney ought to set up a system whereby he knows of all the criminal prosecutions in his county and either appears therein in person or by assistant or consents to appearances on his behalf by other public officers or private attorneys (Peo. vs. Van Sickle, 13 NY 2d 61, pages 62, 63).

All officers handling cases in court should be aware of the wishes and/or rules of their own District Attorney in respect to police prosecution of minor cases.

CRIME VICTIMS AND COMPENSATION: The Legislature recognized that innocent persons often suffer personal injury or death as a result of criminal acts and determined that a need existed for governmental financial assistance for such victims.

Accordingly, by Chapter 894, Laws of 1966, effective August 1, 1966 (Sections 620-635, Executive Law) the Legislature set up the Crime Victim's Compensation Board, with authority to hear and determine claims, to direct medical examinations of victims, and to request from the state police or any county or municipal police department or agency, or public authority (and the same are authorized to provide) such assistance and data as will enable the Board to carry out its functions and duties (Exec. L. Sec. 623).

A victim of a crime, or his spouse, child or dependent (if he dies as a direct result of the crime) are eligible for awards under the law. Of course, a person criminally responsible for the crime upon which a claim is based, or any accomplice of such a person or a member of the family of such a person is not eligible (Exec. L. Sec. 624).

The "crimes" which result in a person being eligible for a reward are any acts committed in New York state which would, if committed by a mentally competent, criminally responsible adult, who has no legal exemption or defense, constitute a crime as defined in and proscribed (forbidden) by the new Penal Law, except that no act involving the operation of a

motor vehicle which results in injury can constitute a crime for the purposes of an award, unless the injuries were intentionally inflicted through the use of a vehicle (Exec. L. Sec. 621, subd. 3).

The Crime Victim's Compensation Board is a part of the Executive Department of the State government, at the Capitol, Albany. Officers may inform victim's concerning this Board and its functions in proper cases.

The minimum allowable claim must be based on out-of-pocket loss of at least $100. or at least 2 weeks' continuous earnings or support (Exec. L. Sec. 626).

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13. INFORMATIONS

An information is an allegation (ordinarily in writing) made to a magistrate that a person has been guilty of some designated offense (CCP Sec. 145, subd. 1). The information cannot allege that the subject has previously been convicted of any crime or offense and it cannot set out any record of such (unless the previous conviction affects the degree of the offense charged in the information, or is an element of the crime charged, or affects the jurisdiction of a court or magistrate to hear and determine the charge) (CCP Sec. 145, subd. 2).

1. This prohibition as to mentioning prior convictions also applies to traffic infractions. Prior traffic convictions cannot be alleged unless they affect the degree of crime charged (such as DWI, second offense), etc.

2. The prohibition does not apply at all in case of information alleging acts or omissions which are not crimes and in such informations, prior convictions or records of them may be alleged where pertinent (CCP Sec. 145, subd. 2).

Magistrates will undoubtedly require in all but minor cases, and in all cases where a crime is alleged, that informations be submitted in writing. In all cases where a crime is charged, officers should submit to the magistrate or court an information in writing.

The responsibility of preparing informations should be assumed by the officer to whom a complaint is made or who handles the case, whether for submission as his own or merely in assistance of the complainant. Preparation of informations is not a magistrate's function. In cases of novelty or difficulty, the officer may consult the District Attorney or one of his assistants for advice.

When an information is filed the magistrate must examine the informant under oath, as well as any witnesses the informant may bring, and take their depositions in writing (CCP Sec. 148).

All informations should be drawn with the utmost care, setting forth specific facts establishing the elements of the crime or other offense charged. Failure to do so may result in losing the case at the arraignment, at the trial, or on appeal.

PREPARING INFORMATIONS: Officers submitting informations are ordinarily referred to as "complainants" and in the law are termed "informants" or "prosecutors" (CCP Sec. 148). All informations must specify the violation of law charged. Officers should designate the violation by name of violation, section number, subdivision (if any), and the name of the law (e.g. "Assault in the Second Degree in violation of Section 120.05, Subdivision 3, Penal Law).

All informations must set out sufficient facts to show violation of each element of the crime or offense alleged.

1. Officers preparing informations should carefully review the elements of the crime or offense and insure that facts covering each element are set out.

2. If the officer is not the only witness to the crime, sworn statements ("affidavits" or "depositions") of other witnesses may be attached to the information and should be specifically referred to in the information.

3. If the officer was not a witness he may prepare the information "upon information and belief", setting out the facts establishing the necessary elements of the crime or offense and adding at the end: "The sources of deponent's informations and the grounds for his belief are the sworn statements (or "affidavits" or "depositions") of (name) and (name) which are attached to this information and made a part of it".

Informations must always state a crime or offense *and also* state the acts which constitute the crime or offense.

Forms for various kinds of informations may be found in such publications as "Morrison's Guide for Justices of the Peace", "Benders Forms for the Consolidated Laws", "Volume 5", or "Forms and Outline Procedure for Magistrates and Courts of Special Sessions", published by The Association of Towns of the State of New York, at Albany.

Informations are drawn up in the form indicated by the following, an information charging Assault in the Second Degree:

STATE OF NEW YORK }
COUNTY OF ALBANY } ss. **INFORMATION**
CITY OF ASKIN }

Harold P. Doe, being duly sworn, says that he resides at 1 Western Terrace, Askin, New York; that he is a patrolman of the Askin Police Department; that on September 1, 1967, he observed James George Roe reaching into a blue automobile parked on the south side of Woods Road in front of number 52 in the City of Askin, and take a suit case therefrom; that deponent, who was in his police uniform, approached Roe and informed him that he was under arrest for larceny; that Roe with intent to escape, punched deponent in the face and on the head, causing deponent's nose to bleed and cutting deponent's face. Wherefore deponent alleges that the said James George Roe is guilty of Assault in the Second Degree, in violation of Section 120.05, subdivision 3, Penal Law, and requests that Roe be held to answer this complaint as provided by law.

(Signed) Officer HAROLD P. DOE

Sworn to before me
this 1st day of
September, 1967
(signed) JOHN R. LAW
Police Court Judge
City of Askin

1. In all informations, the date of the crime or offense must be specified and the place must be specified with sufficient clarity to establish that the crime or offense occurred within the territorial jurisdiction of the magistrate to whom the information is presented.

SIMPLIFIED TRAFFIC INFORMATION: In traffic cases, a simplified information may be used, under authority granted by Section 147-a,

Code of Criminal Procedure, which permits its use only in charging a violation of a provision of the Vehicle and Traffic Law or an order, ordinance, rule or regulation made by local or public authorities in relation to traffic.

1. A simplified traffic information must contain:

a. The title of the action, specifying the name of the court to which the information is presented and the names of the parties, and

b. A statement of the specific violation with which the defendant is charged (Sec. 147-c, CCP).

(1) The statement of the violation must contain the name of the violation, if it has one, (i.e. "speeding", "reckless driving", etc.) or if it is a violation having no general name, such as disobeying a traffic control device, failing to yield right of way, etc., a brief description of it as given by statute, order, ordinance or rule is sufficient (Sec. 147-d CCP).

2. Simplified traffic information forms may be conveniently printed on the court copy of the uniform traffic tickets issued for officers use. They then require only that blanks be filled in and the information be then properly signed, sworn and submitted to the magistrate. A simplified traffic information need not, of course, be on any particular kind of printed form.

INFORMATION COMMENCES PROSECUTION: A prosecution is commenced when an information is laid before a magistrate charging the commission of an offense and a warrant of arrest is issued by the magistrate (or when an indictment is duly presented by a grand jury in open court) (CCP Sec. 144). When the information is submitted, the magistrate must examine the informant and any witnesses under oath and take their depositions in writing (in the usual case they are initially submitted in writing attached to the complainant's written information) (CCP Sec. 148). The depositions must set forth the facts tending to establish the commission of the crime and the guilt of the defendant (CCP Sec. 149).

If the magistrate is satisfied that the offense complained of has been committed he may, in most minor cases, issue a summons for a defendant who is a child or a New York citizen and a resident of the town or city (CCP Sec. 150, subd. 1). In all other cases the magistrate must issue a warrant of arrest if he is satisfied that the offense complained of was committed and that there is reasonable ground to believe that the defendant committed it (CCP Sec. 150, subd. 2).

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14. THE GRAND JURY AND INDICTMENT

The grand jury is a body of citizens of the county, not less than 16 nor more than 23, drawn for specified terms of the Supreme and County Courts or specially drawn as provided by law. Sixteen must be present to transact business (CCP Secs. 223-225). Any Indictment found must be endorsed "a true bill" and signed by the foreman or acting foreman. At least twelve grand jurors must concur to find an indictment (CCP Sec. 268). Grand jury procedings are required to be secret (CCP Sec. 258).

The grand jury has the power and duty to inquire into all crimes committed or triable in its county (CCP Sec. 245). It can receive only legal evidence (CCP Sec. 249). It is not required to hear any evidence for the defendant but any person who has reason to believe a grand jury is inquiring into a charge that he has committed a crime has the right to appear

before the grand jury on his own behalf. He must specifically request it and must execute and file a waiver of immunity (CCP Sec. 250, Subd. 2).

When a grand jury is formed, the district attorney or an assistant goes before it and submits, through witnesses and/or documents and depositions, such cases as have been remitted by committing magistrates or are known to him otherwise. After the grand jury hears the evidence in a case, it decides whether the evidence is sufficient to hold the defendant for trial. If it is so decided, the grand jury returns an indictment. The indictment must be in writing and presented to the court and charges the defendant with a crime (CCP Sec. 247). If a case is presented to the grand jury and no indictment is voted, the defendant is ordinarily discharged immediately thereafter from custody (or bail). The law requires the grand jury to inquire into the case of every person imprisoned in the jail of its county who has not been indicted (CCP Sec. 253). In any case where an indictment is not found, the grand jury must report to the court that the charge is dismissed (often called "no billed") (CCP Sec. 269). A defendant has the right, if not indicted at the next term of court following his being held on a charge, to apply to the court to have the prosecution dismissed (CCP Sec. 667). It is not mandatory that the court grant such application.

If a grand jury fails to indict, the charge or charges may be presented again to a grand jury if the county judge or supreme court justice so directs (CCP Sec. 270).

15. PROCEEDINGS AFTER INDICTMENT

The proceedings after indictment are handled by the courts and the District Attorney and do not directly involve the police officer, except that he may be required to arrest a person indicted and to testify in court. When an indictment is found it is returned to the Supreme Court or to the County Court. If the defendant is not in custody or on bail at the time, a bench warrant may be issued by the court and the defendant arrested on this warrant and brought before the court.

The defendant need not personally appear at an arraignment in misdemeanor cases. He may, instead, be represented by counsel (CCP Sec. 297). The defendant must personally appear in felony case arraignments. Any plea of guilty must be made by the defendant in person, whether felony or misdemeanor (CCP Sec. 335). If the defendant pleads guilty on arraignment, he is sentenced by the presiding judge. If he pleads not guilty he is tried for the crime by a trial jury consisting of twelve persons. The trial jury is also called a "petit" (pronounced 'petty') jury to distinguish it from the "grand" jury. If the trial jury verdict is guilty, the defendant is sentenced. If it is "not guilty" he is discharged.

Appeals from convictions in County Court or Supreme Court may be taken to the Appellate Division or to the Court of Appeals, depending on the nature of the appeal.

16. FAMILY COURT ACT

The Family Court Act became effective September 1, 1962. It established a completely new court which replaced the Domestic Relations Court of the City of New York and the Children's Courts in the counties outside New York City.

EXCLUSIVE JURISDICTION: The Family Court has exclusive original jurisdiction over neglect, support, paternity, family offenses, juvenile delinquency, persons in need of supervision, conciliation and parental rights

proceedings and in general covers all aspects of family life except divorce, annulment and separation (which under New York's Constitution, are in the jurisdiction of the Supreme Court). It shares jurisdiction over adoption with Surrogate's Courts (FCA Secs. 115, 641).

The Family Court's exclusive original jurisdiction means that the proceedings over which it has jurisdiction must be originated in the Family Court. Any criminal complaint charging disorderly conduct or assault between husband and wife, or parent and child, or between members of the same family or household must be transferred by the criminal court, not more than three days from the time the complaint was made, to the Family Court (FCA Sec. 813).

COURTS AND PROCEEDINGS: There is a Family Court in each county (FCA Sec. 113). Family Court judges may be specifically elected to that office or (in some counties) a judge of the county court acts as Family Court judge. In New York City, Family Court judges are appointed by the Mayor.

No one may be appointed or elected a Family Court judge unless he has been a member of the New York Bar for at least ten years (FCA Secs. 124, 134).

Section 38 of this Manual, "Children" and Section 17, "Procedures re Children and Youths," contain instructions on handling violations against or by children, including neglect, juvenile delinquency and persons in need of supervision. The other provisions of the Family Court Act are of little direct concern to police work, except "Family Offenses".

Family Court proceedings differ somewhat from criminal courts. A case is begun in Family Court by a transfer from criminal court or by the filing of a "petition" (instead of a complaint or information). A "hearing" is held instead of a trial. Matters in Family Court are termed "proceedings" rather than "prosecutions", even when they concern family offenses of disorderly conduct and assault, or acts by children which would be crimes if committed by adults.

FAMILY OFFENSES: In the past, wives and other members of a family who suffered from disorderly conduct or assaults by other members of the family or household were compelled to bring a criminal charge to invoke the jurisdiction of a court, although their purpose may not have been to secure a criminal conviction but rather to get practical help. The purpose of the Family Court provisions concerning family offenses is to create a civil proceeding for dealing with such instances of disorderly conduct or assaults (FCA Sec. 811).

The Family Court has exclusive original jurisdiction over proceedings concerning acts which would constitute: disorderly conduct or an assault between a husband and wife, or parent and child or between members of the same household. Family Court jurisdiction here includes "disorderly conduct" in places which are not public (FCA Sec. 812).

ASSAULT CASES: Any criminal complaint charging disorderly conduct or an assault between husband and wife or parent and child or between members of the same family or household must be transferred by the criminal court in which complaint was made to the Family Court, unless the Family Court had previously transferred the case to the criminal court, or unless the complaint is withdrawn within three days of the time it was made (FCA Sec. 813). The Family Court can transfer any such case to the criminal courts (FCA Sec. 814).

The Appellate Division has held that all cases covered by Section 812 of the Family Court Act, must be transferred to or originally processed in Family Court. (Peo. vs. DeJesus, 21 App. Div. 2d 236).

FILING PETITIONS: "Family Offenses" cases can be initiated in Family Court by filing a petition alleging a pertinent assault or disorderly conduct within the family. Such a petition may be filed by any peace officer, any spouse, parent, child, or member of the family or household of the offender, authorized agencies, association, societies or institutions and anyone whom the court may direct to do so (FCA Sec. 821, 822). The Court's probation service is authorized to confer with anyone seeking to file a petition, but may not prevent any person who wishes to do so from filing a petition (FCA Sec. 823, Rule 8.1 Family Court Rules).

At the conclusion of hearings on a family offense petition, the court may dismiss it, suspend judgment, place the offender on probation or make an "order of protection." This is an order setting out conditions of behavior to be observed by the offender, or the petitioner or both (FCA Secs. 841, 842). If such an order is made, a "Certificate of Order of Protection Issued" may be issued by the clerk of the Family Court to any person affected and the presentation of this certificate to any peace officer constitutes authority for him to take into custody a person charged with violating the terms of the order of protection and to bring the person before the court. The officer must, so far as lies within his power, aid in securing the protection the "order of protection" was intended to afford (FCA Sec. 168).

FAMILY COURT PROCESS: Family Court subpoenas and warrants may be directed to and served by any officer anywhere in New York and in any county (FCA Sec. 154, CCP Sec. 155). When an adult is arrested under a Family Court warrant and the Family Court is not in session, he must be taken to the most accessible magistrate (a Justice of the Peace or other Judge in the county) and arraigned before such magistrate who may hold him, admit him to bail or parole him for hearing before the Family Court (FCA Sec. 155).

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17. PROCEDURES RE CHILDREN AND YOUTHS

A person less than 16 years old is not criminally responsible for his or her conduct (P.L. Sec. 30.00, subd. 1). In any prosecution for any offense lack of criminal responsibility by reason of infancy (being less than 16) is a defense (P.L. Sec. 30.00, subd. 2).

JUVENILE DELINQUENCY: A child of more than seven and less than sixteen years of age, who commits any act or omission which would be a crime if committed by an adult, is deemed guilty of juvenile delinquency only. Any other person concerned in the crime as a principal or accessory is punished as if the child was over sixteen (FCA Sec. 712).

JURISDICTION AND AGE: The Family Court has exclusive original jurisdiction over any proceeding involving a person alleged to be a juvenile delinquent (FCA Secs. 115, 713). The defendant's age at the time the act charged was done determines whether or not the court has jurisdiction (FCA Sec. 714).

The police officer should know that on its own motion and at any time, the Family Court may substitute a proceeding to determine whether a person is in need of supervision or a neglect proceeding in place of a proceeding for determination of juvenile delinquency (FCA Sec. 716). This law is designed to permit the court to avoid adjudicating a child a "juvenile delinquent" while at the same time retaining jurisdiction.

JUVENILE DELINQUENCY PROCEDURE: A juvenile delinquency proceeding may be initiated by a peace officer, a parent or person legally

responsible for care of the juvenile, or by a person injured, by filing a petition in Family Court. The petition must allege the commission of an act which would be a crime if committed by an adult, that the juvenile is under sixteen and that the juvenile requires supervision, treatment or confinement (FCA Secs. 731-733).

ARRESTS: The court may issue a summons or a warrant of arrest to bring the juvenile before the court (FCA Secs. 737, 738). When the juvenile appears before the court, the court may order the juvenile detained if there is a substantial probability that he will not appear in court on the return date or there is serious risk that if not detained he might commit another act which would be a crime if he were an adult (FCA Sec. 739).

Officers may arrest juveniles without warrant under the same circumstances as if they were adults (FCA Sec. 721). The same is true for private persons arresting juveniles (FCA Sec. 722). The private person must immediately deliver the arrested juvenile to his home, or to a Family Court judge or to a peace officer (FCA Sec. 723).

A peace officer arresting a juvenile without warrant (or receiving a juvenile from a private person who has arrested him) must immediately notify the juvenile's parent or other person legally responsible for his care or the person with whom he is domiciled, that the juvenile is in custody. The officer, in the absence of special circumstances, should then release the child to the custody of the parent or person legally responsible, taking a written promise, without security, from such person to produce the child before the family court at a time and place specified in the writing (FCA Sec. 724).

Officers should ascertain the facilities approved by the Appellate Division in their jurisdiction. In the Fourth Department, for example, the Appellate Division has ruled that the Family Court Judge may approve any publicly maintained facility as a place for questioning a child in police custody and that facilities in police stations or barracks, fire stations, schools or other buildings may be approved. Private facilities may also be approved (FCA Sec. 724; Rule 7-1, Family Court Rules).

Section 554, subdivision 9, Code of Criminal Procedure, contains a somewhat similar rule. It provides that whenever a child under the age of sixteen is arrested, charged with juvenile delinquency, a captain or lieutenant or sergeant of police in any city or a sheriff, undersheriff or chief deputy sheriff may accept in lieu of bail, the personal recognizance in writing, without security, of a parent, guardian, or other lawful custodian of such child to produce such child before the proper court or magistrate on the following day, except in cases where the child has been the victim of a crime or a witness to its commission by another.

PERSONS IN NEED OF SUPERVISION: A person in need of supervision is a male less than sixteen or a female less than eighteen who is an habitual truant, who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of parent or other lawful authority (FCA Sec. 712). The Family Court has exclusive original jurisdiction over any proceeding involving a person in need of supervision.

PROCEDURE: A proceeding to adjudicate a person to be in need of supervision is instituted by filing a petition. The petition may be filed by any of the persons who can file a petition concerning juvenile delinquency (FCA Secs. 732, 733). A summons or warrant of arrest may be issued in the same manner as for juvenile delinquency (FCA Secs. 736, 738).

FAMILY COURT PROBATION SERVICE: The probation service is authorized to confer with any person seeking to initiate a juvenile delin-

quency or person in need of supervision proceeding, but may not prevent any person who wishes to file a petition from having access to the court to do so (FCA Sec. 734, Rule 7.3, Family Court Rules).

HEARING REQUIRED: Where a child in custody is brought before a judge of the Family Court before a proceeding is originated (i.e., before a petition is filed) the judge must hold a hearing to make a preliminary determination of whether the court appears to have jurisdiction over the child. He must first advise the child of his (or her) right to remain silent, to be represented by counsel and to have a law guardian assigned. He must also allow the child a reasonable time to send for his parents or other person legally responsible for his care and for counsel and the judge may adjourn the hearing for that purpose.

The child may be confined or returned to custody of parent or other person legally responsible for his care. A written recognizance may be required from the parent or person responsible to produce the child before the court at a date and time stated in the writing (FCA Sec. 728).

DETENTION: No child may be detained for more than seventy-two hours or the next day the court is in session, whichever is sooner, without a hearing under Section 728 of the Family Court Act (FCA Sec. 729).

LEGAL COUNSEL FOR CHILDREN: LAW GUARDIANS: Any minor involved in a neglect proceeding or in a proceeding re juvenile delinquency or person in need of supervision may request that the Family Court appoint a law guardian to represent the minor, if the minor is unable to pay a lawyer or there are other reasons why he cannot retain his own counsel. A parent or person legally responsible for a minor's care can make a similar request for a law guardian to represent the minor (FCA Sec. 249). The court may appoint a law guardian for a minor on the court's own motion. The costs of law guardians are paid by the State (FCA Sec. 248). A minor is a person under the age of twenty-one years (Dom. Rel. L. Sec. 2).

TRUANCY: The old law's provisions re truants were all repealed and were omitted from the current Code of Criminal Procedure.

WAYWARD MINORS: A person between the ages of sixteen and twenty-one who is habitually addicted to the use of drugs or the intemperate use of intoxicating liquors, or habitually associates with dissolute persons, or is found of his or her own free will and knowledge in a house of prostitution, assignation or ill fame, or habitually associates with thieves, prostitutes, pimps, procurers, or disorderly persons, or is willfully disobedient to the reasonable and lawful commands of parent, guardian or other custodian and is morally depraved or is in danger of becoming morally depraved, or who without just cause and without the consent of parents, guardians or other custodians, deserts his or her home or place of abode, and is morally depraved or is in danger of becoming morally depraved, or who so deports himself or herself as to wilfully injure or endanger the morals or health of himself or herself or of others, may be deemed a wayward minor (CCP Sec. 913-a).

CHARGE OF WAYWARD MINOR: An information may be laid before any magistrate except a justice of the peace, charging an individual as a wayward minor. The information may be laid by any peace officer, or a parent, guardian or other person standing in parental relationship to the minor, or by his next of kin, or a principal or teacher of any school where the minor is registered for attendance, or by a representative of an incorporated society doing charitable or philanthropic work. The magistrate may issue a summons or a warrant of arrest and if the charge is established, at a hearing before the magistrate, by competent evidence, the minor may be

adjudged a wayward minor. This is not a conviction of a crime (CCP Secs. 913-b, 913-dd). The adjudged minor may be put on probation, or committed for not more than three years (CCP Sec. 913-c).

YOUTHFUL OFFENDERS: Youthful offender privileges apply in criminal courts and are available to minors sixteen years of age or more but less than nineteen years of age. They apply only in respect to crimes not punishable by death or life imprisonment and only when the youth has not previously been convicted of a felony. A minor who meets these requirements and who has committed a crime may be adjudged a youthful offender instead of being convicted of the crime. A youthful offender is not a criminal and such a judgment is not a conviction of crime (CCP Sec. 913-e, 913-n).

When any prosecution for crime is begun against a minor who is sixteen or more, but not yet nineteen, whether by indictment or by information and whether misdemeanor or felony (but not felony punishable by death or life imprisonment), the grand jury or the district attorney may recommend or the pertinent court may determine on its own motion that the defendant should be handled under youthful offender proceedings. The youthful defendant must consent to any required examinations, investigation, questioning and trial without jury, if a trial is had (CCP Sec. 913-g). The defendant must plead to the charge if found eligible for youthful offender treatment and if consenting thereto. He is then tried summarily without a jury (CCP Secs. 913-g, 913-h).

The youthful offender, during time proceedings are in progress, may be jailed or otherwise controlled as if he (or she) were an adult (CCP Sec. 913-l). If the offender-minor is determined by the court to not be eligible for youthful offender privileges, he is prosecuted as if an adult.

RUNAWAY CHILDREN: A peace officer may return to the parent or person legally responsible for their care any male person under age sixteen or any female under age eighteen who has run away from home without just cause or in the reasonable opinion of the officer appears to have run away from home without just cause.

An officer may reasonably conclude that the child has run away from home when the child refuses to give his name or the name and address of his parent or person legally responsible for his care, or when the officer has reason to doubt that the name or address given are the actual name and address of the parent or other person legally responsible.

The law specifically authorizes the officer to take a child who has or appears to have run away, as described in the two paragraphs preceding, to any facility designated by the Family Court for the reception of children (FCA Sec. 718).

NEGLECTED CHILD: A neglected child is a male less than 16 or a female less than 18 whose parent (or other person legally responsible for his or her care) does not adequately supply the child with food, clothing, shelter, education, or medical or surgical care, though financially able to do so, or offered financial means to do so (FCA Sec. 312, subd. a).

A male under 16 or female under 18 is a neglected child if he or she suffers or is likely to suffer serious harm from the improper guardianship (including lack of moral supervision or guidance) of his or her parents or other person legally responsible for his or her care and requires the aid of the court (FCA Sec. 312, subd. b).

A male under 16 or female under 18 is a neglected child if he or she has been abandoned or deserted by his or her parents or other person legally responsible for his or her care (FCA Sec. 312, subd. c).

OFFICER'S AUTHORITY, NEGLECTED CHILD: A Family Court may order temporary removal of a neglected child from its home when there is not sufficient time for filing a petition and holding a hearing (FCA Sec. 322).

A peace officer may remove a neglected child from its home without a court order and without the consent of the parent or other person legally responsible for the child's care (regardless of whether the parent or other person is absent from the home) if the child is in such condition that its continuing in the home presents an imminent (immediate) danger to the child's life or health and there is not time enough to apply for a court order of removal under Section 322 of the Family Court Act (FCA Sec. 324).

When a peace officer conducts an emergency removal of a neglected child he must bring the child immediately to a place designated by the Appellate Division for the purpose. He must also inform the parent or other person responsible for the child's care of the facility to which he took the child and he must inform the court's Probation Service of the removal (FCA Sec. 325, Family Court Rules, Rule 3).

NEGLECT PROCEEDINGS: A proceeding to determine neglect may be initiated by:

1. A parent or other person interested in the child;
2. a duly authorized agency, association, society or institution;
3. a peace officer;
4. any person having knowledge or information of neglect;
5. any person directed by the court (FCA Sec. 332).

SUPPORT: The Family Court has exclusive jurisdiction over support proceedings and Article 3-A, Domestic Relations Law, called the Uniform Support of Dependants Law (FCA Sec. 411). Sections 411-479 of the Family Court Act define the duties of family support and the means of enforcing such duties through Family Court. Peace officers may not initiate such proceedings. A wife, child, relative, public welfare officer or the Commissioner of Mental Hygiene may (FCA Sec. 422).

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18. ARRESTS AND BAIL

The Constitutions of the United States and of New York provide that ". . . No person shall be . . . deprived of . . . liberty . . . without due process of law . . ." (U.S. Constitution, Amendment V; New York State Constitution, Art. 1, Sec. 6). An arrest, therefore, can only be made in exact accordance with law or it will be unconstitutional and illegal. An illegal arrest may subject the officer to civil suit, permit the arrestee to lawfully resist, and make it impossible to use in court any evidence or confession obtained from the arrested person incident to the illegal arrest.

WHAT IS AN ARREST? Arrest in New York is defined by statute. It consists of taking a person into custody that he may be held to answer for an offense (CCP Sec. 167). It is made by an actual restraint of the person of the defendant or by his submission to the custody of the officer (CCP Sec. 171).

Merely telling a person to appear in court is not an arrest, even if he appears (People vs. Yerman, 138 Misc. 272). Actual physical contact with the defendant is not required to constitute an arrest (People vs. Colletti, 33 Misc. 2d. 195). Police officers have the right to approach persons for the purpose of routine investigation and such investigation does not constitute an arrest (People vs. Marendi, 213 NY 600; People vs. Entrialgo, 19 App. Div. 2d. 509; Rios vs. United States, 364 U.S. 253).

A police officer may stop any person abroad in a public place whom he reasonably suspects is committing, has committed or is about to commit a felony or any of the offenses listed in Section 552, Code of Criminal Procedure (see heading "Fingerprints in Other Than Felony Cases," later in this section of the Manual). He may demand the person's name, address and an explanation of his actions (CCP Sec. 180-a, subd. 1).

When the police officer has so stopped a person, and reasonably suspects that he (the officer) is in danger of life or limb he may search the person for weapons and if he finds a weapon (or anything the possession of which may be a crime) he may take it and hold it until completion of the questioning, at which time he may return the thing or things taken, if lawfully possessed by the person questioned, or arrest such person if not lawfully possessed (CCP Sec. 180-a, subd. 2).

Section 180-a of the Code of Criminal Procedure is referred to as the "Stop and Frisk Law." The Court of Appeals, in a case decided before this law was passed (Peo. vs. Rivera, 14 NY 2d 441), pointed out that the business of police is to prevent crime if they can and that prompt inquiry into suspicious or unusual street action is an indispensable police power. The evidence needed to permit police to make such inquiry need not be as conclusive as that needed to make an arrest. The stopping of an individual to inquire is not an arrest (Peo. vs. Marendi, 213 NY 600; Peo. vs. Rivera, 14 NY 441). The court also pointed out, in the Rivera case, that the "frisk" is a reasonable and constitutionally permissible precaution to minimize danger to the police. It is not an unreasonable search prohibited by the Constitution.

The "Stop and Frisk Law," Section 180-a Code of Criminal Procedure, is entirely constitutional (Peo. vs. Peters, 18 NY 2d 238).

BY WHOM ARRESTS MADE BE MADE: Both peace officers and private persons may make arrests (CCP Sec. 168). Ordinarily, only officers make arrests with warrants.

AIDING ARREST: Every person must aid an officer in the execution of a warrant if the officer requires his aid (CCP Sec. 169). The officer must be present and acting to execute the warrant (CCP Sec. 169).

Any person who, after being commanded by a peace officer identifiable or identified by him as such, unreasonably fails or refuses to aid such peace officer in effecting an arrest, or in preventing the commission by another person of any offense, is guilty of Refusing to Aid a Peace Officer, a Class B misdemeanor (P.L. Sec. 195.10). If the person so commanded is killed or injured or his property or that of his employer is injured, the municipality employing the officer is responsible and may be sued by the person, his heirs, etc. (Genl. Mun. L. Sec. 71-a). "The citizenry may be called upon to enforce the justice of the State . . . honestly and bravely with whatever implements and facilities are convenient and at hand" (Chief Judge Cardozo, Court of Appeals, Matter of Babington vs. Yellow Taxi Corp., 250 NY 14).

If the person commanded does aid the officer, the state or the political subdivision or agency of the state employing the officer is required to protect the person against claims of negligence (except gross negligence) or alleged tortious acts committed by the person in so aiding. (Civ. Rts. L. Sec. 79-f). The law requires that the person notify the chief legal officer of the state, agency, or political subdivision within ten days of the receipt of any summons, complaint, etc. (Civ. Rts. L. Sec. 79-f, subd. 2).

WARRANTS OF ARREST: A warrant of arrest is an order in writing in the name of the people signed by a magistrate, commanding the arrest of the defendant (CCP Sec. 151). The defendant may be designated therein by any name and the name "JOHN DOE" is commonly used when the

defendant's name is not known. Warrants issued when the name of the defendant is not known are thus referred to by officers as "John Doe Warrants" (CCP Sec. 152).

Warrants must be in substantially the form prescribed by Section 151 of the Code of Criminal Procedure, which is as follows (the blanks to be properly filled in):

County of _____

In the name of the people of the State of New York, to any peace officer in the _____

Information upon oath, having been this day laid before me that the crime of _____ *has been committed and accusing* _____ *thereof, you are, therefore, commanded forthwith to arrest the above named* _____ *and bring him before* _____, *at* _____

Dated at _____, *this* _____ *day of* _____, *19* ____

(signed) _____

Justice of the Peace

All magistrates have the power to issue a warrant of arrest for persons charged with any offense (CCP Sec. 146).

OFFICER RECEIVING WARRANT: When an officer receives a warrant of arrest he should examine it to make sure that it sufficiently identifies the person to be arrested and specifies a crime, or violation or infraction, and if a crime, he should determine whether it is a felony or a misdemeanor.

WHEN ARREST MAY BE MADE: If the offense charged is a felony, the arrest may be made on any day, at any time of the day or during the night.

If the offense charged is other than a felony the arrest cannot be made on Sunday, or in the night, except by direction of the magistrate endorsed on the warrant (CCP Sec. 170). The night is the period from sunset to sunrise (Genl. Constr. L. Sec. 51).

WHERE WARRANTS MAY BE EXECUTED: Warrants issued by justices of the supreme court, county judges, judges of the Nassau or Suffolk County District Courts, recorders of cities who have jurisdiction conferred by law, or city court judges, may be issued to any peace officer in the state and may be executed anywhere in the state (CCP Sec. 155; 1934 Op. Atty. Gen. 93). Warrants issued by any other magistrate may be directed to any peace officer in the county in which issued and can be executed in that county. If the defendant is in another county, it is necessary to secure from a magistrate in that other county an endorsement on such warrants, which should read: "This warrant may be executed in the county of (name)." The endorsement must be signed by the magistrate with his title, the date and the place where signed (CCP Sec. 156).

Warrants issued by a magistrate to a sheriff may be executed by the sheriff or his deputies in the county where issued and if the defendant is in another county, it is only necessary that the sheriff of the other county endorse the warrant for service in his county, in the same words as in the preceding paragraph.

The State Police and policemen of second class cities may execute any magistrate's warrant anywhere in the state without endorsement (Exec. L. Sec. 223; Sec. Cl. Cit. L. Sec. 142).

ARRESTS WITHOUT WARRANT: A police or other peace officer may make an arrest without a warrant for an offense committed or

attempted in his presence, whether felony, misdemeanor or lesser violation (including traffic infractions). In addition, a *police* officer may make an arrest without a warrant if he has reasonable grounds for believing that an offense is being committed in his presence (whether felony, misdemeanor, or lesser offense (CCP Sec. 177).

A police officer or other peace officer may make an arrest without a warrant when the person arrested has committed a felony, even though not in the officer's presence. They may also make arrests without a warrant when they have reasonable cause for believing that a felony was committed and that the person they arrest committed it, even though it is later determined that no felony was committed or that the person arrested did not commit it (CCP Sec. 177).

In cases of offenses other than felonies not in the officer's presence, where there is no time to obtain a warrant, any person who actually witnessed the matter may make the arrest and turn the offender over to the officer. The officer may assist in such arrest. In all cases of private arrest the person making the arrest should accompany the officer with the prisoner, in order to appear as a witness or complainant.

Infractions of the Vehicle and Traffic Law are offenses and the law gives the officer the authority to make arrests in respect to them as if they were misdemeanors (P.L. Sec. 10.00, subd. 1, 2; V&T Sec. 155; Squadrito vs. Griebsch, 1 NY 2d. 471).

PUBLIC INTOXICATION: A person is guilty of public intoxication when he appears in a public place under the influence of alcohol, narcotics or other drugs to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity (P.L. Sec. 240.40). "Public Intoxication" is a violation, and the offender is thus subject to summary arrest, without a warrant, for an offense committed in the officer's presence.

DISORDERLY PERSON AND DISORDERLY CONDUCT: The old provisions of Sections 899 through 913 of the Code of Criminal Procedure (Part 6, Title VII, "Of Proceedings Respecting Disorderly Persons") were repealed effective September 1, 1967, as were Sections 887 through 898-a (Part 6, Title VI, "Of Proceedings Respecting Vagrants"). Thus, there are no longer in the law such offenses as being a "disorderly person," or a "tramp" or "vagrant."

The new Penal Law does have a number of specific, modern provisions relating to disorderliness of various kinds and the situations on which arrests of "tramps" and "vagrants" were based in the past (see Section 54, "Disorderly Conduct, Harassment and Loitering," this Manual).

MINOR OFFENSES NOT IN THE PENAL LAW: In the past, before the new Penal Law and before the current provisions of Section 177 of the Code of Criminal Procedure as to arrest without warrant, there were a number of minor transgressions created by statue which were called "offenses." In the absence of special provisions of law, no arrest could have been made for such offenses without a warrant, even if committed in the officer's presence. For example, under the Navigation Law no arrest for an "offense" was lawful without a warrant and it was usual to issue a Uniform Navigation Summons for minor transgressions. The new Penal Law and changes in Section 177 altered such restrictions. Now, what were "offenses" under the old law are all either misdemeanors or violations (depending on the punishment) and an officer can make an arrest without warrant for any misdemeanor or violation committed in his presence.

Villages may designate violations of village ordinances only as disorderly conduct and violators as disorderly persons. Such offenders may be arrested without warrant for violations committed in the officer's presence

(Vill. L. Sec. 93). Violations of town ordinances may be either misdemeanors or violations and the arrest authority is the same (Town L. Sec. 135).

Members of the police departments of second class cities have all the power of peace officers under the general laws of the state and also have the power and duty to arrest (without warrant) any person found by them violating any of the laws of the state or penal ordinances of the city, to be dealt with in the same manner as if arrested upon a warrant issued by a magistrate (Sec. Cl. Cit. L. Sec. 142).

HABITUAL CRIMINALS: Under the old law a person convicted of a felony could be adjudged an habitual criminal if previously convicted of a crime. A person convicted of a misdemeanor might likewise have been adjudged an habitual criminal if he had five prior misdemeanor convictions. A person so adjudged was liable to arrest without a warrant at any time when in possession of any deadly or dangerous weapon or of any tool or thing adapted to or used by criminals for the commission of crime or when found in any place or situation under circumstances giving reasonable grounds to believe that he is intending or waiting the opportunity to commit some crime. His person or premises were liable to search at any time, with or without warrant and he was a "disorderly person." All these "Habitual Criminal" laws (CCP Secs. 510-514-a) were repealed, effective September 1, 1967.

SPECIAL CONSIDERATIONS, ARRESTS WITHOUT WARRANT: It must be borne in mind, in considering whether to arrest without a warrant, that no one may be punished for a crime except upon legal conviction in a court having jurisdiction (CCP Sec. 3), and that a defendant is presumed innocent until the contrary is proved; in case of reasonable doubt he is entitled to an acquittal (CCP Sec. 389). Officers must thus be certain that there is an offense for which an arrest may be lawfully made and that evidence is present or may be secured to prove the guilt of the arrested person.

MENTALLY ILL PERSONS: Any peace officer may take into custody any person who appears to be mentally ill and is conducting himself in a manner which in a sane person would be disorderly (Ment. Hy. L. Sec. 78, subd. 3). See also section "Mental Hygiene Law," this Manual.

The officer may direct the removal of such person, or may remove such person to any hospital (other than a licensed private institution) maintaining adequate staff and facilities for the observation, examination, care and treatment of persons alleged to be mentally ill and approved by the Commissioner of Mental Hygiene to receive and retain persons alleged to be in need of immediate observation, care or treatment for mental illness (Ment. Hy. L. Sec. 78, subd. 3).

The officer may temporarily detain such person in a safe and comfortable place pending examination or admission to the hospital (Ment. Hy. L. Sec. 78, subd. 3).

No person known to be mentally ill may be committed as a disorderly person to any prison, jail or lock-up for criminals (Ment. Hy. L. Sec. 81, subd. 4).

Any officer arresting a person apparently mentally ill and conducting himself in a manner which in a sane person would be disorderly must immediately notify the local health officer or Director of Community Health Services (in the City of New York, the Commissioner of Hospitals; in the County of Erie, the Board of Managers of the Edward J. Meyer Memorial Hospital; and in the County of Albany, the Commissioner of Public Welfare) which officials are required to forthwith take proper measures for the determination of the mental illness of such arrested person (Ment. Hy. L. Sec. 81, subd. 5).

Where a person indicted for a crime may be mentally ill, the court on its own motion, or on motion of the district attorney or the defendant himself, at any time before final judgment, may order the defendant to be examined to determine the question of his sanity (CCP Sec. 658).

Outside New York City, such examinations are by two qualified psychiatrists designated by the superintendent or person in charge of a state-supported hospital which has been certified by the Commissioner of Mental Hygiene as having adequate facilities for such examination. In New York City, examinations are by two qualified psychiatrists designated by the Director of the Division of Psychiatry of the Department of Hospitals of New York City, and they must be assisted by an Assistant Corporation Counsel (CCP Sec. 659).

Such examinations may be in the place where the defendant is detained, or the court may commit him to a hospital for examination, for a period not over sixty days (CCP Sec. 660).

The same rules set out in the preceding three paragraphs apply to defendants charged with a crime but not under indictment, or charged with an offense which is not a crime, or in New York City, charged with a misdemeanor in a case where an information has not been filed (CCP Sec. 870; Ment. Hy. L. Sec. 78, subd. 4). If any order for examination is made in such cases, the court or magistrate must notify the district attorney (CCP Sec. 870).

CLOSE PURSUIT WITHIN THE STATE BY PEACE OFFICER: Whenever an officer is authorized by law to make an arrest without warrant or to issue a traffic summons for an offense the officer may follow the offender in continuous close pursuit from the officer's jurisdiction to any part of the state and make the arrest anywhere in the state, whenever such continuous close pursuit is necessary to effect the arrest or to issue the summons (CCP Sec. 182-a).

ARRESTS BY PRIVATE PERSONS: A private person may arrest any person for an offense committed or attempted in his presence, or when the person arrested has in fact committed a felony, even though not in the private person's presence. He has like power to arrest for juvenile delinquency (CCP Sec. 183; FCA Sec. 722).

The private person must take the arrested individual without unnecessary delay before a magistrate or deliver him to a peace officer (CCP Sec. 185). If the arrest is for juvenile delinquency the juvenile must be taken without unnecessary delay to his home or to a Family Court judge or must be delivered to a peace officer.

Any peace officer may take into custody an individual who has been arrested by a citizen if he has reasonable cause for believing that the citizen's arrest was legal (CCP Sec. 177).

Also, a peace officer may take before a magistrate any person engaged in a breach of the peace who has been arrested by a bystander and delivered to the officer (CCP Sec. 181).

DISPOSITION OF ARRESTED PERSONS: An arrested person must always be taken by an officer before a magistrate, without unnecessary delay, and may give bail at any hour of the day or night (CCP Sec. 165).

A public servant is guilty of official misconduct, a class A misdemeanor, when with intent to obtain a benefit he knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office (P.L. Sec. 195.00, subd. 2).

DISPOSITION OF ARREST WITH WARRANT: In felony cases the defendant must be taken before the magistrate who issued the warrant. If such magistrate is absent or unable to act, the defendant should be taken

before a magistrate in the county of offense who is nearest or most accessible to the place of arrest (CCP Secs. 158, 164).

In misdemeanor cases, the defendant must be arraigned before the magistrate named in the warrant. If the warrant does not direct the magistrate before whom the defendant is to be taken, he must be taken before an available magistrate of a town in the county of offense who is nearest or most accessible to the place of arrest. If the warrant does name a magistrate and that magistrate is absent or unable to act, the same rule may be followed (CCP Sec. 164).

A person arrested on a justice of the peace warrant issued on a charge of a crime or violation committed in a village must be taken before the police justice of the village (Vill. L. Sec. 182).

ARREST IN ANOTHER COUNTY (MISDEMEANOR): If the defendant is arrested with a warrant charging an offense other than a felony in a county other than the county where the offense was committed and if he requests it, he must be taken before any magistrate in the county of arrest who must admit him to bail, for later appearance before the magistrate named in the warrant (CCP Sec. 159).

FAMILY COURT WARRANTS: Adults arrested under Family Court warrants must be brought before the Family Court and if it is not in session, before the most accessible magistrate (FCA Sec. 155).

DISPOSITION OF ARREST WITHOUT WARRANT: In felony cases the defendant may be taken before any magistrate in the county of offense. In misdemeanor arrests without warrant, or in arrests without warrant for violations, infractions or violations of ordinances, the defendant should be taken before an available magistrate of a town in the county of offense who is nearest or most accessible to the place of arrest (CCP Sec. 164).

DISPOSITION OF ARREST IN TRAFFIC AND NAVIGATION CASES: In Traffic and Navigation law cases, the warrant may direct defendant be brought before a magistrate in any town in the county of offense (CCP Sec. 151-a). When an arrest is made without warrant in such cases, the defendant should be taken before an available magistrate of a town in the county of offense nearest or most accessible to place of arrest (CCP Sec. 164).

DISPOSITION OF ARRESTS IN CONSERVATION CASES: The defendant in such cases must be brought before the magistrate who issued the warrant. In arrests without warrant, the defendant may be brought before any justice of the peace in the town of offense or in any adjoining town. If the defendant is brought before a police justice other than a justice of the peace, it must be before a police justice with territorial jurisdiction over the place of offense (Conserv. L. Sec. 386, subd. 4), regardless of the place of offense.

ARRESTS AFTER INDICTMENT; BENCH WARRANTS: When an indictment is filed, the defendant must be arraigned in court (CCP Sec. 296). If he is not in custody and does not appear when required, the court may order the clerk to issue a "bench warrant" for the defendant's arrest (CCP Sec. 299). The clerk may issue the bench warrant on the application of the district attorney at any time after the order, whether or not the court is sitting (CCP Sec. 300).

A district attorney may issue a bench warrant without aid of court at any time after an indictment is found (CCP Sec. 300). The form of bench warrant which must be issued by the clerk of the court is set out in Section 301 of the Code of Criminal Procedure.

Bench warrants may be served in any county and if served in a county other than the one where issued, do not require any magistrate's endorsement to be served in the other county (CCP Sec. 304).

RETURN TO BE MADE ON WARRANTS: Whenever an arrest is made under a warrant, the officer arresting must make a return on the warrant and deliver it to the magistrate before whom the defendant is brought. The form of return is usually printed on the back of a warrant form (and if not may be typed or handwritten on the back of the warrant) as follows: "I have arrested the within named defendant (or defendants) and have him (or them) here in my custody as within commanded (signature and title of officer)." If the defendant cannot be found, the form is: "The within named defendant after diligent search cannot be found (signature and title of officer)" (CCP Sec. 164).

INJURED PRISONERS: In order to protect both the officer and his department, it is recommended that a definite procedure be adopted and followed in all instances where (a) a person is injured while being arrested, (b) a person being held in custody sustains injury, or (c) a person is arrested and is found to have injuries suffered prior to the time of arrest. The following is a suggested guide:

1. If the person is injured while being arrested or while in custody, a ranking officer should be informed at once, by telephone, of the facts. It will be his responsibility to determine whether the matter requires investigation and a written report by a ranking officer.

2. In any such instances of injury the arresting officer (or the officer first learning of the injury, in case of injury while in custody) should arrange for immediate medical examination and medical treatment, at the cost of the department or municipality.

3. All officers concerned should prepare and submit affidavits as to the complete circumstances.

   a. If the prisoner was injured by an officer in self-defense this should be clearly indicated.

   b. The prisoner should be charged with assault in all instances where an officer is assaulted.

4. Signed statements should be obtained from any witnesses other than the officers concerned.

5. Where a person arrested is found to have injuries suffered prior to arrest, the arresting officer should take necessary steps to substantiate that fact, including taking a signed statement from the arrested person detailing all the facts and conducting such further investigation as is necessary. Medical examination and attention should be promptly obtained as necessary.

   a. Where a prisoner with injuries suffered prior to arrest has been treated, prior to the arrest, at a hospital, a doctor's office, or a clinic, and the medical record is sufficient to establish the injuries and time of treatment, no further action as to the injuries need be taken (except medical attention as required).

FINGERPRINTS OF PERSONS CHARGED WITH FELONY: Every peace officer has a duty imposed by law to take, on arrest (whether with or without warrant) the fingerprints and thumbprints and if necessary the photograph and blood grouping tests of every person arrested and charged with a felony or any crime which would be a felony if the person arrested had been previously convicted of a crime (CCP Sec. 940).

FINGERPRINTS IN OTHER THAN FELONY CASES: Fingerprints must also be taken by officers when they make an arrest, with or without warrant, for any of the offenses specified in Section 552 of the Code of Criminal Procedure (CCP Sec. 940), or for prostitution, gambling offenses (P.L. Secs. 225.00-225.30) or fortune telling.

The offenses (in addition to felonies) in Section 552 are specified in the law in terms of both the old Penal Law (which was repealed effective September 1, 1967) and the current Penal Law. They include all offenses involving a charge of any of the following:

1. **UNDER OLD PENAL LAW:**

a. Illegally using, carrying or possessing a pistol or other dangerous weapon.

b. Making or possessing burglar's instruments.

c. Buying or receiving stolen property.

d. Unlawful entry of a building.

e. Aiding escape from prison.

f. Disorderly Conduct as defined in subdivision 6 of Section 722, old Penal Law (interferring with a person by jostling, unnecessarily crowding, placing hand in proximity of pocket, accosting or stationing oneself for purpose of obtaining money or property by trick, artifice, swindle, confidence game or illegal manner).

g. Disorderly Conduct as defined in subdivision 8 of Section 722, old Penal Law (frequenting or loitering about any public place soliciting men for purpose of crime against nature or other lewdness).

h. Endangering life or health of child, old Penal Law Section 483.

i. Carnal abuse of a child over 10 and less than 16, old Penal Law Section 483-b.

j. Exposing minor to harmful materials, old Penal Law Section 484-h.

k. Indecency violations, including exposure of persons, obscene prints and articles, etc., as set out in Article 106 of the old Penal Law, Sections 1140, "Exposure of Person," through 1148, "Person Living on Proceeds of Prostitution."

l. Sodomy or rape designated as a misdemeanor under the old Penal Law.

m. Sale or Possession of Hallucinogenic Drugs, old Penal Law Section 1747-d.

n. Sale and Possession of Hypodermic Syringes and Hypodermic Needles; Possession of Certain other Instruments, old Penal Law Section 1747-e.

o. Any violation of any provision of Article 33 of the Public Health Law relating to narcotic drugs which was defined as a misdemeanor by Section 1751-a of the old Penal Law.

p. Any violation of any provision of Article 33-a of the Public Health Law relating to depressant and stimulant drugs which was defined as a misdemeanor by Section 1747-b of the old Penal Law.

2. **UNDER CURRENT PENAL LAW:**

a. Illegally using, carrying, or possessing a pistol or other dangerous weapon.

b. Possession of Burglar's Tools (P.L. Sec. 140.35).

c. Criminal Possession of Stolen Property in the Third Degree (P.L. Sec. 165.40).

d. Escape in the Third Degree (P.L. Sec. 205.05).

e. Jostling (P.L. Sec. 165.25).

f. Fraudulent Accosting (P.L. Sec. 165.30).

g. Loitering as defined in Penal Law Section 240.35, subd. 3 ("loiters or remains in a public place for the purpose of engaging or soliciting another person to engage in deviate sexual intercourse or other sexual behavior of a deviate nature").

h. Endangering the Welfare of a Child (P.L. Sec. 260.10).

i. Offenses defined in Article 235, "Obscenity and Related Offenses," Penal Law (Penal Law Sections 235.05, "Obscenity," 235.21 "Disseminating Indecent Material to Minors").

j. Issuing Abortional Articles (P.L. Sec. 125.60).

k. Permitting Prostitution (P.L. Sec. 230.40).

l. Promoting Prostitution in the Third Degree (P.L. Sec. 230.20).

m. All offenses defined in Article 130, "Sex Offenses," Penal Law (sections 130.20, "Sexual Misconduct," 130.25-130.35, "Rape" (all degrees), 130.38, "Consensual Sodomy," 130.40-130.50, "Sodomy" (all degrees), 130.55-130.65 "Sexual Abuse" (all degrees).

n. All offenses defined in Article 220, "Dangerous Drug Offenses," Penal Law (sections 220.05-220.20, "Criminal Possession of a Dangerous Drug" (all degrees), 220.30-220.40, "Criminally Selling a Dangerous Drug" (all degrees), 220.45, "Criminally Possessing a Hypodermic Instrument").

FINGERPRINTING PROCEDURES: Procedures for taking and handling fingerprints are discussed in Section 64, "Fingerprints and Identification," this Manual. Officers have no authority to require persons to be fingerprinted on arrest, except in the instances specified in the preceding paragraphs.

Members of the State Police are specifically authorized to transport arrested persons to their troop headquarters for purposes of fingerprinting, photographing and blood grouping (CCP Sec. 940).

DISPOSITION OF FINGERPRINTS REQUIRED BY LAW: All fingerprints taken as required by law must have one copy promptly forwarded (within twenty-four hours of the arrest) to the Bureau of Identification, New York State Identification and Intelligence System (NYSIIS), Albany, N. Y., and another copy to the Division of Identification, Federal Bureau of Investigation, U. S. Department of Justice, Washington, D. C. The identification data required on the fingerprint cards must be fully supplied (CCP Sec. 941).

Section 617 of the Correction Law makes it the duty of all police agency heads, sheriffs and other officers under penalty of removal from office for neglect of duty, to daily forward to the Bureau of Identification, NYSIIS, fingerprints, comprehensive descriptions and photographs when deemed essential, of all persons arrested who in their judgment are wanted for serious crimes, or are fugitives from justice, or who were found in possession of goods believed stolen, or of explosives, or infernal machines, bomb or the like believed possessed for unlawful use. Also of all persons carrying concealed firearms or other deadly weapons for unlawful purposes or those possessed of anything necessary for counterfeiting money which the officer believes is possessed for an unlawful purpose.

RETURN OF FINGERPRINTS: When an arrested person is acquitted of the charge on which fingerprinted, his fingerprints and photograph and all copies, including the photographic negative, must be returned to him on request, unless another criminal action is pending against him, or unless he was previously convicted of a crime or of disorderly conduct or vagrancy or as a disorderly person, in New York, or was convicted elsewhere of what would be such a crime or offense in New York. Failure to return when proper demand is made is a misdemeanor (CCP Sec. 944; Civ. Rts. L. Sec. 79-e).

PROCEDURE IN MAKING AN ARREST: An arrest is accomplished by actually restraining the person or by his submitting to police custody (CCP Sec. 171). In arrests with warrant, the defendant must be informed by the officer that he acts under the authority of the warrant and he must show the defendant the warrant if required. In misdemeanor or lesser cases the officer must always have the warrant in his possession at the time of arrest. In felony cases he should have the warrant if possible; if it cannot be obtained in time, the arrest should be made as an arrest without warrant. In arrests without warrant, the officer must inform the person arrested of the authority of the officer and the cause of the arrest ("I am a police officer. You are under arrest for disorderly conduct"). No advice to the arrestee is required when he is arrested in the actual commission of an offense or is pursued immediately after an escape (CCP Sec. 180).

In effecting an arrest, an officer may break open an outer or inner door or window of any building to execute the warrant if after notice of his authority and purpose he is refused admittance (CCP Secs. 175, 178).

A person arrested must not be subjected to any more restraint than is necessary for his arrest and detention (CCP Sec. 172).

INTERFERENCE OR RESISTANCE: It is a Class A misdemeanor for any person, by means of intimidation, physical force or interference or any independently unlawful act, to obstruct, impair or pervert the administration of law or other governmental function or prevent or attempt to prevent a public servant from performing an official function (P.L. Sec. 195.05). This, of course, would include any person interfering with a lawful arrest.

Officers should bear in mind that it is Assault in the Second Degree for any person to cause physical injury to a peace officer with intent to prevent the officer from performing a lawful duty (P.L. Sec. 120.05, subd. 3). Assault Second is a Class D felony. Officers should be alert to charge such violations in all proper instances, in addition to the violation for which the arrest was originally sought to be made.

When an arrest is resisted, but the officer is not assaulted, the offender may be charged with Resisting Arrest (P.L. Sec. 205.30), a Class A misdemeanor consisting of intentionally preventing or attempting to prevent a peace officer from effecting a lawful arrest of oneself or another.

Menacing should also be borne in mind. It is a Class B misdemeanor committed by intentionally, by physical menace, placing or attempting to place another person in fear of imminent serious physical injury (P.L. Sec. 120.15).

TECHNIQUES OF ARREST; INTRODUCTION: Officers should plan every arrest, even though only a brief period of time may be available to them in which to do so.

In many instances, an officer is able to anticipate that he will require assistance in effecting an arrest. He should seek assistance in all such instances when it is practicable to do so. A failure to ask for assistance, when circumstances indicate the need, is improper police procedure.

Officers making arrests must stay alert. The use of intelligence and practical psychology are essential in every arrest. The officer's life and the life and property of others may depend upon the officer making prompt and correct decisions and correctly anticipating the mental attitude and behavior of the person or persons to be arrested.

In approaching each arrest, officers must remind themselves that stereotyped or set, unvarying procedures are dangerous. They must expect continued variation in arrest problems. Many arrests, as the officer prepares to make them, seem routine and look as if they will follow a known, simple pattern. But if an officer counts on each arrest being routine and acts accordingly, he is exposing himself and others to serious risks, including death.

PLANNING: Officers should take as much time as is reasonably necessary to plan arrests, when the need for the arrest can be anticipated. Where an on-the-spot, almost instantaneous decision must be made, the officer should still think carefully and plan his actions during whatever period of time is available. If the officer has previously analyzed the problems of resistance, weapons and escape as applied to arrests he has made in the past, to arrests by other officers known to him, and to practice arrests in schools and training courses, he will be able to make correct decisions and plan proper action very promptly.

Not all arrests call for elaborate planning. Some do. When subjects are known to be difficult to arrest because of their ability to run or elude officers, their location, surroundings, crowds, weapons, strength, etc., definite plans must be made beforehand to ensure a successful arrest. The place in which the arrest must be made may in itself provide difficulty calling for detailed planning. In any event, officers should carefully avoid a careless, "let's go get 'em, boys" approach to any arrest problem. Even the apparently simple arrest for "public intox" may suddenly involve a wrestling match with a strong individual armed with a knife or gun, so that no arrest can be shrugged off as "simple" or "easy" and approached carelessly.

All planning should be aimed at one thing: successful, safe arrest, (including safety to officers, citizens and subjects).

When planning is complete, all officers involved should be thoroughly instructed.

BASIC CHARACTERISTICS OF GOOD ARREST PLANS: All arrests should be planned to have three basic characteristics:

1. Speed.
2. Simplicity.
3. Surprise.

Speed is necessary to keep to a minimum the time when the subject can react unfavorably, resist, use weapons, call for assistance, be aided by bystanders and so on. In order to have speed it is essential that every officer participating understands precisely his role in the arrest problem and the equipment he is to have, (whether automobile, light, shotgun or anything else, including extra handcuffs, leg-irons, etc.). Speed requires precise instructions to, and understanding by, the officers involved. It requires also a precise agreement as to when the first move in the arrest is to be made, and exact follow-through on plans as instructed.

Simplicity may be understood as meaning "without any unnecessary step or action." Any elaboration of the basic necessities of an arrest offers more chance of mistake and more time needed to make the arrest. Elaboration also tends to unnecessary use of manpower, work time, equipment and facilities. Elaboration makes the instruction of the officers involved more complicated, and more open to error.

Surprise permits finding the subject to be arrested in a relaxed, defenseless posture. It is of great importance, whether the surprise permits arresting a sleeping subject before he can reach a pistol under his pillow, or a half-drunk teen-age hoodlum before he can avoid a come-along hold.

SAFETY: An armed subject threatens the safety not only of the arresting officer but of any nearby man, woman or child, and of property as well.

In addition, every subject has his or her "personal weapons," (hands, fingernails, fists, feet, head, etc.). Any adult's personal weapons can be damaging and dangerous. The personal weapons of an adult trained in boxing, karate, judo, savate or other offensive tactics, are formidable and can kill or seriously injure.

In all arrests, officers must anticipate and take steps to minimize and avoid the use of gun, knife, club or similar weapons, or personal weapons, by the subjects.

PLACE OF ARREST: In many cases an officer can control the place of arrest. If he has a warrant for John X. Smith, and finds Smith in a low-class bar, frequented by known law breakers, all friends of Smith, Smith is better arrested when he is alone on the street, somewhere away from the bar. Arresting him in the bar would give the officer no advantage and instead would give Smith the advantage.

An arrest should always be made in a place advantageous to the officer, if the officer can control where the arrest will be made without serious risk of "losing" the subject.

EXECUTING AN ARREST: In executing an arrest, the officer should stay "in charge" at all times. By his manner, his firm, calm instructions and his tone of voice he can and should dominate the situation. Officers making arrests should not be apologetic, hesitant, show any doubt or be indecisive in any way. Officers should speak in a firm, decisive manner. Their tone at all times must be calm and authoritative.

It is suggested that in all arrests, whether with or without warrant, the officer inform the subject to be arrested of the officer's identity and the reason for the arrest ("I am a police detective. I arrest you for burglary"). This need not be done, of course, where the subject is escaping or attempting to escape or committing an offense.

When addressing the subject of an arrest, the officer should do so in a fair and reasonable manner. He should allow the person arrested to retain as much self respect as possible. Harsh or abusive language tends to make an arrest more, rather than less, difficult. Keeping a subject calm and reasonably free from shame and/or despair will assist in making the arrest easy, sure and orderly.

Arrests should be made rapidly and carried through to a conclusion without delay.

WEAPONS: Police weapons should be used as required for the safety of the officer or officers involved in the arrest, and of the public. The following are suggested as proper guidelines for police use of weapons.

1. An officer should feel free to draw his service revolver for use in an arrest at any time the weapon is reasonably required or need to use it may reasonably be anticipated.

   a. The nature of the arrest will determine whether other weapons, such as shotguns, sub-machineguns, gas guns, etc. should be used.

2. So called "warning," "winging" or "crippling" shots should not be fired at any time. If fired they may also kill or injure innocent persons.

3. A firearm may be fired at a person only when killing such person would be warranted to defend the officer or another from death or serious injury, or to effect an arrest or prevent the escape from custody of a person whom the officer reasonably believes:

   a. has committed or attempted to commit a felony involving the use or threatened use of deadly physical force, or

   b. is attempting to escape by the use of a deadly weapon, or

   c. otherwise indicates that he or she is likely to:

      (1) endanger human life, or

      (2) inflict serious physical injury,

      (3) unless apprehended without delay (P.L. Sec. 35.30, subd. 2).

Nothing in the law constitutes justification for reckless or criminally negligent conduct by a peace officer attempting to arrest or prevent escape which amounts to an offense against or with respect to any innocent persons whom the officer is not trying to arrest or keep from escaping (P.L. Sec. 35.30, subd. 2-b).

OTHER USE OF FORCE: The force which an officer may use at any time is specifically laid out in the Penal Law and is discussed in Section 11, this Manual. "Defenses and the Use of Force." The rules set out therein include not only the use of force such as firearms, clubs and tear gas, but also any other kind of force which might be brought to bear, including water hoses, horses, dogs, fists, feet, etc.

POLICE USE OF FIREARMS: Officers should utilize their issue weapons as required. In the ordinary case, firearms will be used as a threat and to insure compliance by the subject with the officer's instructions. Rarely will it be necessary to kill if the police firearms are properly handled to intimidate and deter subjects known to be armed or who are otherwise possibly dangerous.

In using a revolver, shotgun, club or any weapon in making an arrest, officers should make certain that they handle the weapon properly and in an approved manner. Careless handling will permit an alert and desperate subject to disarm them, with resultant possible death or serious injury, and an escape.

Weapons should never be "poked" or placed against or within reach of a subject at any time.

Weapons should be held in a ready position. If an arrest is a sufficiently serious problem to require a display of weapons, the weapons should be used alertly by officers, in firing condition, and they should be ready at all times during the arrest for instant and accurate fire.

STREET ARRESTS, SUBJECT AFOOT: Before making an arrest on the street, the officer should check the area for escape routes, persons who might interfere, and traffic or other physical hazards. If the subject is moving, the officer should select the location most advantageous for the officer in making the arrest. At night, a lighted area should be selected, if possible.

Speed and surprise may be maintained by getting as close as possible to the subject before making any specific move of which he may become aware. If practicable, he should be approached from the "curb" side, to keep him against a wall or building, and minimize escape routes.

Where the subject is part of a group or near a group which might be favorably disposed toward the subject or otherwise troublesome, the officer must guard against being overpowered. He should call for assistance if possible to do so. The individual desired to be arrested should be singled out and taken away from the group immediately, when the arrest is made.

ARREST IN PUBLIC GATHERING: An arrest in a public gathering should be avoided, if it is practicable to do so. If an arrest must be made in a public gathering, it should be done as quickly and unobtrusively as possible. When the subject is actually arrested he should be quickly and quietly removed from the crowded area. Plainclothes officers will find it usually of value to pin their badges on their outer lapel, for identification and as an aid to diverting crowd interference in such situations.

ARREST OF PERSON IN VEHICLE: Special care must be exercised when attempting to effect an arrest from a car. High speed pursuit is dangerous. When stopping a vehicle to check it, or to effect an arrest, the officer should park to the rear of it and approach it cautiously. Only one

officer should make an approach or give any commands. His partner (if any) should "cover" him from behind the right rear corner of the stopped vehicle.

When stopping the vehicle at night, the officer should select a lighted area, if practicable. The police vehicle spotlight should be used to illuminate the interior of the stopped vehicle, after stopping.

It is well, if escape is a possibility, to require the vehicle driver to turn off his engine. The officer should stand to the rear of the driver's door, requiring the driver to turn to see him. The officer should not, at any time, bend down or place any part of his body through a vehicle window.

Since weapons are easily concealed, the officer must insure that the hands of all occupants are visible to him and shall command the occupants as necessary to insure this. Occupants should be cautioned against opening a door until commanded, since a common "holster" for weapons is alongside the door, particularly the driver's door. Occupants should be instructed to remain in the vehicle until ordered out individually, as desired by the officer.

When making arrests, officers should insure that the driver has his hands clasped around the wheel, other front passengers their hands on the windshield, and rear seat passengers their hands palms up on the back of the front seat. All must be required to move slowly and cautiously, to ensure against any "grab" for a weapon concealed in the car or on the person of an occupant.

In any "chase," the officer's rule should be that safety of operation must take precedence over speed and apprehension. If the vehicle to be stopped is one involved in a felony or believed possibly occupied by a felon, or is stolen, or other danger factors exist, the officer should inform his headquarters, by radio, of his exact location and the facts, before making the stop.

ARRESTS IN THE HOME: Except where the arrest is dangerous enough to warrant a raid, an arrest at home lacks the elements of speed and surprise. Entrance is usually requested. The subject is in familiar surroundings, among family and possibly friends. All arrests in the home are therefore potentially dangerous.

Entry into the home should be rapid and the subject should be located, controlled, arrested and searched as quickly as possible. He should be promptly removed from the home, and only time for dressing should be allowed. Other personal requests should not be granted, except in minor cases and where security is absolutely assured.

When a subject must dress or be dressed, each article of clothing should be scrutinized by the officer before it is given to the subject. A subject should never be permitted to pick up clothes himself, or to approach closets, dressers, or upholstered furniture, to avoid his obtaining a weapon or destroying evidence. In minor cases, women subjects who must dress may be put in a previously searched room for decent privacy and handed their clothing after it is searched. In major cases where females are arrested matrons can accompany the officers to supervise any female subject while she is dressing.

ARREST IN APARTMENT OR HOTEL: When making arrests in hotels or in apartment buildings, a check with the manager, room clerk or janitor will usually determine that a key or other ready means of entry to the subject's apartment is available and that rapid entry may be effected, in proper cases, without either a "raid" technique or a request to the room or apartment occupant. Such persons can also furnish a plan of or describe the subject's room, suite or apartment, so that the officer will be properly oriented before entry. Care must be taken to ensure that such persons do not alert the subject to the officers' presence.

MOTEL AND CAMP ARRESTS: A basic problem in most motel and camp arrests is that an alert subject is quite likely to see an officer making a direct approach and to be aware of the officer's presence before the officer is even sure that the subject is in the motel or camp. This could cost an officer his life or cause him serious injury and a missed arrest.

In all such cases, caution should be exercised. A preliminary check should be made (if the premises are not well known to the officer) to determine where and in what manner an unobtrusive approach may be made.

In motels, the room clerk or manager should ordinarily be first contacted to assist with keys, information on layout, and determination of whether the subject is in, or out, or his current location (i.e. in the dining room, at the bar, at the pool, etc.)

ARREST IN OFFICE OR PLACE OF BUSINESS: In the usual case, it will be found desirable to plan to make the arrest in a private room or other place with restricted access, and to enlist the aid of the employer or management at the beginning (unless they are not trustworthy). Care must be taken to ensure that possible exits or "bolt holes" by which the subject might escape if he observes the officers are guarded, locked or otherwise closed off.

The safety of other employees must be considered. If the subject may be armed and dangerous, the arrest can usually be planned for after the subject leaves the premises, on the street, in the parking lot, or other logical place consistent with the need not to "lose" him.

INTOXICATION, ILLNESS, DRUGS—PERSONS ARRESTED: Persons arrested may be or become genuinely ill. They also may only pretend to be ill, either as part of an escape plan, or to create sympathy or delay.

If an arrested person complains of pains in the chest, the officer should not ignore it and should arrange immediate medical examination.

When arrests are made for public intoxication, officers should bear in mind that some severe illnesses counterfeit intoxication and should arrange immediate medical examination as required. Such illnesses as diabetes, internal head injuries, epilepsy, carbon monoxide poisoning, very high blood pressure, etc. may produce symptoms which an officer could mistake for intoxication.

Drug addicts are a special problem. A narcotic addict's craving for a "fix" or "shot" can reach ungovernable proportions, to the extent that an addict will do almost anything to avoid arrest (which is certain to cut off his chance of a "fix" or "shot"). An addict should be considered as very dangerous at all times.

SEARCHING PERSONS ARRESTED: In every arrest the officer should promptly search the person arrested, and if pertinent, the immediate place or vehicle in which arrested. A basic reason for search is safety—to uncover weapons or anything else with which the subject may harm himself, or others, or the officer or with which he may escape. Searches must be thorough and detailed.

The safest method of search is the "wall search." In this type of search, the subject is required to put his hands over his head and then place them, palms flat, against a wall (or power pole, side of truck, or other convenient thing), leaning forward and pulling his feet away from the wall or other support so that his weight is thrown against his hands, thus inhibiting sudden movement and "anchoring" him so that he may be searched by the officer with some degree of safety. The officer should search the person from the rear, reaching on either side as required. The officer may use a foot to kick the subject's foot from under him, if resistance is felt, which will pitch the subject on his face, where he may be controlled as needed.

A complete search of the body of a female subject should always be performed by matrons rather than male officers. However, at the time of arrest officers should take care to search a female subject's handbag, coat, or other belonging which she has with her and to carefully observe her clothing and person for possible concealed weapons.

Males should be carefully and completely searched. An officer should not stop short of a complete search (even when he finds a major weapon, such as an automatic pistol, or major evidence, such as stolen loot). In any serious case, particularly cases involving small bits of evidence, such as narcotics, a strip search should be made, (at the time of arrest, if circumstances make it possible; otherwise in the first place of detention where sufficient privacy may be achieved). This includes stripping to the skin, searching all clothing, including seams and shoe soles, and body cavities. Care must be taken to locate items concealed in folds of fat or taped in crotch, under arms, etc., with flesh colored tape. Actual internal body searches should be made by physicians.

Whether or not a full strip search is possible immediately after an arrest is made, careful search must always be made immediately. This involves carefully feeling all of subject's clothing, the subject's person and all contents of his clothing, for weapons or evidence.

Searches should be conducted in a regular and orderly fashion. A usable system is to begin with the head, searching through the hair, the hat, behind the ears, then the shoulder line, between the shoulder blades, the body, the belt and under the belt, all around, then the groin and crotch. Each arm and leg should be separately examined, taking care to check for items taped thereto. A left-right arm and left-right leg pattern will ensure that no one limb is overlooked.

HANDCUFFING: All felony prisoners should be handcuffed immediately after being searched. Handcuffing other prisoners is a matter of judgment and they may be handcuffed when the officer reasonably deems it necessary to protect himself or the prisoner, or to prevent escape.

HANDLING PRISONERS SUCCESSFULLY: The key to handling prisoners successfully is to constantly realize that they wish to and may escape, that handcuffs or other restraints are not guarantees of security and that they must be constantly watched. Be especially wary in case of any request for person privileges by a prisoner and ensure complete security before granting any privilege.

TRANSPORTING PRISONERS: In transporting prisoners by car, two officers should be in the car. If one prisoner, seat the prisoner in the rear on right side, one officer in rear behind driver. If two or three prisoners, seat all in rear, both officers in front, officer not driving facing rear to constantly watch prisoners.

USE OF TEAR GAS: Tear gas, when properly used, is a valuable weapon. It is particularly adapted to driving barricaded persons into the open and dispersing riotous groups. Under certain circumstances, a close concentration of tear gas may produce death.

1. Permission should be obtained from a high ranking officer before tear gas is used.
2. No greater use of tear gas should be made than is actually necessary to effect the arrest.
3. The subject should be taken into custody and removed from the gassed area as soon as possible.

Tear gas produces temporary blindness and great discomfort. Exposure to fresh air and washing the eyes with water are usual first aid. A person

exposed to a heavy concentration should be kept warm in order to prevent shock or pneumonia. Medical attention should be immediately secured for such subjects.

ARREST OF U. S. MAIL TRUCK DRIVERS OR CARRIERS. Title 18, U. S. Code, Section 1701, makes it a criminal offense to obstruct or retard the passage of the mails. However, U. S. Mail Truck drivers or carriers may be arrested or summonses issued to them for violation of the Vehicle and Traffic Law or other laws and ordinances, so long as this does not result in the withdrawal of adequate protection to the mails or delay the mails. Where a summary arrest must be made, such as in a Driving While Intoxicated case, the arresting officer must assume responsibility for adequately protecting the mail and promptly informing postal authorities so that the mail will not be delayed. In unusual situations, the local postmaster or postal inspector should be first consulted to work out the mail problem without violating Section 1701.

ARREST OF FEDERAL VEHICLE DRIVERS: Federal vehicles are not required to be registered under state law nor need their drivers carry state operators' or chauffeurs' licenses. Frequently Federal vehicle drivers will carry government-issued driving permits, which are valid in New York to operate Federal vehicles. Operators of federally owned vehicles may be issued traffic summons or may be arrested for traffic violations.

ARREST OF MILITARY PERSONNEL: Military personnel off military bases are subject to arrest the same as any other person for a like violation. In cases where military personnel have committed a violation and are thereafter found on a military base or in military custody, the military are authorized, under the Uniform Code of Military Justice, to turn them over to local authorities for prosecution. A formal request to surrender the offender should be made to the base commander or officer-in-charge, accompanied by a copy of the indictment (or information) and a warrant of arrest.

ARREST OF DESERTERS: Military deserters may be summarily arrested, without warrant, by any peace officer (Title 10 U. S. Code, Sec. 808). All officers should know, however, that they do not have authority to arrest military personnel merely for being AWOL. Service personnel become deserters when so declared by their respective service. A mere lack of leave papers, or being over leave, is not sufficient to establish that a serviceman or woman is a deserter. In the absence of positive information that an individual is a deserter, such as a Form DD553, "Absentee Wanted by the Armed Forces" sent to local police by the military actually showing the individual is a deserter, or the result of a file check with the appropriate service or the local FBI office, no "deserter" arrest should be made. Persons suspected of being deserters may, of course, be arrested for any offense they actually commit (such as hitch hiking (V&T Sec. 1157)) and their military status can be checked while they are being prosecuted and serving time for the substantive offense. If there is no substantive offense, they should not be arrested or detained solely to determine their military status.

UNIFORM CLOSE PURSUIT ACT (FUGITIVES OUT-OF-STATE): New York and all the states adjoining it have passed Uniform Close Pursuit Acts. These laws provide that an officer who enters another state in close pursuit and continues in close pursuit of a person to arrest that person has the same right of arrest in the other state as an officer of that other state, in respect to the person pursued. The person to be arrested must be pursued into New York for an offense which would be a crime under the laws of New York (CCP Sec. 860). In New Jersey pursuit must be for a felony or high misdemeanor, in Connecticut, Massachusetts and

Vermont for a felony and in Pennsylvania for a crime which would be an indictable offense in Pennsylvania.

A New York officer may not follow a motor vehicle operator in close pursuit into an adjoining state and arrest him in the other state for a traffic infraction committed in New York (1953, Op. Atty. Gen. 103). Such infractions are not felonies, high misdemeanors, or indictable crimes. The same would be true for officers pursuing traffic violators into New York.

In other states the person apprehended must be taken by the New York officer before a judge, justice or magistrate as prescribed by the laws of that state, to determine whether the arrest was in accordance with the provisions of that state's Uniform Close Pursuit Act (not to determine guilt or innocence). In New York the out-of-state officer must take the prisoner before any magistrate, to determine whether the arrest was made in accordance with subdivision "a" of Section 860, Code of Criminal Procedure. When it is found the arrest was lawful, the prisoner is committed to the custody of the arresting officer, to be removed immediately to the state from which he was pursued.

FEDERAL FUGITIVE FELON ACT: Fugitives from justice who have fled New York in local felony cases come under the Federal Fugitive Felon Act, Title 18, United States Code, Section 1073, which makes it a Federal crime to travel in interstate or foreign commerce with intent to avoid prosecution for a felony, to avoid giving testimony as a witness in a felony case or to avoid custody or confinement after conviction of a felony.

The FBI, upon request, will cooperate in seeking and arresting such a fugitive. The request must be based on a warrant of arrest, plus evidence tending to show interstate flight. A statement in writing from the District Attorney that when apprehended the fugitive will be extradited at local expense will also be required. In urgent cases, a verbal commitment, to be followed by written confirmation, may be acceptable.

EXTRADITION; UNIFORM CRIMINAL EXTRADITION ACT: Warrants of arrest from New York are not valid for service in another state nor are arrest warrants from another state of any validity in New York. The rendition of defendants from one state to another ("extradition") is governed by Uniform Criminal Extradition Acts or extradition laws of each state, and from other countries by the U. S. Constitution and treaties. All such proceedings should be handled under the guidance of the District Attorney.

Extradition and rendition refer to the same process—a fugitive is "extradited" from the state where found—the process by which he is given up by the state where found is a "rendition proceeding."

The U. S. Constitution is the basis for extradition: "A person charged in any State with Treason, Felony or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime" (Article IV, Section 2).

New York State extradition proceedings are governed by the Uniform Criminal Extradition Act (CCP Secs. 827-859). Over forty states, in addition to New York, have adopted the Uniform Criminal Extradition Act, so that the procedure in obtaining fugitives from other states is basically the same as the procedure in New York.

In summary, extradition is secured by a written request from the governor of the state from which the fugitive fled to the governor of the state in which he has asylum, requesting the return of the fugitive. The governor of the state of asylum will thereupon issue a warrant for the arrest of the fugitive and he will be arrested by officers of the state of asylum and be brought before a judge of a court of record to be advised of his rights and

to have an opportunity to seek a writ of habeas corpus. In proper cases, after this hearing, the fugitive is then turned over by the arresting officers to the representatives of the state which sought his return. In New York, failure to bring an out-of-state fugitive before a judge of a court of record, before turning him over to another state's representatives, is a felony (CCP Secs. 830, 835, 836, 838, 839).

In these proceedings, the guilt or innocence of the fugitive may not be inquired into by the state of asylum, except solely in respect to identifying the fugitive as the person wanted (CCP Sec. 849). In case of fugitives wanted by New York, the request from the Governor of New York to the governor of the state of asylum is initiated by the prosecuting attorney of the county in New York where the offense was committed. This county must bear any expense of the extradition. The prosecuting attorney sends the Governor a written request for the extradition, stating the fugitive's name, the crime charged, the approximate time, place and circumstances of the commission of the crime, the state where the fugitive is believed to be and his location in that state and a certification that the ends of justice require the arrest and return of the accused fugitive and that the proceeding is not instituted to enforce a private claim (CCP Sec. 853). In state cases, the Attorney General may initiate the proceedings. In parole jumping cases the prosecuting attorney or the parole board may initiate them, and in escape from confinement cases, the prosecuting attorney, warden or sheriff may initiate the proceedings.

The written request to the Governor of New York must be accompanied by two copies of an affidavit of verification and two certified copies of the indictment, or of the information and affidavits, or of the complaint (CCP Sec. 853).

When the Governor of New York makes an extradition request to another governor, he also issues a warrant of arrest sealed with the New York State seal (referred to as an "agent's certification") directing some agent to go and receive the fugitive in the state of asylum and return him to the New York county where the offense was committed (CCP Sec. 852). The agent will ordinarily be an officer of the department handling the investigation of the case. The District Attorney, in his original application, identifies to the Governor the person to be appointed agent. Printed forms for application by the District Attorney have been approved by the Governor's Office and are familiar to District Attorneys.

In cases where fugitives wanted in other states are found in New York, such as where an out-of-state police agency requests that an identified individual be arrested, as wanted for burglary, the law permits New York officers (and private persons) to arrest without warrant "upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year." The person arrested must be taken before a magistrate as soon as possible and complaint made against him under oath, setting out the grounds for his arrest (CCP Sec. 843).

The arresting officer should execute an information before the magistrate to the effect that the person arrested is "a fugitive from justice, wanted in the state of (name of state) on a charge of (name the crime), punishable by death or imprisonment for more than one year . . ." and the information should add "this information is on information and belief, the source of my information and the grounds for my belief being (state grounds, such as 'teletype message in my possession from Chief of Police of Cleveland, Ohio, which I believe to be true and authentic')."

If it appears that the person arrested is the person wanted and that he fled from the other state, the magistrate must commit him to the county

jail for not more than thirty days (CCP Sec. 844). This is for the purpose of letting the other state secure extradition through its governor and the Governor of New York. The magistrate may extend the period of incarceration or he may discharge the defendant after thirty days (CCP Sec. 846).

An arrested fugitive has a right to bail (unless the offense for which sought is an offense punishable by death or life imprisonment) (CCP Sec. 845). Only a Supreme Court justice or a County Judge may admit such fugitives to bail (CCP Sec. 845).

If the crime is not one punishable by either death or imprisonment for one year in the state where committed, no arrest may be made without warrant. If in doubt, the New York officer should ascertain the penalty from the requesting out-of-state department before making an arrest without warrant.

In any case where a person is wanted for a crime in another state, his arrest may be secured in New York by "any credible person" swearing before a magistrate that the fugitive committed a crime in another state (or fled from justice, or after conviction escaped, or broke probation or parole, or jumped bail) and the magistrate is empowered to issue a warrant of arrest to any New York peace officer directing him to take the fugitive into custody and to arraign him before the same magistrate or any other convenient magistrate as directed (CCP Sec. 842).

Any fugitive arrested as such in New York may waive extradition. This waiver must be in writing, subscribed in the presence of a judge of a court of record (CCP Sec. 851).

Nothing limits the right of a fugitive to return voluntarily and without formality to the demanding state. However, in practice an arrest is usually made, and the procedure in the preceding paragraph must then be followed (CCP Sec. 851).

BAIL: If the charge is for any offense not specified in Section 552, CCP, defendant must be admitted to bail as a matter of right in cases of misdemeanors, violations and traffic infractions and as a matter of the magistrate's discretion in all felony cases (CCP Sec. 553.) The offenses specified in Section 552 are set out previously in this manual section under the heading "Fingerprints in other than Felony cases."

WHO MAY GRANT BAIL: When a defendant has been arrested, he may be admitted to bail by the magistrate who issued the warrant or before whom it is returnable, except as stated in the following two paragraphs. If both such magistrates are incapacitated or absent from the jurisdiction and if either of them has fixed the amount of bail, the defendant may be admitted to bail by any other magistrate of like jurisdiction (CCP Sec. 550, subd. 1). Any justice of the supreme court or any county judge may admit a defendant to bail.

BAIL; CRIMES PUNISHABLE BY DEATH: Only a justice of the supreme court or a judge of the county court where the defendant is charged has authority to grant bail when the defendant is charged with a crime punishable by death or with inflicting a probable fatal injury on another under circumstances where if the victim dies the crime would be murder (CCP Sec. 552, subds. 1, 2).

BAIL; FELONIES AND SOME MISDEMEANORS: Only a justice of the supreme court or a judge of the county court where the defendant is charged may admit to bail a defendant charged with a felony or with any of the selected offenses specified in subdivision four of Section 552 of the Code of Criminal Procedure, if it appears from the defendant's fingerprints, or otherwise, that there is reason to believe that he has either been previously convicted in New York of a felony, or of an attempt to com-

mit a felony, or of a crime under the laws of another state, government, or country which if committed in New York would be a felony, or has been twice so convicted of any one of such selected offenses or convicted of any two of them (CCP Sec. 552, subd. 3).

The offenses listed in subdivision 4 of Section 552 are set out previously in this Manual section under the subheading "Fingerprints in other than Felony cases."

FINGERPRINTS AS A REQUIREMENT FOR BAIL: A person charged with a felony or with any of the selected offenses specified in Section 552, subd. 4 of the Code of Criminal Procedure cannot be admitted to bail until his fingerprints have been taken to determine whether he or she has previously been convicted of any offense. In addition, if the arrest is in any city or other locality with facilities for the prompt taking and recording of fingerprints, the defendant's previous record, if any, must be ascertained by the officer who has the defendant in custody from such records, and submitted to the magistrate or person empowered to admit to bail, before the defendant can be admitted to bail (CCP Sec. 552-a). The Section 552 selected offenses are set out earlier in this Manual section under the subheading "Fingerprints in Other Than Felony Cases."

BAIL BY POLICE, SPECIAL SESSIONS CASES: In cases which Courts of Special Sessions have jurisdiction to try and if a magistrate is not accessible, bail must be taken by the police chief, acting police chief, captain, lieutenant, sergeant or desk officer in charge at a police station, county jail or police headquarters. The bail is to be taken for an appearance date not more than one week later. Bail may be cash or with oath of ownership, or a corporate surety. Personal sureties cannot be used. A surety by a corporate surety authorized to do business in New York is permissible (CCP Sec. 737, subd. 2).

A magistrate is not accessible under the law when he is ill or is known to be absent from his usual place of business, and between 7:00 PM and 9:00 AM (CCP Sec. 737, subd. 2).

OTHER AUTHORITY OF OFFICERS TO GRANT BAIL (OVERNIGHT BAIL): Any chief or acting chief, captain or lieutenant or sergeant or acting sergeant of police in any police department organized under the laws of New York, or of the Westchester County Parkway Police and any sheriff, undersheriff or chief deputy sheriff must take bail for appearance the next morning before a magistrate from anyone arrested for a misdemeanor, or violation, except the selected offenses specified in Section 552 of the Code of Criminal Procedure and the offenses in Article 225 of the Penal Law ("Gambling Offenses," Sections 225.00-225.40). Bail must be so taken at anytime between eleven o'clock in the morning and eight o'clock the next morning (in New York City between two o'clock in the afternoon and eight o'clock the next morning) and as soon as anyone offers bail (CCP Sec. 554).

The State Police are not authorized to take bail (Op. Atty. Gen. 45 St. Dept. 604).

AMOUNT OF BAIL GRANTED BY MAGISTRATES: In cases over which Courts of Special Sessions have jurisdiction magistrates may set bail up to $500. In other cases bail may be in the amount determined by the magistrate, except that the amount cannot be excessive (CCP Sec. 737, subd. 1; NYS Constitution, Art. 1, Sec. 5).

AMOUNT OF BAIL GRANTED BY OFFICERS: Officers taking bail in cases over which a Court of Special Sessions has jurisdiction can take not less than $25 and not more than $200 in cases of misdemeanor. They can take not less than $5 nor more than $100 in respect to violations (CCP Sec. 737, subd. 2).

The amount of bail which officers may set between 11 AM and 8 AM for appearance the next morning, under Section 554, must be $500, except that in cases of violations of ordinances which only carry a fine, bail must be double the largest fine, and for violations of other ordinances, $100. Personal sureties are acceptable and a corporate surety is not required.

In cases involving violations of ordinances which only carry a fine, the bailing officer may, in lieu of bail, parole the arrested person on such person's promise to appear the following day before the proper magistrate (CCP Sec. 554, subd. 6).

BAIL AFTER BEING HELD TO ANSWER: When a person arrested has been arraigned and examined and held to answer, he may be admitted to bail by the magistrate who held him to answer, and if this magistrate does not have authority to admit him to bail he may be admitted to bail by a supreme court judge (CCP Sec. 22), by a judge of the court to whom the committing magistrate forwards the case if that court will try it and if not, by the court to which it may be sent or removed after indictment (CCP Secs. 557, 558).

BAIL AFTER INDICTMENT: In misdemeanor cases, bail may be granted after indictment by any magistrate in the county of arrest (CCP Secs. 302, 578) and the officer must take the arrested person before such a magistrate if requested. In felony indictments the officer must follow the direction of the bench warrant and bring the arrested person before the court as directed or if court has adjourned for the term, he must be delivered to the custody of the sheriff mentioned in the warrant (CCP Secs. 301, 579, 580).

If the amount of bail is fixed and endorsed on the warrant, in felony cases, the arrested person may be admitted to bail, when delivered into custody, by the judge presiding in the court in which the indictment was found or to which it was sent or removed or by any judge of the supreme court or of any judge authorized to preside in a court having jurisdiction to try indictments (CCP Secs. 580, 557).

REAL ESTATE AS SECURITY FOR BAIL: If sureties offer real estate as security for bail, the assessed valuation, less any liens, mortgages, water charges, etc., must be at least double the amount of bail (CCP Sec. 569).

BAIL PROCEDURE: Giving bail amounts to the defendant signing an agreement to appear, and the signing of the same agreement by sureties who promise that they will guarantee his appearance or forfeit the face amount of the bail. The magistrate must approve the sureties. In place of sureties, the defendant can deposit cash or property of equal value, accompanied by an affidavit of ownership (CCP Secs. 554, 737). The cited sections specify the written forms to be used.

When a defendant has been admitted to bail and has given bail, he is released from custody.

In lieu of bail and any time after an order admitting him to bail is granted, the defendant may make a deposit of cash, or U. S. Government bonds, or Treasury Certificates, or New York State or New York City bonds, equaling the amount of the bail. The deposit may be made with the County Treasurer (in New York City with the City Treasurer) or with the magistrate by whom he is held, or with any other justice or magistrate of the same court, or with the clerk or deputy clerk of a court held by any such justice or magistrate, (or with the warden, deputy warden or keeper in charge of the jail in which he is committed. When a deposit is so made, the defendant must be released (CCP Sec. 586).

BAIL JUMPING, SECOND DEGREE: A person is guilty of Bail Jumping in the Second Degree, a Class A misdemeanor, when having been released from custody, with or without bail, by court order or by other lawful authority, upon condition that he will subsequently appear personally in connection with a criminal action or proceeding, he fails to appear personally on the required date, or within thirty days thereafter (P.L. Sec. 205.35).

BAIL JUMPING, FIRST DEGREE: A person is guilty of Bail Jumping in the First Degree, a Class E felony when, having been released from custody, with or without bail, by court order or by other lawful authority, upon condition that he will subsequently appear personally in connection with a charge against him of committing a felony, he fails to appear personally on the required date or within thirty days thereafter (P.L. Sec. 205.40).

DEFENSE TO BAIL JUMPING: In any prosecution for bail jumping, it is an affirmative defense that the defendant's failure to appear was unavoidable and due to circumstances beyond his control (P.L. Sec. 205.45).

ARRESTS FORBIDDEN; AMBASSADORS AND PUBLIC MINISTERS: Anyone who assaults, strikes, wounds or imprisons or offers violence to the person of an ambassador or other public minister in violation of the law of nations is guilty of a Federal crime, punishable by $5000 fine and/or 3 years imprisonment (Title 18, U. S. Code, Sec. 112). If a deadly or dangerous weapon is used, the penalty is $10,000, ten years, or both. A writ or process issued by any court whereby the person of any ambassador or public minister of any foreign prince or state or any domestic or domestic servant of such person is arrested or imprisoned is void (Title 22, U. S. Code, Sec. 252). Every person by whom the process was obtained, whether as party or attorney, and every officer concerned in executing it, is guilty of a Federal crime and is subject to being fined at the discretion of the Federal court and/or imprisoned for 3 years (Title 22, U. S. Code, Sec. 253).

The prohibitions in the preceding paragraphs have been held not to protest consuls. Minor United Nations personnel have been held not automatically entitled to immunity from arrest or prosecution as a matter of law (County of Westchester vs. Ranollo, 187 Misc. 777; People vs. Coumatos, 32 Misc. 2d. 1085, affirmed 20 App. Div. 2d. 850).

The chauffeur to the Indonesian Ambassador to Canada, given a speeding ticket in New York, was held not immune to prosecution as his ambassador was not accredited to the President and government of the United States (People vs. Roy, 21 Misc. 2d. 303).

The peace officer must recognize the privileges of diplomatic immunity, at his peril, under Federal law. In no instance should officers make summary arrest of UN or other diplomatic personnel, and bring them into court for court determinations of their status.

In case of minor violations, such as traffic infractions, an officer may require anyone to identify him or herself, and he may issue a summons in proper cases. If the person should present or claim to have diplomatic credentials, the validity of such credentials may later be checked with the U. S. State Department in Washington, or the Security Office of the United Nations in New York City, and if it should be determined that the person did not have diplomatic status or that the status he does have does not entitle him to immunity, a warrant may be secured for his arrest and he may be proceeded against like any other violators.

Officers should not determine for themselves the legal questions of whether particular UN or other diplomatic positions confer on the holders

of the positions full immunity and this question should be pursued through the District Attorney.

In instances of serious violations, where immediate police action must be taken (drunken driving, crimes of violence, etc.), the officer has no choice but to proceed as if the offender was a citizen, except that the officer should not make any arrest when he is on notice that the subject may have diplomatic immunity. The officer would be clearly put on notice by a diplomat license plate, by a verbal claim and/or the display of credentials from the Chief of Protocol of the United States Department of State or from the United Nations.

In such instances, the subject should be completely identified. If his demeanor, statements and credentials do not offer clear evidence of his diplomatic status, he must be required by the officer to establish such evidence. The officer should afford all necessary assistance to do so. In no instance may a person with actual diplomatic immunity be arrested, incarcerated or prosecuted, no matter what the provocation or offense involved may be.

In cases of drunkeness of persons with diplomatic immunity, representatives of their country or mission should be immediately contacted to take responsibility for them.

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19. ABORTION AND RELATED CRIMES

ABORTION DEFINED: A person is guilty of abortion who commits an abortional act upon a female, unless the abortional act is justifiable (P.L. Secs. 125.40, 125.45).

1. **ABORTIONAL ACT:** An abortional act is an act:
   a. Committed upon or with respect to a female,
   b. By another person, or by the female herself,
   c. Whether she is pregnant or not,
   d. Directly on her body, or
   e. By administering or taking drugs, or
   f. By prescription of drugs, or
   g. In any other manner,
   h. With intent to cause a miscarriage of the female (P.L. Sec. 125.05, subd. 2).

2. **JUSTIFIABLE ABORTIONAL ACTS:** An abortional act is justifiable when:
   a. Committed upon a female by a duly licensed physician acting under a reasonable belief that the act is necessary to preserve the female's life; or
   b. Committed by a female upon herself when acting upon the advice of a duly licensed physician that it is necessary to preserve her life; or
   c. The female submits to the act under the belief that it is being committed by a duly licensed physician and she is in fact acting upon the advice of a duly licensed physician that the act is necessary to preserve her life (P.L. Sec. 125.05, subd. 3).

DEGREES OF ABORTION: Abortion is second degree when committed upon any female. It is not necessary that she be pregnant, or injured or that there be any miscarriage (P.L. Sec. 125.40). Abortion Second is a Class E felony (P.L. Sec. 125.40).

Abortion is first degree when it is committed upon a female pregnant for more than 24 weeks and it causes her to miscarry (P.L. Sec. 125.45). Abortion First is a Class D felony.

INTENT: The offender must be proved to have committed the abortional act with the specific intent to cause a miscarriage of the female, since such intent is part of the definition of an abortional act. (P.L. Sec. 125.05, subd. 2).

SELF ABORTION: A female is guilty of Self Abortion when:

1. Being pregnant,
2. She commits, or
3. She submits to,
4. An abortional act other than a justifiable abortional act,
5. Which causes her miscarriage (P.L. Secs. 125.50, 125.55).

DEGREES OF SELF ABORTION: Self Abortion is second degree when committed by any female (P.L. Sec. 125.50). It is first degree when the female was pregnant for more than 24 weeks and it causes her to miscarry (P.L. Sec. 125.50).

Self Abortion Second is a Class B misdemeanor; Self Abortion First is a Class A misdemeanor.

INTENT IN SELF ABORTION: Officers should bear in mind that the criminal intent in all abortion cases is embodied in the description of an abortional act. Therefore, when a woman commits Self Abortion by an abortional act upon herself she must intend to cause a miscarriage. If she merely submits to an abortional act, it is necessary that the one performing the act do so with intent to cause a miscarriage but the female need only submit knowingly and it need not be proved that the female submitting specifically intended a miscarriage so long as she had knowledge of the objective of the abortional act (P.L. Sec. 15.10).

Thus, in any abortion case, the female may also be prosecuted, for Self Abortion, unless she was in fact unaware of the objective of the abortional act.

MANSLAUGHTER (BY ABORTION) DEFINED: It is manslaughter to commit an abortional act other than a justifiable abortional act, upon a female, when it causes her death (P.L. Secs. 125.15, subd. 2, 125.20, subd. 3).

The crime is Manslaughter Second when committed upon any female. Manslaughter Second is a Class C felony (P.L. Sec. 125.15, subd. 2). It is Manslaughter First when committed upon a female pregnant for more than 24 weeks. Manslaughter First is a Class B felony (P.L. Sec. 125.20, subd. 3).

Experienced officers will note a major change in Manslaughter by Abortion—producing the death of the child with which a woman is pregnant no longer constitutes a manslaughter or any homicide, since homicide can only be committed upon a human being who was born (P.L. Sec. 125.05, subd. 1). Manslaughter by abortion now only covers the death of the female.

INTENT: It should be borne in mind that the intent required for Manslaughter by abortion is spelled out in the law's definition of an abortional act—the offender must intend to cause a miscarriage of the female. He need not intend any other harm to her.

ISSUING ABORTIONAL ARTICLES: A person is guilty of issuing abortional articles when he manufactures, sells or delivers any instrument, article, medicine, drug or substance with intent that the same be used in unlawfully procuring the miscarriage of a female (P.L. Sec. 125.60).

Issuing abortional articles is a Class B misdemeanor.

INVESTIGATIONS: A common defense to abortion violations, when perpetrated by a doctor, is that the victim had already had a miscarriage before she sought aid. Officers must be certain to anticipate this defense in obtaining dying declarations and in collecting other evidence.

In all cases, detailed statements should be obtained from complainants and victims. Conduct background investigation of abortionist. Consider physical surveillance of abortionist and premises. Consider obtaining eavesdropping order and also checking telephone toll calls. Application for search warrant and a raid should then be considered.

Be certain to arrange qualified medical aid for possible victim at scene. Raid planning should include planning detailed photographs and careful identification of evidence found as well as assignments for prompt interview of victim and abortionist.

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20. ACCIDENTS

Accidents vary in kind and severity. It is not necessary for an officer to do everything possible at every accident. The severity of the accident largely controls the need for and kind of police action. A minor case of fender scraping and a two-car collision with three dead call for entirely different levels and amount of police activity.

Officers must firmly bear in mind that in any accident investigation, whether minor or major, an accurate and sufficiently complete investigation and report should be made.

OFFICER'S ATTITUDE: The officer must school himself not to show personal bias or prejudice at an accident. He must control his personal feeling and display an impartial attitude, even though one party to the accident might be plainly at fault or particularly unlikable.

Judgments as to civil responsibility in accident cases are the courts' business. They are not police business. Police business at an accident is solely aid, protection and investigation as to the cause of the accident, followed by arrest or application for warrant of arrest, if indicated.

A police officer at an accident should never adjust or attempt to adjust a money settlement in damage cases.

BASIC TASKS: In accident work, whether traffic or other kinds of accidents, the basic police tasks are:

1. Up-to-date list of emergency services available.
2. Proper interrogation of accident complainant.
3. Safe and rapid travel to accident scene.
4. Taking charge at the accident scene.
5. Handling "immediate danger" problems, if any.
6. First aid and safeguarding life.
7. Handling accident-death problems.
8. Investigation and reporting thereof.
9. Handling inquiries of press, TV and radio.
10. Safeguarding property.

EMERGENCY SERVICES: When an accident occurs, the police should be in a position to promptly summon the required emergency services. This cannot be done if valuable time must be used trying to discover what services are then available and their whereabouts. It is essential that there be kept for immediate use a list, with telephone numbers, for contact at any hour, covering all emergency services which are available and which might be required at an accident of any kind.

Individual officers without headquarters radio coverage should have such a list recorded in their notebooks for their assigned area.

Any such list must be kept up-to-date.

The services listed should include ambulances, doctors, hospitals, tow trucks, health officers, coroners, clergymen, emergency vehicles of water,

electric power and transportation companies, fire apparatus, public works mobile equipment, railroad wrecker trains, underwater divers, explosives and radioactive materials experts, etc.

INTERROGATION OF ACCIDENT COMPLAINANT: Accident complaints may be received on the telephone or in person. In either case, certain basic data should be obtained and promptly written down. The required basic data are:

1. Name, address and telephone number of complainant.
2. Time and location of accident.
3. Kind of accident and how serious it may be.
4. Vehicles or other equipment involved.
5. Whether ambulance, doctor, other services may be needed.
6. Whether persons involved are at scene or have departed or were removed (if not at scene, inquire as to current whereabouts).
7. In hit-and-run cases, ascertain whether offender, vehicle or license number are known or can be described and obtain identity of any witnesses known to complainant.

Obtaining the information outlined should be a brief process. It should not be drawn out. Time is important in accident cases.

Promptly upon receipt of complaint, personnel should be ordered to the scene and emergency services which appear to be necessary should be called. In hit-and-run cases, consideration should be given to prompt sending of alerts or broadcasts, if factual information permitting this was obtained from the complainant.

If the complaint was taken by an officer on the street, he should immediately inform his station and request any indicated assistance, calls to emergency services and alerts or broadcasts. If this can be done by radio, as the officer proceeds to the scene, time is saved. If the accident occurred outside the officer's assigned post, he should request instructions as to whether to proceed or whether officers closer are to be dispatched.

TRAVEL TO THE SCENE: High speed automobile travel is dangerous. Officers should proceed with safety in mind. The need to arrive at an accident scene promptly is no excuse for causing another accident en route.

Officers should (but are not required by law to) turn on their vehicle's red light and sound their siren while proceeding as an emergency vehicle (V & T, Sec. 1104 subd. c). Section 101 of the Vehicle & Traffic Law describes the permitted types of emergency vehicles. Every vehicle operated by a police department or sheriff, or by a regularly paid deputy sheriff, when engaged in the performance of duty as a peace officer, is an emergency vehicle (V & T, Sec. 101).

All officers should know that the law does not relieve the driver of an emergency vehicle from the duty to drive with due regard for the safety of all persons and it does not protect him from the consequences of any reckless disregard for the safety of others (V & T, Sec. 1104, subd. d).

The officer should, in light of his knowledge of the accident scene and based on the facts known, analyze how the accident problem may be handled. This should be done en route to the scene.

As the accident scene is approached, the officer should be alert for fallen power lines, fire potential and other hazardous conditions. He should take care not to drive over or otherwise mar any skid marks or other tire track marks or debris on the roadway or its shoulders, as these may be evidence. The police vehicle should be parked in a manner consistent with safety, off the road if possible.

TAKING CHARGE AT THE SCENE: The officer's presence at motor vehicle accident scenes involving injury to a person is based on the legal requirement that he investigate the same (V & T, Sec. 603). His presence at other accidents is not based on statute but on his general authority to investigate possible violations of law.

The officer must take charge at the accident scene. The law does not give him specific statutory authority to do so. He must do so by inspiring the confidence and respect of persons at the scene. He can accomplish this by being calm, businesslike, objective and by controlling what is done at the scene.

All officers should continually study to improve their ability to "take charge." It is a skill to be learned. It is of value to carefully study the actions and techniques of others who successfully exert leadership and control in emergency situations.

The impression an officer makes on those at the accident scene controls much of his success in handling the case efficiently and properly. It is essential that he avoid any appearance of excitement, doubt or partiality. Where he must mentally analyze what is to be done and consider possible lines of action, he should outwardly present a calm and collected appearance.

HANDLING "IMMEDIATE DANGER" PROBLEMS: Immediate dangers presented by traffic, spilled gasoline or other inflammables, downed power lines, fire, etc., must be handled promptly to prevent further injuries or loss of life. If experienced rescue squad personnel or other experienced emergency personnel arrive at the scene, the officer should cooperate with them and direct their attention to what tasks must be accomplished. The officer ordinarily should not attempt to dictate the technical details of carrying out these tasks.

Certain basic principles must be kept in mind when faced with danger problems at an accident:

1. **Consider if action must be taken now:** (i.e. persons trapped in a car with a live power line down on top of the car can be instructed to remain in the car until power company equipment and personnel can safely remove or cut off the line). If it is necessary for occupants to leave a car in such a case, because of fire, tell them to jump, not step, out of the car and to avoid touching any part of the car after their foot touches the ground.

2. **Consider what it is actually possible to do now:** (i.e., think not of what you would like to do but of what you can do; can a trapped occupant of a car in the midst of spilled gasoline be removed without further serious injury or can we only safeguard the area from igniting until apparatus can be secured to wash the gasoline away and use equipment to free him).

3. **Consider what must not be done now:** (i.e., in a collapsed building, inexpert prying at structural members to extricate a victim may cause a more complete collapse which might crush the victim to death).

All police officers should endeavor throughout their careers to become familiar with standard rescue practices and problems, so that they will be in a position to properly handle their accident cases.

In traffic accident cases it is particularly important to recognize the need for and to use flares. They should be promptly and carefully placed at accident scenes so as to give adequate warning to oncoming traffic. Flares should always be carried in police cars in ample quantity and should be regularly inspected to insure they will function when needed. Flares should be removed from the roadway as soon as they have served their purpose.

In almost all accident cases, handling of traffic safety matters must be promptly considered. An officer alone should consider posting responsible bystanders familiar with traffic, such as bus and truck drivers, to assist in this regard. They should be specifically instructed.

FIRST AID AND SAFEGUARDING LIFE: Officers should follow the practice of never permitting incompetent volunteers to treat or move injured persons at accidents. The consequences of improper treatment or movement may be severe, including death.

Officers should have a thorough knowledge of basic first aid. The officer at an accident should not attempt to diagnose injuries or administer more than the necessary minimum of first aid. He should not move an injured person, unless it is essential to do so, to protect the person's life.

As a basic rule the officer should limit his first aid to stopping arterial bleeding, restoring breathing, treating for shock if indicated and covering the victim for protection against exposure. Mouth-to-mouth breathing or mechanical resuscitators should be used to restore breathing. Use of pressure methods of resuscitation may cause additional damage in cases of violent injury such as automobile collisions.

The officer ordinarily will leave other medical attention for trained ambulance attendants and doctors. Good judgment must be exercised by an officer taking additional steps to give first aid.

HANDLING ACCIDENT DEATH PROBLEMS: In any death case, the officer should always consider that the death may have been due to suicide, homicide or criminal negligence, as well as non-culpable accident. He should be guided in his determination by the facts developed in his investigations. He should refer to Section 73 in this Manual, "Homicide," for proper techniques of investigation in death cases.

Whenever possible, it is well to leave the body of a victim undisturbed at the scene until the arrival of the coroner. This is accepted custom and practice. It is not required by law. The coroner or medical examiner should be promptly summoned but it is not necessary to obstruct traffic or delay a train or other conveyance for any longer period of time than is reasonable to await the arrival of such officer.

The time, place and circumstances of the accident would determine what is reasonable. An accurate diagram of the scene, the position of the body or bodies and other related facts should be made before moving a body or bodies. (Letter, Attorney General to Superintendent, New York State Police, 1/31/27).

In case of any death occurring without medical attendance, any person to whose knowledge the death may come has the duty of notifying the coroner or county medical examiner. (County L., Sec. 673) (Publ. H. L., Sec. 4143, subd. 1, 2).

NOTIFYING NEXT-OF-KIN: Police investigating accidents should accept responsibility, where necessary, for notifying next-of-kin of deaths or serious injuries. It is not required by law. In making notification, it should be done in person, not by telephone.

The officer handling such a task should give an appearance of sincere interest and sympathy. He should get the full attention of the person being notified and give the bad news a little at a time. Let the reaction of the person determine the pace at which the news is given. The assistance of relatives, clergy, physicians or friendly neighbors should be secured when it is known or apparent that the person to be notified, due to age, illness or mental condition may offer a problem.

If the person to be so notified is driving a vehicle, officers should exercise good judgment as to the advisability of permitting continued operation,

while such persons are in a condition of shock or mental disturbance because of the news.

Notification should be very prompt. If outside police agencies must be requested to make such a notification, the request should be expedited and they should be requested to make it in line with the instructions in the next to last preceding paragraph herein.

NOTIFICATION OF DEATH OF MILITARY PERSONNEL: The nearest military facility of the branch of service to which the deceased was attached should be promptly furnished the deceased person's full name, rank, serial number, unit to which attached, manner of death and where body held. If the deceased is a resident of the police agency's town or area, notification should be made to next-of-kin by the police as previously described. If not, it is best, in the usual case, to let the military handle such notification.

AIRCRAFT ACCIDENTS: All aircraft accidents, other than accidents to military aircraft, should be immediately reported to the Federal Aviation Agency (FAA). The FAA has offices at Albany Airport, Albany; Kennedy Airport (Air Carrier District Office 31, FAA, Bldg. 141,) Queens, N. Y.; Zahn's Airport, Lindenhurst, Municipal Airport, Rochester, and Oneida County Airport, Utica.

Accidents to military aircraft should be reported to the nearest military post and when the identity of the service to which the aircraft is attached is known, to the nearest post of that service. In case of military aircraft accidents, the area should be protected from all unauthorized persons and extreme caution should be used. Military aircraft may contain classified equipment as well as live ammunition, high explosives and/or nuclear weapons as well as high-octane aviation fuel. The danger of fire and/or explosion after the initial crash must be considered. Nuclear explosion is not probable.

In the absence of military authorities, police should prevent the taking of photographs. Civilian photographers may take photographs only of unclassified equipment. All classified equipment, if known, should be protected and covered. If a civilian should have taken pictures, he should be instructed to submit the negatives or plates to military authorities for examination. Any such photographer should be fully identified, including car license number.

Taking photographs of classified equipment, without first securing permission of the proper military officer and then submitting the photographs for censorship is a criminal offense under Title 18, U.S. Code, Sec. 795 and Executive Order 10104. The nearest FBI office should be notified of any suspected violation of this section of Federal Law.

When any aircraft falls or lands in a wrecked condition or is wrecked by landing or falling and an occupant is killed or severely injured or escapes by parachute, neither the aircraft nor any part of it may be removed before twenty-four hours have elapsed, without permission of an inspector of the Federal Aviation Agency or a member of the State Police or a sheriff or regular deputy sheriff (Genl. Bus. L. Sec. 247).

If such an inspector, state police member, sheriff or deputy makes an examination of the wreck it cannot be destroyed or removed until the examination is completed, provided that the examination is completed within 48 hours of the time it fell or landed (Genl. Bus. L. Sec. 247).

Any violation of the provisions of the above two paragraphs is a Class A misdemeanor. However, a wrecked aircraft can be removed at any time if it lies in a public street or highway in a position that causes a blockade of traffic, or lies in navigable waterways in a position impeding or imperiling navigation. Also, if immediate destruction or removal of the aircraft is

necessary to prevent injury to persons, the necessity may be advanced as a defense in any prosecution (Genl. Bus. L. Sec. 247).

MAJOR AIRCRAFT DISASTERS: In the case of major disasters, with multiple deaths, problems of identification of victims are of major importance. The FBI's Identification Division can, in proper cases, and on request of local police, furnish a mobile team of experts to handle this on the spot and assist in all phases of identification work, including necessary country-wide investigations to establish identities. Scenes of such crashes should be sealed to the public and protected from the public and non-official personnel.

BOATING ACCIDENTS: Police officers receiving information of an accident involving a pleasure vessel must make a written report within five days to the Division of Motorboats (Conservation Commissioner), including the results of their investigation, if any (Navig. L. Sec. 47, subd. 5). If the accident involves the death of any person the Division requires a report within 48 hours. The principles set out in this Manual section apply equally to boating accidents.

Reports should be made on Division of Motorboats form "Police Report of Boating Accident." Supplies of the form may be secured through the Division of Motorboats, Conservation Department.

Where more than two vessels are involved, an additional form or forms should be used.

In any boating accident investigation, care must be taken to pinpoint the location of any victim who drowned or any sunken vessel, so that necessary recovery operations can be conducted properly and with precision.

Officers should bear in mind the certainty of civil suits, in many instances. Where interviews are conducted and pertinent information obtained they should be made a matter of permanent record with the police copy of the accident report, as should notes of the officer's own observations.

REPORTS ON BOATING ACCIDENTS BY PRIVATE PERSONS:

1. **Pleasure Vessels:** Whenever a pleasure vessel meets with an accident involving (a) loss of life, or (b) personal injury, or (c) damage to property (in any amount) the operator must stop and give the following information to the party injured or sustaining damage:

   (1) Operator's name and address.
   (2) Owner's name and address.
   (3) Identification number of vessel.

   If the person injured or sustaining damage cannot be located at the place where the accident occurred, the operator must report the same information and a description of the accident within twenty-four hours to the nearest police officer or local judicial officer (Navig. L. Sec. 47, subd. 1).

2. **Any Vessel:** Whenever any vessel on the navigable waters of the State or any other waters in the boundaries of the State is in any manner involved in an accident in which (a) any person is killed, or (b) any person is injured, or (c) damage in excess of $25 is sustained by the property of anyone (including the operator), the operator must make a report in writing to the Conservation Commissioner within 7 days (Navig. L. Sec. 47, subd. 2). Reports should be made on a boating accident report form of the Division of Motorboats, Department of Conservation.

   Failure by a private person to make a required report is an offense punishable by fine not over $100 (Navig. L. Sec. 47, subd. 4).

   All law enforcement agencies should maintain a supply of Division of Motorboats Accident Report Forms and be ready to assist persons

in filling them out. When possible, officers should make investigations of boating accidents at the scene and should include checks for required lights, equipment and registration (see Section 87, "Navigation Law," this Manual).

In death cases, Penal Law Section 125.10, Criminally Negligent Homicide, should be borne in mind.

FARM ACCIDENTS: In the event children are killed or injured, Penal Law Section 260.10, Endangering the Welfare of a Child, should be borne in mind. When a parent of the child killed or injured is involved, good judgment must be exercised in taking enforcement action and the advice of the District Attorney should ordinarily be sought.

MOTOR VEHICLE ACCIDENTS: Whenever a motor vehicle accident involving an injury to any person is reported to an officer, he is required by law to make or cause to be made an investigation of the accident and to report the results of such investigation to the Commissioner of Motor Vehicles (V & T Secs. 603, 604).

The report must be on a "Police Accident Report" form prescribed by the Department of Motor Vehicles. Supplies may be procured through that Department.

In addition to this statutory requirement, each department should have clearly spelled out in its rules when and under what circumstances a motor vehicle accident investigation is to be conducted by the department's members.

REPORTS BY PRIVATE PERSONS, MOTOR VEHICLE ACCIDENTS: Every person operating a motor vehicle which is in any manner involved in an accident anywhere in New York State, in which a person is killed or injured or in which property damage in excess of $150 occurs (whether his own or anyone else's property) must make a report to the Commissioner of Motor Vehicles within 10 days. If the operator is unable to report, the vehicle owner must report within 10 days after he learns of it. Where an operator or chauffeur is physically incapable of making a report and there is another participant in the accident who is not injured, such participant is required to make the report, within 10 days. Failure to report is a Class A misdemeanor (V & T Sec. 605, subd. a, b). Failure to report also may lead to suspension or revocation of operator's or chauffeur's license and all certificates of registration for any motor vehicle of the person failing to report.

The report must be made in duplicate on forms prescribed by the Commissioner of Motor Vehicles. Police should maintain a supply of such forms to assist motorists. The forms may, of course, also be secured by motorists from the Department of Motor Vehicles or its offices. Private insurance agents will also usually have the forms available.

The Commissioner is required by law to send one copy of each report to the police head of the city in which the accident occurred and if it was outside a city, to the county sheriff. The sheriff is required to send the copy to the mayor or chief of police of any village in which the accident occurred (V & T Sec. 605, subd. d).

WRECKED VEHICLES ON HIGHWAY: Any person removing a wrecked or damaged vehicle from a highway must remove any glass or other injurious substances dropped upon the highway from such vehicle (V & T Sec. 1219, subd. c). Failure to comply is an infraction (V & T Sec. 155).

HIT-AND-RUN ACCIDENTS: Careful location and questioning of witnesses and collection of evidence are vital in hit-and-run cases. Officers must bear in mind that time is an important factor in successful identifica-

tion of the offender and must always be alert to initiate broadcasts of information of value in identifying the unknown offender and vehicle as soon as possible after pertinent information is obtained.

TRAIN ACCIDENTS: When a railroad train is involved in an accident, the officer must immediately notify the nearest railroad station so that railroad signals can be promptly set to warn approaching trains. If the train is at the scene, it should not be delayed unnecessarily (see previously in this section "Handling Accident Death Problems").

Where the train is not at the scene, the assistance of railroad police may be sought to obtain basic information.

In any train case, certain specific data should be initially obtained, including:

1. Type of train (passenger, freight, work, etc.).
2. Number of cars and engines.
3. Train and engine numbers.
4. Starting point and starting time of train trip.
5. Destination and time due.
6. Last stop and time left last stop.
7. Train's status:
   a. On time.
   b. Late, making up time.
   c. Ahead of schedule.
8. Speed of train at time of accident (engine may have a speed recorder which can be checked to determine speed at the time of the accident).
9. Railroad speed restrictions at point of or just before point of accident.
10. If at a crossing, ascertain:
    a. Type of crossing.
    b. Guarded or unguarded.
    c. Signs, signals, warning devices marking crossing.
    d. Gates, if any, and type.
    e. Signals, warning devices, gates working at time of accident:
       (1) signals, warning devices and gates should be tested as soon as possible after accident to determine if working.
    f. View of crossing and/or signs, signals, warning devices, obstructed. If so, by what, in what detail; determine also responsibility for obstruction.
    g. Watchman on duty? What was his physical condition; was he present? Any dereliction of duty?
    h. Was train whistle or horn sounded prior to train reaching crossing?

In all train accident cases, prompt investigation should be conducted to identify and locate actual eye witnesses in addition to the engineer, fireman and other train crew members who may have observed the occurrence of the accident.

INVESTIGATIONS

Accident investigation has two basic parts: (1) interview of witnesses and (2) collection of physical evidence.

Witnesses (drivers in motor vehicle cases, engineers in train cases, etc.) may become defendants in criminal cases, depending on the facts. The officer may thus be called upon to testify to their admissions.

The officer should also bear in mind that any accident case may end up in civil court and that he will possibly be a witness. He must be careful and accurate in his collection of evidence and in recording the same.

INTERVIEWS: Accident witnesses frequently require careful handling. Shock and emotional upset may exist. A calm and sympathetic approach is ordinarily most effective in obtaining full and accurate information.

Witnesses not directly involved in an accident may be reluctant to come forward and officers should be alert to identify all actual witnesses. They should be on guard against witnesses furnishing fictitious names, and should request identification in doubtful cases. One useful technique is to note down license numbers of cars seen at or near the scene. Occupants may thus be later located and interviewed if it should become necessary or advisable.

All questioning should begin by the officer identifying himself, in a calm manner, and requesting identification of the person interviewed. Obtain full names and addresses. In case of women, obtain husband's and their own names (i.e., Mrs. John (Mary Jane) Smith). If they are drivers in motor vehicle accidents also note birth dates and sex for record identification. Starting in this way will give person interviewed time to get over apprehension or concern about being interviewed, before the officer begins to ask about details of the accident.

TECHNIQUE OF QUESTIONING: Do not ask questions which can be shrugged off with a "yes" or "no". Ask "What did you see?" instead of "Did you see anything?" or "When did you first see the other car?" instead of "Did you see the other car?"

Recognize symptoms of shock or emotional upset. It may be necessary to take a minimum of information from a witness in shock and plan on detailed questioning later, when he has recovered.

Be alert to get factual information, not vague and inconclusive statements. Do not accept such a statement as "He was going very fast." Get the actual fact: "He was going about 38 miles an hour." Instead of accepting the reply "very close" have the fact pinned down: "about one hundred feet." In cases of importance a witness's judgment may be checked by actual test-estimates of previously measured distances and of the speed of cars traveling at pre-determined rates.

The interviewer must be aware of the fact that people often report, as a fact, what is actually only a guess or surmise on their part. This may be done in all honesty. A person seeing a car pass to his rear and then hearing a collision crash may say he "saw" the accident, when in fact he only saw the position of the cars somewhat after the collision. The officer must be careful to probe for such facts.

It is generally well to keep witnesses, including drivers in motor vehicle accidents, apart until they have told their stories separately. The officer may then consider whether it will be useful to bring them together to repeat their stories in each other's presence.

In respect to drivers in motor vehicle accidents, the law requires every motor vehicle operator "upon demand of any . . . officer (to) produce for inspection the certificate of registration or the registration renewal stub . . . and . . . furnish . . . any information necessary for the identification of (the) vehicle and its owner, and all information required concerning his license to operate . . . and . . . if required sign his name in the presence of such . . . officer . . . as a further means of identification." (V & T Sec. 401, subd. 4.)

COLLECTING EVIDENCE: Reference should be made to the section on "Investigations" in this Manual, under "Evidence" for instructions concerning collection and preservation of physical evidence.

At traffic accidents, it is important that in serious cases physical evidence represented by tire and skid marks, location of debris, broken glass, vehicle parts, etc., be preserved by careful examination, exact measurements, photographing and collecting. Detailed notes should be made for permanent identification. In taking measurements, permanent reference points should be used.

REPORTS: Officers must bear in mind that many accidents, whether aircraft, boat, motor vehicle, train or other type, may lead to criminal charges, and usually involve civil suits. In either instance, the officer may be a witness.

When accidents other than boat or motor vehicle accidents are investigated by an officer, a report should be prepared for the files of his own agency, in the form prescribed by his agency and if no form is prescribed, in the form suggested under "Report Writing" in this Manual. Reports of boat or motor vehicle accident investigations can ordinarily be prepared on the prescribed forms, attaching plain sheets for added details, as required.

The results of all interviews and other investigative activity of the officer should also be permanently preserved, in the form of careful and complete notes made in the officer's notebook. This is essential for later testimony.

The officer's notebook, when completed (or the sheets therefrom, if loose-leaf), should be permanently retained and properly identified in the law enforcement agency files. Notes should never be regarded or handled as the personal property of the officer. They should be considered and handled as valuable and permanent property of the law enforcement agency.

Accident reports are ordinarily filled out by the officer at the scene, unless the accident is of major scope or importance. It is entirely proper (and essential in major cases of any complication) to only take notes at the scene and fill out the accident report at the station, if desired. In any case, a copy should always be made for and retained in the police agency's own files.

Although a formal written report on a special printed form is required only in motor vehicle and boating accidents, the type of information required by such forms is an excellent guide for conducting any type of accident investigation and should always be borne in mind in conducting other types of accident investigations.

It is of the greatest importance that officers should not, in a report, express personal viewpoints or opinion. A proper police accident report should concern itself with specific facts and exactly reported statements of witnesses. Any expression of opinion which seems to be required should be clearly labelled as such in the report.

HANDLING INQUIRIES OF PRESS, TV AND RADIO: Officers should always make every effort to notify next-of-kin before press publication or news broadcasts, in death and serious injury cases. In the event identifications have not been made or are uncertain, the accident facts should be promptly furnished to newsmen and they should be informed of the fact that the process of identification is underway and will be completed as rapidly as possible. Care must be taken to avoid giving information which could result in incorrect identifications being published.

Officers should limit themselves to furnishing factual information and should carefully avoid offering opinions as to accident causes.

In aircraft accident cases, it is the policy of the Federal Aviation Agency and the Federal Civil Aeronautics Board, which is also concerned in accident investigation, not to release information as to *the cause* of an accident until the information is publicly released after their investigation. Police should cooperate in this policy.

SAFEGUARDING PROPERTY: Officers should take prompt and positive action to safeguard property at accident scenes, including the vehicle, boat or equipment involved, personal property of the injured or dead and merchandise from carriers.

Theft prevention, especially in cases of small and valuable personal property, such as money, rings, watches, etc., is well worthwhile to the officer. He should always bear in mind that he may be a target of accusations of theft or negligence when any such items are missing and the best defense the officer has is to prevent any loss or theft.

In some cases it may be advisable to remove personal property and take custody of it. In such instances take all property, make a careful written inventory, with a witness, if possible, and secure the items taken in an envelope or other container, which should be promptly sealed and retained in official custody of the police agency at the appropriate station or headquarters. If taking property might injure a victim, it should be left with the victim and appropriate note made and appropriate entry put on an inventory sheet.

Prevention of thefts of merchandise consists of guarding, securing and removing procedures. Owners or their representatives should be contacted as soon as possible to take custody of merchandise at accident scenes. Where possible, merchandise should be temporarily locked in the vehicle.

ACCIDENTS INVOLVING SHIPMENTS OF RADIOACTIVE MATERIALS: Accidents in which radioactive materials are involved may create hazardous situations. Special precaution must be used in such instances.

1. The use of radioactive materials for peaceful as well as military purposes is increasing rapidly. At present there are more than 600 licensed users in this State (research, educational, medical, as well as industrial organizations). In addition, shipments of such materials are being transported across the State on highways and railways and in the air at all hours of the day and night.

2. Movement of radioactive materials should not create any cause for alarm since present procedures for the transportation of radioactive materials are based on both scientific knowledge and principles of safety engineering. The regulations of the Interstate Commerce Commission provide for special packaging to assure safe transport. For instance, all radioactive materials must be adequately shielded and the liquids in shipments must be surrounded by enough absorbent material to absorb the entire contents of the package, thus eliminating any hazards resulting from an accident which might destroy the container. A few shipments involving large quantities of highly radioactive materials pose a potentially dangerous radiation hazard. These shipments are normally transported by rail in specially constructed shipping casks or containers weighing anywhere from 10 to 70 tons. At the present time these shipments are accompanied by specially trained couriers. Safety restrictions limit the amount of radioactive material included in any one shipment. A nuclear explosion is virtually impossible, even when a nuclear weapon is being transported.

Federal statute mandates that placards indicating the presence of radioactive materials be posted wherever significant amounts of such materials are stored, used or shipped. It is therefore possible, in most instances, to recognize the involvement of such materials, although detection of radiological contamination can be determined only with highly specialized sensitive instruments.

Police officers are not expected to be technical experts in the handling of these potentially dangerous substances; however, they should:

1. be able to recognize the symbols and other identifying markings indicating the presence of these substances; and

2. know what not to do as well as what to do if such materials are present or involved in an accident.

SPECIFIC ACTION AT TIME OF ACCIDENT: The Radiation Officer, of the United States Atomic Energy Commission, 376 Hudson Street, New York City, should be immediately notified by telephone of such accidents. The telephone number of the United States Atomic Energy Commission is area code 212, YUkon 9-1000. There is a Radiation Officer on duty during regular office hours. There is a guard on duty during other than office hours and when informed of the nature of the call he will contact the radiation officer and have him return the call.

Officers should also:

1. Notify local health officer or the State Department of Health, Albany.

2. If incident involves wreckage and a person is believed to be alive and trapped, make every possible effort to rescue the person.

3. Restrict area of accident. Keep public as far from scene as practical. Souvenir collection should be forbidden.

4. Segregate and retain those who have had possible contact with the radioactive material, until they can be examined further. Obtain the names and addresses of those involved.

5. In removing injured from area of accident, do it rapidly, avoiding contact wherever possible. Take any measures necessary to save life by carrying out first aid where obsolutely necessary. Obtain assistance of physicians familiar with radiation medicine. When necessary, an injured individual should be removed to a hospital or office for treatment, but the doctor or hospital should be informed that there is reason to suspect that the injured individual has radioactive contamination on body and clothing.

6. Whenever incident involves fire, stay upwind as far as possible. Keep out of any smoke, fumes or dust. Precautions with such a fire are similar to those taken with highly poisonous gases. Use self-contained masks. Do not handle material believed to be radioactive until it has been monitored and released by monitoring personnel. Segregate clothing and tools used at fire until they can be checked by radiological expert.

7. In the event of a radiological incident involving a vehicle accident, detour traffic around scene of accident. If not possible, move vehicle shortest distance necessary to clear right of way. If radioactive material is spilled, prevent passage through area unless absolutely necessary. If right of way must be cleared before expert assistance arrives, wash spillage to shoulders of right-of-way with minimum dispersal of wash water.

8. Do not eat, drink or smoke in the area. Do not use food or drinking water that may have been in contact with material from the accident. Do not try to do too much prior to the arrival of radiation experts.

Incidents involving radioactive materials will be rare, but the ever-increasing volume of such shipments and the presence within the State of experimental, industrial, educational and medical installations, where radioactive materials are handled, makes it necessary for police officers to be aware of the acceptable manner of handling such hazards.

SYMBOLS AND IDENTIFICATION MARKS: Radioactive materials are moving about the country by all modes of transportation, and except for the labels or placards identifying these shipments, the casual observer probably cannot distinguish such shipments from those of other products. Although the widely-known symbol of a purple or magneta-colored, propeller-shaped figure on a yellow background identifies the presence of nuclear materials, there are other identifying signs which should be familiar to police officers.

1. Diamond shaped labels, 4" x 4" in size, with blue or red printing on white background, bearing explanation of contents, are generally used on truck or aircraft shipments.
2. Shipping placards for railroad cars are diamond shaped, 10¾ inches square, red printing on white background, bearing explanatory instructions and stating contents.
3. Placards for display on trucks are 9" x 22" in size and consist of black letters printed on a white background bearing the word "dangerous" over the words "radioactive material."

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21. ADULTERY

ADULTERY DEFINED: A person is guilty of adultery when:

1. He engages in sexual intercourse,
2. With another person,
3. At a time when:
   a. He has a living spouse, or
   b. The other person has a living spouse (P.L. Sec. 255.17).

Adultery is a Class B misdemeanor.

DEFINITIONS FOR ADULTERY: A spouse is a married person, man or woman, whose marriage partner is living and to which partner he or she is still bound in marriage by law. Marriage is a civil contract, to which the consent of parties capable in law of making a contract is essential. (Dom. Rel. L. Sec. 10). Sexual intercourse has its usual meaning and occurs on any penetration, however, slight (P.L. Sec. 130.00, subd. 1).

DEFENSE TO ADULTERY: It is an affirmative defense to a prosecution for adultery that the defendant acted under a reasonable belief that both he and the other person to the sexual intercourse were unmarried (P.L. Sec. 255.20). An affirmative defense is one which must be established by the defendant by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

CORROBORATION: A person cannot be convicted of adultery or of an attempt to commit adultery on the uncorroborated testimony of the other party to the adulterous or attempted adulterous act (P.L. Sec. 255.30).

INVESTIGATIONS

Proof of the sexual intercourse may be by statements obtained from the subjects, or testimony of the officer as to acts in his presence, or by testimony of witnesses.

The marriage of one party must be established. The State Commissioner of Health will furnish police, on request, a certified transcript of any marriage on record with his office.

In New York State, divorce may be granted on the grounds of adultery, among other grounds, under Section 170, Domestic Relations Law. Officers should take care not to become embroiled in purely civil cases through indiscriminate surveillances, "raids," etc. They should take steps to insure their response to adultery complaints turns out to be more than fact gathering activities for civil suits of divorce. Officers should restrict their police action to criminal cases for actual prosecution.

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22. ADVERTISEMENTS

UNLAWFULLY POSTING ADVERTISEMENTS: A person is guilty of unlawfully posting advertisements who:

1. Having no right to do so, nor
2. Any reasonable ground to believe that he has such right,
   a. Posts, or
   b. Paints, or
   c. Otherwise affixes
3. To the property of another person,
4. Any:
   a. Advertisement, or
   b. Poster, or
   c. Notice, or
   d. Other matter.
5. Designed to benefit a person other than the owner of the property (P.L. Sec. 145.30, subd. 1).

Where the matter posted, etc., is a commercial advertisement, it is presumed that the vendor of the specified product, service or entertainment is a person who placed such advertisement or caused it to be placed upon the property (P.L. Sec. 145.30, subd. 2).

Unlawfully Posting Advertisements is a violation.

FALSE ADVERTISING: A person is guilty of false advertising when:

1. With intent to promote the sale, or
2. To increase the consumption of,
3. Property or services,
4. He makes or causes to be made:
   a. A false statement, or
   b. Misleading statement
5. In any advertisement addressed to the public, or
6. To a substantial number of persons (P.L. Sec. 190.20).

It is an affirmative defense that the allegedly false or misleading statement was not knowingly or recklessly made or caused to be made (P.L. Sec. 190.20). An affirmative defense must be proved by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

False Advertising is a Class A misdemeanor.

NAME OR PICTURE OF LIVING PERSON: A person, firm or corporation which uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person (or if a minor of his or her parent or guardian) is guilty of a Class A misdemeanor (Civ. Rts. L. Sec. 50).

FLAGS, STANDARDS, COLORS, SHIELDS OR ENSIGNS OF THE UNITED STATES OR NEW YORK STATE: It is a Class A misdemeanor to do any of the following in respect to any flag, standard, color,

shield or ensign of the United States or New York State, or any picture or representation of any of them on any substance and of any size, or any picture or representation showing the colors, the stars and the stripes, in any number, or any picture or representation by which a person seeing the same without deliberation may believe the same to represent such flag, standard, color, shield or ensign (Genl. Bus. L., Sec. 136).

1. In any manner, for exhibition or display, place on any such flag, etc., any word, figure, mark, picture, design, drawing or advertisement (Genl. Bus. L. Sec. 136, subd. a).

2. Manufacture, sell or possess any article of merchandise (or receptacle or carrier for merchandise) on which is a representation of any such flag, etc., to advertise, call attention to, decorate, mark or distinguish the article (Genl. Bus. L. Sec. 136, subd. b).

3. Print, engrave or otherwise place on any business stationery or checks a representation of such flag, etc. (Genl. Bus. L. Sec. 136, subd. c).

4. Use any business stationery or check with a representation of such flag, etc (Genl. Bus. L. Sec. 136, subd. c).

5. Publicly mutilate, deface, defile, defy, trample on, or cast contempt on by word or act, any such flag, etc. (Genl. Bus. L. Sec. 136, subd. d).

6. Raffle or place in pawn any such flag, etc. (Genl. Bus. L. Sec. 136, subd. e).

7. Publicly carry or display any emblem, placard or flag which casts contempt upon the flag of the United States (Genl. Bus. L. Sec. 136, subd. f).

8. Publicly use any flag, etc., as a receptable for placing, depositing or collecting money or any other thing Genl. Bus. L. Sec. 136, subd. g).

The acts prohibited in (1) through (8) are not unlawful if expressly permitted by any statute of the United States or by any United States army or navy regulation. The prohibitions also do not apply to a certificate, diploma, warrant or commission of appointment to office, ornamental pictures, articles of jewelry, stationery for private correspondence, or to newspapers or periodicals if the imprint of the flag, etc., is disconnected and apart from any advertisement (Genl. Bus. L. Sec. 136, subd. g).

TRAVEL AGENTS, VESSELS: No person issuing, selling or offering to sell any ticket or right to passage on a vessel or a berth or stateroom in a vessel, can advertise himself in any way as the agent of the owner or operator of the vessel unless he has received authority in writing from such owner or operator to do so and unless such authority is conspicously displayed in his office. The authority must contain the items specified in the statute. No such person can publish or cause to be published any false or misleading advertisement in regard to his agency for the shipping line or vessel or in regard to the ticket, passage or vessel. Any advertisement, circular, notice, etc. must show the vessel's country of registry (Genl. Bus. L. Sec. 117).

Violations are Class A misdemeanors (Genl. Bus. L. Sec. 119).

UNAUTHORIZED ADVERTISEMENT IN NEWSPAPERS AND MAGAZINES: It is unlawful for any person with intent to profit to place or cause to be placed in or affixed to a newspaper, magazine or periodical any advertisement, without the consent of the publisher of the newspaper, magazine or periodical and in a way calculated to lead readers to believe the advertisement was circulated by the publisher (Genl. Bus. L. Sec. 335).

The placing of the advertisement, notice, circular, pamphlet, card, hand bill, or printed notice of any kind in or the affixing thereof to a newspaper,

magazine, or periodical is presumptive evidence that the person or persons or corporation or corporations whose name or names appear thereon as proprietor, advertiser, vendor, or exhibitor, or whose goods, wares and merchandise are advertised therein caused or procured the same to be so placed or affixed with intent to profit thereby (Genl. Bus. L. Sec. 335).

Offenses are Class A misdemeanors.

VENEREAL DISEASE AND OTHER ADVERTISEMENTS: Publishing or causing to be published any advertisement concerning a venereal disease, lost manhood, lost vitality, impotency, sexual weakness, seminal emission, varicocele, self-abuse or excessive indulgence, no matter how described, and calling attention to a medicine article or preparation that may be used therefor or to a person from whom or an office or place at which information, treatment or advice therefor may be obtained is an unclassified misdemeanor. This prohibition does not apply to incorporated hospitals, licensed dispensaries, municipal boards or departments of health or the Department of Health of the State of New York.

Punishment for an offense under this section is imprisonment not more than six months, fine not less than fifty nor over five hundred dollars, or both and offenses are Unclassified misdemeanors (Pub. H. L. Sec. 2310).

ADVERTISING TO PROCURE DIVORCES: Advertising offering to advise on the laws of any foreign state, nation or jurisdiction for the purpose of procuring or aiding in procuring a divorce, annulment, severance or dissolution of any marriage, or offering to procure the same or to act as attorney in any suit for alimony or divorce, severance dissolution or annulment either in New York or elsewhere, is a Class A misdemeanor (Genl. Bus. L. Sec. 337).

FALSE STATEMENT OR ADVERTISEMENT AS TO SECURITIES: It is a Class A misdemeanor for any person, with intent to deceive, to make, issue, publish, or cause to be made, issued or published, any statement or advertisement as to the value of or as to facts affecting the value of the stocks, bonds or other evidences of debt of a corporation, company or association, or as to the financial condition of or facts affecting the financial condition of any corporation, company or association which has issued, is issuing or is about to issue stocks, bonds or other evidences of debt, if such person knows, or has reasonable grounds to believe that any material representation, prediction or promise made in such statement or advertisement is false (Genl. Bus. L. Sec. 339-a).

UNLAWFUL SELLING PRACTICES: It is a Class A misdemeanor to advertise for sale any merchandise, commodity or service as part of a plan or scheme intending not to sell it at the price advertised or not to sell it at all. This is often called "bait advertising." The Attorney General may obtain an injunction against such advertising without proof that anyone was deceived. The law does not apply to the newspaper, radio or TV station innocently carrying the advertisement (Genl. Bus. L. Sec. 396).

NEWSPAPER, RADIO OR TV ADVERTISEMENTS: Any person or firm in the business of dealing in any property who places any advertisement in any publication or over radio or TV must indicate in the advertisement that he is a dealer in such property, and on request of the advertising medium must furnish certain information truthfully. Violations are Class A misdemeanors (Genl. Bus. L. Sec. 396-b).

ADVERTISEMENTS BY PERSONS ENGAGED IN DENTAL BUSINESS RELATING TO DENTURES AND BRIDGES: It is a Class A misdemeanor for any person engaged in any business having to do with dentures, bridges, and/or other substitutes for natural teeth to adver-

tise his services to the general public by means of advertisements in any type of public news media, or to directly solicit the patronage of the general public for any dental services (Genl. Bus. L. Sec. 396-c).

ADVERTISEMENT AND DESCRIPTION OF REAL PROPERTY: Whenever any person, in connection with advertising real estate, uses any name which includes the name of a political subdivision or territorial subdivison in the county or in any adjoining county (other than the name of the political or territorial subdivision where the property actually is) he must state and display the name of the town, city or other political subdivision in which the property is actually located, with the same prominence as the name used for the real estate.

Offenses are Class A misdemeanors (Genl. Bus. L. Sec. 396-d).

CEMETERY ADVERTISEMENTS TO STATE TRUE LOCATION: Cemetery corporation advertisements must show the location of the cemetery grounds, including the city, village or town, and the county and state. Failure to do so is an Unclassified misdemeanor by those responsible for the "ad," punishable by fine not over five hundred dollars, imprisonment not more than six months, or both (Genl. Bus. L. Sec. 451).

INVESTIGATIVE SUGGESTIONS

Crimes relating to bill-posting and advertising are not usual cases for the average officer. However, the widespread use of and importance of advertising indicates all officers should be aware of the basic criminal laws in this field.

The officer must make certain, at the outset of any case, to obtain original copies (or transcripts or tapes in case of radio or TV violations) of the offending material.

Photographs should be promptly taken of offending signs, billboards, etc., to include not only the violation but also some of the surrounding terrain, for positive identification. This will preserve evidence which might otherwise be lost (by prompt and surreptitious removal of the offending item).

Any copy, transcript, tape or photograph must be obtained and handled in such a manner and with such continuity of possession that it will be clearly admissible in evidence.

In most cases, the question of responsibility must be pinpointed. Careful attention should be paid, in interviews at all stages of any investigation, to pinpoint specific responsibility. In many cases it is advisable to take detailed signed statements, especially from the persons who actually and physically did the posting, distribution, etc., which the law prohibited, but who did so at the direction of a superior.

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23. AIRCRAFT

In New York the only licenses required to operate aircraft are Federal licenses (Genl. Bus. L. Sec. 241). The only license and registration required for aircraft are Federal licensing and registration (Gen. Bus. L. Sec. 243).

Aircraft operators' licenses must be in personal possession while operating aircraft and must be presented upon demand of any passenger, peace officer of New York, or any official, manager or person in charge of any airport or landing field on which the aircraft lands (Genl. Bus. L. Sec. 242). The license for the aircraft itself must be conspicuously posted in the aircraft while in flight. It must be presented for inspection on demand

to any peace officer or the officials mentioned in the previous sentence (Genl. Bus. L. Sec. 243). Violation of any of the foregoing requirements is an Unclassified misdemeanor (Genl. Bus. L. Sec. 246).

OFFENSES ABOARD AIRCRAFT: If an offense is committed aboard an aircraft, prosecutive jurisdiction lies in any county through which or any part of which the airplane passes or in any county where the trip terminates or would terminate if completed (CCP Sec. 137).

INTOXICATION: Under the old Penal Law (Section 1222) it was a specific misdemeanor to operate an aircraft while intoxicated, and a felony if serious bodily injury to another resulted. This crime is no longer a part of the law. Instead, a person now operating an aircraft while intoxicated is guilty of Reckless Endangerment (See Section 27, "Assault, Menacing, Reckless Endangerment," this Manual).

LARCENY: Aircraft may be subject of larceny or Unauthorized Use like any other kind of personal property.

It is a Federal felony, handled by the FBI, to transport in interstate or foreign commerce any aircraft, knowing it to have been stolen. Penalties are fine not over $5000, imprisonment not over 5 years or both (Title 18 U. S. Code, Sec. 2312).

PARACHUTE JUMPING: Parachute jumping, (even for exhibition purposes) is lawful, but such jumping is permitted only in any emergency or when in accordance with rules and regulations of the Commissioner of Commerce (NYS) and Federal regulations (Genl. Bus. L. Sec. 244).

FLYING VIOLATIONS: Section 245, General Business Law, sets out the air traffic rules of New York. Offenses are misdemeanors (Genl. Bus. L. Sec. 246). The rules are in accord with Federal regulations. It is a misdemeanor under the rules to operate an aircraft in a careless or reckless manner so as to endanger life or property of others; to fail to maintain visual or radio contact with air traffic control at an airport; to operate below minimum safe altitudes (1000 feet over congested areas of cities, towns, villages or settlements or over open-air assemblies of persons, except helicopters, which may be flown at any lesser altitude when this is non-hazardous); acrobatic flying without a parachute or over congested areas, or within any civil airway or control zone, or when visibility is less than three miles, or below 1500 feet altitude; taking off or landing from public street or highway without prior consent of the local governing authority and prior approval of the now Federal Aviation Agency. Reference should be made to Section 245 for additional violations.

No aircraft may take off from or land on the surface of Lakes Waccabuc, Oscaleta, Truesdale and Rippowan in the Town of Lewisboro, and Lake Kitchawan, in the towns of Lewisboro and Pound Ridge, and County of Westchester, except under actual distress conditions. Any offense is a Class A misdemeanor (Genl. Bus. L. Sec. 248-a).

WEAPONS ON AIRCRAFT: Possession of a concealed deadly or dangerous weapon aboard an aircraft in interstate or foreign transportation or attempting to board such an aircraft with such a weapon on or about the person is a Federal crime (Title 49 U. S. Code, Sec. 1472, subd. e). Local and Federal law enforcement officers authorized to carry side arms are excepted by the terms of this law. Offenses under it are handled by the FBI.

SHOOTING AT AIRCRAFT: Any person who wilfully discharges a loaded firearm or any other gun the propelling force of which is gunpowder, at an aircraft while the aircraft is in motion in the air or in motion or sta-

tionary on the ground is guilty of a Class D felony if the safety of any person is endangered thereby and in every other case of such shooting, of a Class E felony (P.L. Sec. 265.35, subd. 3).

MISSING AIRCRAFT: Complaints of missing aircraft should be immediately telephoned to the nearest Flight Service Station, Federal Aviation Agency. Stations are located at Albany, Buffalo, Elmira, Glens Falls, Massena, New York City (John F. Kennedy Airport), Poughkeepsie, Utica and Watertown. The station telephones are listed under "Federal Aviation Agency" in the "United States Government" portion of the pertinent city telephone directory.

In proper instances, the Flight Service Station will request active air search from the Air Force, whose Search and Rescue Service, Robbins Air Force Base, Georgia, handles all such procedures for New York, including coordination with the Civil Air Patrol.

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24. ALCOHOLIC BEVERAGE CONTROL LAW

Any offense against provisions of the Alcoholic Beverage Control Law for which no punishment or penalty is otherwise provided is Class A misdemeanor (ABC Sec. 130, subd. 3).

The operation of the Alcoholic Beverage Control Law (ABC Law) is assigned by statute to the State Liquor Authority, the duties of which are to administer the law and to issue, revoke or suspend licenses. In addition the ABC Law establishes County Alcoholic Beverage Control Boards (in New York City a single board covers all counties). These boards have power to restrict hours of sale and to make recommendations concerning licenses to the State Liquor Authority. They may hold hearings and issue subpoenas in connection with applicants or licensees. They do not have authority to issue, suspend or revoke licenses (ABC Sec. 17, 43).

Since offenses against the ABC Law are largely crimes (misdemeanors), police must enforce the law. The State Liquor Authority has offices in Albany, Buffalo and New York. Their telephones are listed under "New York State" and they may be contacted for investigative advice and/or assistance. They also have investigators in the field.

The officer will ordinarily meet with violations committed in respect to retail establishments which are licensed to sell for consumption "off premises" (liquor stores, groceries selling beer, etc.) and/or consumption "on premises" (bars, grills, restaurants, clubs, etc.). The violations which will principally confront the officer are set out hereinafter. For other violations reference should be made to the ABC Law and the State Liquor Authority.

The law requires the State Liquor Authority to notify the Police Commissioner, Chief or Chief Police Officer of any city or village when the license of a licensed premises therein is revoked. If the premises are in a town and not in a village or city, the notice may be sent to the Sheriff of the county or a Constable of the town (ABC Sec. 129).

The State Liquor Authority should be informed by all officers whenever they take police action in or in regard to any licensed premises, whether or not the action is in respect to a violation of the ABC Law by a licensee or an employee of the licensed premises.

LEGAL HOURS OF SALE: In determining legal hours, daylight saving time is used when in effect (ABC Sec. 105, subd. 14, Sec. 106, subd. 5).

No premises licensed to sell liquor or wine for off-premises consumption can remain open: (a) on Sunday, (b) on any other day, between mid-

night and eight a.m., (c) during the hours when polls are open on any general or primary election day, (d) on December 25th (Christmas Day) and if this is a Sunday, the following day (ABC Sec. 105, subd. 14).

Holders of licenses and/or permits to sell beer at retail may sell it on Sunday but only before three a.m. and after one p.m., and then only for off-premises consumption and when taken by the purchaser from the licensed premises. Beer delivery by stores on Sunday is thus prohibited. The customer must himself carry the beer purchased (ABC Sec. 105-a).

No alcoholic beverages can be sold, offered for sale or given away on any premises licensed to sell alcoholic beverages at retail for on-premises consumption during the following hours: (a) on Sunday, from 3:00 a.m. to 1:00 p.m., (b) on any day but Sunday, between 3:00 a.m. and 8:00 a.m., (in New York City, 4:00 a.m. to 8:00 a.m.), or during the hours when the polls are open on any general or primary election day.

No person may be permitted to consume any alcoholic beverages in such premises later than one-half hour after the start of the prohibited hours of sale (ABC Sec. 106, subd. 5).

County Alcoholic Beverage Control Boards are permitted to set more restrictive hours if they wish (ABC Sec. 106, subd. 5). Officers should determine the hours set by their County Board and whether local election days are included.

In New York City, summonses must be issued for illegal hours violations, in accordance with the procedure of section 116 of the New York City Criminal Courts Act (ABC Sec. 130, subd. 4).

PROHIBITED SALES: No person may sell, deliver, give away or cause or permit or procure to be sold, delivered or given away any alcoholic beverages to any of the following kinds of persons: (a) any minor actually or apparently under 18; (b) any intoxicated person or any person actually or apparently under the influence of liquor; (c) any habitual drunkard known to be such to the person authorized to dispense any alcoholic beverage (ABC Sec. 65).

Under the Penal Law it is a misdemeanor to sell or give or cause to be sold or given to any child under 18, any alcoholic beverage. It is no defense that the child acted as the agent of another or that the defendant dealt with the minor as the agent or representative of another (P.L. Sec. 260.20, subds. 4, 5).

Any person who misrepresents the age of a minor under 18 for the purpose of inducing the sale of any alcoholic beverage to the minor is guilty of a violation (ABC Sec. 65-a).

Any person under 18 who presents written evidence of age which is false or not his or her own in order to purchase or attempt to purchase any alcoholic beverage may be placed on probation and fined $10.00 on a charge of illegally purchasing (or attempting to purchase) an alcoholic beverage (ABC Sec. 65-b).

SALE WITHOUT A LICENSE: Any person who sells alcoholic beverages without a license or after his license has been revoked, surrendered or cancelled is guilty of an Unclassified misdemeanor (ABC Sec. 130, subd. 1). Possession or sale by anyone, licensed or not, of any alcoholic beverage on which applicable federal tax has not been paid is a Class A misdemeanor (ABC Secs. 150, 151, 152, subd. a). These offenses require a knowing possession or sale. Mere possession of untaxed alcohol with intent to sell is also a Class A misdemeanor. The intent will be presumed from knowing possession of one or more gallons (ABC Sec. 152, subd. b). The presumption can be overcome by proper proof of lack of intent. A second offense is selling alcohol on which tax was not paid is a Class E felony (ABC Sec. 155).

SALES ON CREDIT: No retail licensee may sell, deliver or give away or cause to be sold, delivered or given away any alcoholic beverage on credit (ABC Sec. 100, subd. 5).

Credit sales may be made by licensed clubs to members and guests and hotels may sell on credit to duly registered guests. Wine may be sold on credit for sacramental use, to churches, synagogues and religious organizations (ABC Sec. 100, subd. 5).

In addition, a special permit may be obtained by "on premises" licensees to sell alcoholic beverages on credit when such sale is made only as an incident to the sale of food to be consumed on the premises (ABC Sec. 99-c).

Credit sales offenses are Class A misdemeanors (ABC Sec. 130, subd. 3).

CLUB SALES: A licensed club may sell alcoholic beverages for "on premises" consumption only to its members and their guests accompanying them (ABC Sec. 106, subd. 8).

Sales to non-members who are not guests are violations. Where the general public has access to a licensed club and no inquiry appears to be made as to membership, and no display of membership cards or other evidence of membership is required, violations should be suspected.

EMPLOYMENT OF MINORS: No retailer may employ or permit to be employed or suffer to work on any premises licensed for retail sale any person under the age of 18 as a hostess, waitress, waiter or in any other capacity where the duties of such person require or permit such person to sell, dispense or handle alcoholic beverages (ABC Sec. 100, subd. 2-a).

Any person holding a grocery store beer license and employing a person under 18 is permitted to have the minor deliver beer (ABC Sec. 100 subd. 2-a).

No retailer may permit or suffer to appear as an entertainer on any premises licensed for retail sales any person under 18. Failure to restrain such person from so appearing constitutes permission to appear (ABC Sec. 100, subd. 2-b).

All such offenses are Class A misdemeanors (ABC Sec. 130, subd. 3).

GAMBLING, DISORDERLY PREMISES: No person licensed to sell alcoholic beverages may suffer or permit any gambling on the licensed premises, or suffer or permit such premises to become disorderly (ABC Sec. 106, subd. 6). Offenses are Class A misdemeanors (ABC Sec. 120, subd. 3).

INSPECTION OF PREMISES: All retail licensed premises are subject to inspection by any peace officer during the hours when the premises are open for business (ABC Sec. 106, subd. 15).

All retail licenses must be enclosed in a suitable wood or metal frame showing the whole of the license and must be posted up and at all times displayed in a conspicuous place in the room where the business is carried on (ABC Sec. 114, subd. 6). Offenses are Class A misdemeanors (ABC Sec. 130, subd. 3).

The State Liquor Authority requires that if a door opens into the licensed premises from the street and a window faces the street on which the door opens, the license must be displayed in the window so that it may be readily seen from the street. Failure to do so is not a misdemeanor but may subject the licensee to disciplinary action by the State Liquor Authority.

The inspection of licensed premises includes the right to inspect all books and records located on the premises at the time of inspection and the licensee may not impede or limit the inspection by refusing to permit examination of records and books (Barski vs. State Liquor Authority, 285 App. Div. 996).

VISIBILITY OF PREMISES: No restaurant licensed to sell liquors and/or wines for "on premises" consumption is permitted to have any screen, blind, curtain, article or thing covering any part of any window on the licensed premises, which prevents a clear and full view into the interior of the premises from the outside sidewalk. All glass in any window or door must be clear and not opaque, colored, stained or frosted (ABC Sec. 106, subd. 9-a, 9-d).

Such premises may not have any swinging entrance door nor any box, stall, partition or obstruction which prevents a full view of the entire room by every person present therein (ABC Sec. 106, subd. 9-c).

Rule 43 of the Rules of the State Liquor Authority provides that no premises shall be deemed to have a clear and full view into the interior unless all windows which abut on a public street or thoroughfare are kept clear in height from a point 4½ feet to 6 feet above the sidewalk level and in width, for a minimum distance of 4 feet and at least 2 feet on each side of an imaginary line vertically through the center of the window.

The rule also provides that no premises shall be deemed to provide a full view of the entire premises unless all portions open for service to the public (or members, if a club) are continuously illuminated by sufficient natural or artificial light to permit a person to read nine-point type of the kind generally used in the average newspaper. Lights may be temporarily dimmed during a period of regular entertainment or other special occasions.

If the entrance to the licensed premises does not abut a public street or thoroughfare, the premises are subject only to the lighting requirements of Rule 43, unless otherwise directed by the State Liquor Authority.

PROHIBITED INTERESTS OF LAW ENFORCEMENT OFFICERS: It is unlawful for any police commissioner, police inspector, captain, sergeant, roundsman, patrolman or other police official or any subordinate of any police department of a village, town or city in New York to be directly or indirectly interested in the manufacture or sale of any alcoholic beverages or to offer for sale or recommend to any licensee any alcoholic beverage. The solicitation or recommendation made to any licensee to purchase any alcoholic beverage by a police official or subordinate is presumptive evidence of the interest of such official or subordinate in the manufacture or sale of alcoholic beverages. Offenses are Class A misdemeanors (ABC Secs. 128, 130, subd. 3).

ILLEGALLY MAKING ALCOHOLIC BEVERAGES; STILLS: Alcoholic beverage means alcohol, spirits, liquor, wine, beer, cider and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being (ABC Sec. 3). An illicit alcoholic beverage is one on which Federal tax is not paid (ABC Sec. 150).

Anyone who manufactures an illicit alcoholic beverage or who is not a licensed distiller and who possesses a still is guilty of a felony (unless the still is used for laboratory purposes or for distilling non-alcoholic materials where the cubic capacity of such stills is one gallon or less) (ABC Sec. 153).

If the still has been registered under or is otherwise in compliance with Federal law, there is no violation under Section 153.

Any illegally possessed still is a "nuisance" and forfeit to the sheriff of the county or in a city with population of over 75,000, to the Commissioner of Police and in Nassau County to the Commissioner of the County Police (ABC Sec. 153).

An owner, lessee or occupant of any room, shed, tenement, booth, building, float or vessel, or part thereof who knowingly permits it to be used for the manufacture, distribution, purchase, sale, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing, transportation, distil-

ling or storage of an illicit alcoholic beverage is guilty of a Class A misdemeanor (ABC Sec. 154). A second offense is a Class E felony (ABC Sec. 155).

Whenever information is received or an apprehension is made relative to the manufacture and/or possession of illicit alcohol or a still, officers should notify and work in conjunction with the ABC and the Alcohol and Tobacco Tax Division of the U.S. Treasury Department.

Federal law contains prohibitions similar to the state law as to the manufacture of alcohol (Title 26, U.S. Code Sec. 5222), the illegal possession of alcohol (Title 26 U.S. Code Sec. 5205) and stills (Title 26 U.S. Code Secs. 5179, 5609). Under Federal law, in a case of seizure of illegal still, where it is impractical to remove the still to a place of safe storage, the seizing officer is authorized to destroy it. Any illegal distilled spirits seized may likewise be destroyed. Destruction must be in the presence of at least one witness (Title 26 U.S. Code Sec. 5609).

INVESTIGATIONS

INVESTIGATION, ILLEGAL HOURS SALES: Officers should note that "on-premises" licensees are not required to close up during prohibited hours and may stay open (to serve food, for example) at any hour. The only prohibition is that they may not dispense alcoholic beverages during the prohibited hours. In making investigations, admissible proof of sale of the alcoholic beverage must be obtained. Determination that it was an alcoholic beverage may be made by tasting, smelling, observing label on bottle or by laboratory analysis. Samples of the dispensed beverage may be taken for laboratory analysis, when the need is anticipated. A careful check should be promptly made by the officer to verify the hour shown by his timepiece, so that he will be in a position to testify as to correct time of sale and that he verified the time.

INVESTIGATION OF PROHIBITED SALE: The risk of sale to underage minors is on the liquor licensee (Barnett vs. O'Connell, 279 App. Div. 449; Erin Wine & Liquor vs. O'Connell, 283 App. Div. 443). The investigating officer should obtain the minor's name, address, birth data and proof of age, (ordinarily a certified copy of the birth certificate). Proof of the alcoholic nature of the beverage dispensed and identity of person who served it must be established. In cases where the minor furnishes initial information of the sale, evidence to support the minor's information should be obtained through witnesses, usually companions or acquaintances of the minor who were present. Take brief written statements of witnesses when possible, including nature of beverage, identity of person who dispensed and identity of minor who received.

In case of sales to intoxicated persons, the actual or apparent intoxication at the time of sale must be established, ordinarily by manner of walking, posture, manner of speech (whether speech incoherent, loud, abusive, etc.) and physical appearance, including eyes, drooping eyelids, flushed face and evidence of what intoxicants had been recently drunk. Proof of identity of person dispensing and of alcoholic nature of beverage dispensed must also be had.

Cases of sale to drunkards (whether sober or intoxicated) require, in addition, proof that the person who dispensed the alcoholic beverage knew the customer to be a drunkard. This proof may be in form of common knowledge in the community, knowledge that the customer had been committed to an institution as an alcoholic or to "dry out," knowledge of the customer's addiction to use of desperation sources of alcohol, like bay rum, canned heat, rubbing alcohol, etc.

INVESTIGATION OF GAMBLING ON OR DISORDERLY PREMISES: Any gambling, professional or social, is within the prohibition of the law. These kinds of offenses require proof of (1) gambling and (2) that it occurred with the knowledge and permission (or sufferance) of the management.

Premises may be considered disorderly when public order or morality are violated or if there is a public nuisance (Peo. vs. Bart's Restaurant Corp., 42 Misc. 2d. 1093). This would include congregation of homosexuals, solicitation by prostitutes, assaults and affrays, noise and disorder, indecent shows. The State Liquor Authority construes congregating of criminals or narcotics addicts, or "clipping" or "steering," as also constituting disorderliness.

In all such cases, knowledge and permission (or sufferance) must be proved. In the absence of proof of actual knowledge, proof that a reasonably perceptive and alert management ought to have known of the condition may be sufficient. The facts constituting the disorderliness must also be proved (Gilmer vs. Hostetter, 20 App. Div. 2d, 586).

Clipping would include overcharging and serving hostesses "downers" consisting of colored or flavored water, tea, etc. Establish proper charges or prices from records of premises or other customers' bills and if written bill was presented to victim, obtain it or a copy.

In "steering" cases, ascertain whether the same person or cab driver directs prospective customers to the same place or a selected group of places, whether other or different places were suggested and if suggestions were unsolicited; whether a percentage of patron's check or any initial payment is made by licensee to steerer, whether special gifts or favors are allowed to the steerer by the licensee or his employees.

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25. ANIMALS (INCLUDING RABIES)

In view of the high regard large numbers of persons have for pets and animals generally, and the considerable monetary value of domestic animals, officers should be familiar with the laws detailed in this section.

The law defines an animal as any living creature except a human being (Agr. & Mkts. L. Sec. 350, subd. 1). Most of the laws specifying crimes relating to animals are now in Article 26, "Animals," Agriculture and Markets Law. Prior to September 1, 1967, such laws were part of the Penal Law.

OFFICERS' DUTY: A constable or police officer "must . . . summon or arrest" and bring before a court or magistrate any person offending against any provision of Article 26 of the Agriculture and Markets Law (CCP Sec. 117-a), Article 26 includes Sections 350 through 370. A complaint on oath may be made before any magistrate based only on "just and reasonable cause to suspect that" a provision of law affecting animals is being or is about to be violated and the magistrate is required to issue a warrant to search and/or arrest (CCP Sec. 117-b).

Officers should note that any agent or officer of the American Society for the Prevention of Cruelty to Animals or of any duly incorporated society for the prevention of cruelty to animals may lawfully take possession of any lost, strayed, homeless or abandoned animal found in any street, road or other public place (CCP Sec. 117-c).

VIOLATIONS OF THE AGRICULTURE AND MARKETS LAW: Failure to comply with provisions of the Agriculture and Markets law is, unless another penalty is specified in a particular section, punishable by fine not less than $25 nor more than $200, imprisonment not less than one nor

more than 6 months, or both, for a first offense, and for a second offense not more than one year (Agr. & Mkts. L. Sec. 41). Some of such laws set out later in this Manual section do specify another penalty (fine not over $500, imprisonment not more than one year, or both). There are still other penalties indicated, as specified in certain individual sections herein. All these offenses are Unclassified Misdemeanors (or Class E felonies where indicated) under Section 55.10, subd. 2-c, Penal Law. The offenses specified in Agriculture and Markets Law Section 366, "Dog Stealing," etc., are violations.

OVERDRIVING, TORTURING OR INJURING: It is an Unclassified misdemeanor to overdrive, overload, torture or cruelly beat or unjustifiably injure, maim, mutilate or kill any animal (whether wild or tame), or to procure or permit the same, whether the animal belongs to the offender or another ($500, one year or both) (Agr. & Mkts. L. Sec. 353).

"Torture" or "cruelty" includes every act, omission or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted (Agr. & Mkts. L. Sec. 350, subd. 2).

It is an Unclassified misdemeanor to deprive any animal of necessary sustenance, food or drink, or to procure or permit the same or to wilfully set on foot, instigate or engage in, or in any way further, an act of cruelty to any animal, or any act tending to produce such cruelty ($500, one year or both) (Agr. & Mkts. L. Sec. 353).

The above laws are not applicable to properly conducted scientific tests conducted in laboratories or institutions which are approved for such purposes by the State Commissioner of Health (Agr. & Mkts. L. Sec. 353).

ABANDONMENT: A person being the owner or possessor or having charge or custody of any animal who abandons such animal or leaves it to die in a street, road or public place, or who allows such animal, if it becomes disabled, to lie in a public street, road or public place more than three hours after he receives notice that it is left disabled, is guilty of an Unclassified misdemeanor ($500, one year or both) (Agr. & Mkts. L. Sec. 355).

FAILURE TO PROVIDE FOOD AND DRINK: A person who, having impounded or confined any animal, refuses or neglects to supply such animal during its confinement a sufficient supply of good and wholesome air, food, shelter and water, is guilty of an Unclassified misdemeanor. In case any such animal is without necessary food and water for twelve successive hours, anyone may enter to feed and water the animal and may charge the owner the cost thereof ($500, one year or both) (Agr. & Mkts. L. Sec. 356).

GARBAGE FED TO ANIMALS: Garbage is any animal or vegetable waste subject to decomposition or rotting ("putrescible") derived from the handling, preparation, cooking and consumption of foods (Agr. & Mkts. L. Sec. 72-a).

It is an Unclassified misdemeanor (Agr. & Mkts. L. Sec. 41) to feed any domestic animal, including poultry, on garbage, unless the garbage has been cooked (which means heating to 212 degrees Fahrenheit for thirty minutes) or unless it has been treated in a manner prescribed by the Commissioner of Agriculture and Markets, or the premises where the feeding takes place have been declared exempt by the Commissioner, under Section 72-a, subdivision 7 of the Agriculture and Markets Law.

There is no violation where a person feeds garbage from his own household only to animals or poultry on his own premises (Agr. & Mkts. L. Sec. 72-a).

CARRYING ANIMAL IN CRUEL MANNER: A person who carries or causes to be carried in or upon any vessel, or vehicle, or otherwise, any animal in a cruel or inhuman manner, or so as to produce torture, is guilty of an Unclassified misdemeanor ($500, one year or both) (Agr. & Mkts. L. Sec. 359, subd. 1).

A railroad or person in charge of any horses, sheep, cattle or swine in the course of or for transportation cannot confine them in cars for more than twenty-eight consecutive hours without unloading for five consecutive hours for rest, food and water. A consent in writing may be given by the owner or person in custody of the shipment to extend the period of confinement to thirty-six hours. Time spent in cars on connecting railroads must be included in computing time. Care and feed necessarily expended by a railroad in compliance is a lien on the shipment. It is an Unclassified misdemeanor to violate this section. ($500, one year or both) (Agr. & Mkts. L. Sec. 359, subd. 2).

COCK FIGHTS, ANIMAL FIGHTS: A person who sets on foot, instigates, promotes or carries on or does any act as assistant, umpire or principal, or is a witness of, or in any way aids in or engages in the furtherance of any fight between cocks or other birds, or between dogs, bulls, bears or other animals, or between any such animal and a person or persons, except in exhibitions of a kind commonly featured at rodeos, premeditated by any person owning or having custody of such birds or animals is guilty of an Unclassified misdemeanor, punishable by fine not less than $10 nor more than $1,000, imprisonment not less than 10 days or more than one year, or both (Agr. & Mkts. L. Sec. 352).

Spectators are equally guilty, under this law ("or is a witness of").

Keeping a place where animals are fought or receiving money for admission to the same is an Unclassified misdemeanor, ($500, one year, or both) (Agr. & Mkts. L. Sec. 351).

Any officer authorized to make arrests may take possession of any animals or other property connected with violations relating to animal fights. He must tell the person who has custody of them his name and residence and the time and place when he will apply to a magistrate for an order relating to disposition of the property seized (CCP Sec. 117-e). The officer is required to file with the magistrate an affidavit setting out the facts and listing the property seized. The magistrate then issues an order directing custody of the property (CCP Sec. 117-f).

Officers are reminded that when they seize property under any search warrant, they must give a receipt for the property taken, specifying it in detail, to the person from whom it was taken and in the absence of any person, must leave a receipt at the place where the property was found (CCP Sec. 803).

OPERATING ON TAILS OF HORSES: Cutting or operating on the tail of a horse, mare or gelding to dock it or alter the natural carriage of the tail, or permitting the same, or being voluntarily present at such cutting, is an Unclassified misdemeanor. A horse found with an unhealed wound of such nature is presumptive evidence of a violation by the owner or user of the premises where found, or by the person having custody of the animal ($500, one year or both) (Agr. & Mkts. L. Sec. 368, subd. 1).

Voluntary spectators are equally guilty under this law.

Showing or exhibiting a horse, mare or gelding whose tail has been illegally operated on is a similar misdemeanor, unless the operation was done before 6/1/64, or in another state wherein such operation was not prohibited. An affidavit to this effect, furnishing the information required in this section, must be furnished to the official in charge of the show or

exhibition, or must previously have been on file with a central registry office. (Agr. & Mkts. L. Sec. 368, subd. 2).

BABY CHICKS, DUCKLINGS, OTHER FOWL: It is an Unclassified misdemeanor to sell or give away baby chicks, ducklings or other fowl unless proper brooder facilities are provided while they are in possession of the seller (Agr. & Mkts. L. Sec. 354, subd. 1). No such animals under two months of age may be sold in any quantity less than six (Agr. & Mkts. L. Sec. 354, subd. 3). To do so is an Unclassified misdemeanor. It is also an Unclassified misdemeanor to dye such animals or otherwise impart an artificial color to them ($500, one year or both) (Agr. & Mkts. L. Sec. 354, subd. 2).

DISEASED ANIMALS: It is an Unclassified misdemeanor to sell or offer for sale any animal having any contagious or infectious disease dangerous to life or health of humans or animals, or which is diseased past recovery, or to refuse on demand to kill an animal affected with any such disease ($500, one year, or both) (Agr. & Mkts. L. Sec. 357).

It is an Unclassified misdemeanor for a licensed auctioneer knowingly to receive, or sell, or offer for sale, at public auction, any horse which by reason of debility, disease or lameness or any other cause could not be worked without violating the law against cruelty to animals (fine not less than $5.00 or over $100.00, imprisonment not more than six months, or both) (Agr. & Mkts. L. Sec. 358).

A person who knowingly sells, except under the supervision of the Commissioner of Agriculture and Markets, any bovine animals in which tuberculosis shall have been indicated as a result of the tuberculin test, is guilty of a Class A misdemeanor (Agr. & Mkts. L. Sec. 73-a).

DESTRUCTION OF ANIMALS: Any police officer may lawfully and humanely destroy or cause to be humanely destroyed, any animal found abandoned and not properly cared for, or any lost, strayed, homeless or unwanted animal if a licensed veterinary surgeon, after examining the animal, certifies in writing that the animal is so maimed, diseased, disabled or infirm as to be unfit for any useful purpose, or if the owner gives his consent in writing, or if two reputable citizens called by the officer to view the animal find it so maimed, etc., as to be unfit for a useful purpose (CCP Sec. 117-d). Officers taking action on the findings of two citizens should, in self protection, obtain their opinions in writing.

CATS HUNTING BIRDS: The law directs that peace officers shall humanely kill cats at large found hunting or killing any protected wild bird or with a dead bird of any protected species in their possession. The unprotected birds are english sparrows, starlings, crows, pigeons not domesticated living wild, and kingfishers (Conserv. L. Secs. 186, 154, subd. 5-a). No action for damages shall lie against any person for killing a cat in accordance with this law (Conserv. L. Sec. 186, subd. 5).

POISON AND INJURY GENERALLY: It is a Class E felony, punishable by imprisonment up to 5 years, to unjustifiably administer poison to, or to intentionally expose any poison for, a horse, mule or domestic cattle (whether property of the offender or another). If the animals are any other kind, the offense is an Unclassified misdemeanor (imprisonment not more than one year, fine not over $500, or both) (Agr. & Mkts. L. Sec. 360).

Wilfully interfering with, injuring, destroying or tampering with any horse, mule, dog or any other domestic animal used for racing, breeding or competitive exhibition of skill, breed or stamina, whether belonging to the offender or another, is a Class E felony (imprisonment in State Prison for not more than three years) (Agr. & Mkts. L. Sec. 361).

Wilfully throwing, dropping or placing any glass, nails, pieces of metal or other substance which might injure any animal, on any road, highway, street or public place, is a misdemeanor (Agr. & Mkts. L. Sec. 362). It is also a traffic infraction (V & T Sec. 1219).

INVESTIGATION, POISON CASES: Consider possibility natural poisoning while grazing (browse from wilted choke-cherry trees, poison hemlock, skunk cabbage, mandrake, juniper, corn cockle, milkweed, etc). Also feed cut from under poison-sprayed trees, poisons in old paint cans, garbage disposal areas, streams, etc. If criminal poisoning suspected, determine and consider any prior cases in area, check sources of poison, such as feed stores and drug stores, for identification of purchasers. Request Laboratory examination of dead animals' organs (to be removed by veterinarian). Liver, kidneys and one quart of stomach contents required.

DANGEROUS ANIMALS: Any person owning, possessing or harboring a wild animal or reptile capable of inflicting bodily harm on a human being, who fails to exercise due care in safeguarding the public from attack by it, is guilty of an Unclassified misdemeanor. Lack of knowledge of any vicious propensities of the animal or reptile is no defense. No injury to a person is required to constitute the offense. This law specifically excludes "a dog or cat or other domestic animal." ($500, one year or both) (Agr. & Mkts. L. Sec. 370).

PROTECTING BREEDING—PURE BRED STOCK: It is an Unclassified misdemeanor for any person who owns or is in possession of any bull more than six months old, any stallion more than eighteen months old, or any buck or boar more than five months old to permit such animal to run at large on any lands or premises without the consent of the owner of the land (Agr. & Mkts. L. Secs. 41, 95).

ANIMAL EAR TAGS: It is an Unclassified misdemeanor for an unauthorized person to remove or destroy any official ear tag of any living bovine animal or to insert or attach to the ear of any living bovine animal any official ear tag that has not been duly issued by the Department of Agriculture and Markets. (Agr. & Mkts. L. Secs. 41, 95-a).

FALSE PEDIGREE OF ANIMALS: It is an Unclassified misdemeanor for any person to knowingly give a false pedigree of any animal (Agr. & Mkts. L. Secs. 41, 95-b).

RUNNING HORSES ON HIGHWAY: It is an Unclassified misdemeanor for a person driving any vehicle upon any plank road, turnpike or public highway, to unjustifiably run the horses drawing the same, or cause or permit them to run. ($500, one year or both). (Agr. & Mkts. L. Sec. 364).

LEAVING STATE TO AVOID PROVISIONS OF LAW: A person who leaves New York State with intent to elude any of the provisions of Article 26 of the Agriculture and Markets Law ("Animals") or to commit any act out of this state which is prohibited by them or who, being a resident of this state, does any act without this state, pursuant to such intent, which would be punishable under such provisions, if committed within this state, is punishable in the same manner as if such act had been committed within this state (Agr. & Mkts. L. Sec. 367).

ANIMALS KILLING OR INJURING: Under Section 1052, subd. 3, of the old Penal Law, an animal owner committed Manslaughter in the Second Degree if he owned a mischievous animal and knew its propensities and wilfully suffered it to go at large or be kept without ordinary care, so that it killed a human being who had taken all precautions to avoid it. The language of Section 1052, subd. 3 has been dropped from the law. However,

if a person is killed by a mischievous or dangerous animal who is allowed to go at large or is kept without ordinary care, the owner may undoubtedly be charged under either the "Criminally Negligent Homicide" or "Manslaughter" sections of the Penal Law (see Section 73, "Homicide," this Manual).

If the animal injures, under such circumstances, but does not kill, charges of Reckless Endangerment would be proper law (see Section 27, "Assault, Menacing and Reckless Endangerment," this Manual).

In cases of doubt, officers should be prompt to seek the advice of the District Attorney as to the proper charge to be laid.

INTERFERENCE WITH OFFICERS: It is an Unclassified misdemeanor to interfere with or obstruct any constable or police officer or any officer or agent of a duly incorporated society for the prevention of cruelty to animals, in the discharge of his duty to enforce the law relating to animals. Punishment for such an offense is imprisonment not more than one year, fine not over $500, or both. (Agr. & Mkts. L. Sec. 369).

LAWS RELATING TO DOGS

DOG OWNER CENSUS ANNUALLY: The law requires that lists of the names and addresses of owners of all dogs in cities, towns and villages (except New York City) be prepared each October by the police department or enumerators appointed according to law (Agr. & Mkts. L. Sec. 108). The lists must be prepared alphabetically, in triplicate, one to be filed with the Commissioner of Agriculture and Markets, one with the pertinent city, village or town clerk and the third with the county treasurer.

DOG LICENSES: No person may own or harbor a dog (except dogs under six months which are not at large) unless it is licensed. Licenses are secured from city or town clerks and in Westchester County or Nassau County, also from some incorporated village clerks. Fees must be paid as specified in the law and a dog tag is issued, bearing a serial number corresponding to the license (Agr. & Mkts. L. Sec. 109). A kennel license may be issued to owners of kennels (Agr. & Mkts. L. Sec. 110).

UNLICENSED DOGS: Police officers are required to seize any unlicensed dogs, either on or off the owner's property, and any dog found at large not wearing a dog tag (Agr. & Mkts. L. Sec. 114). Dogs seized may be redeemed within three days in a city and five days elsewhere and after that time, if not redeemed, may be killed or sold (Agr. & Mkts. L. Sec. 114).

NIGHT QUARANTINES: The Commissioner of Agriculture and Markets may declare night quarantines of dogs, from sunset to one hour after sunrise. Any dog not accompanied by and under full control of the owner who is found at large in violation of such an order shall be killed on sight by any peace officer. Such an order must be published in the newspapers and posted (Agr. & Mkts. L. Sec. 115).

DOG CENSUS AND INQUIRIES: Failure to answer or answering falsely to inquiries of enumerators or police listing dog owners subjects the offender to a $10 fine (Agr. & Mkts. L. Sec. 124, subd. 1).

KILLING DANGEROUS DOG: If a dog shall attack a person who is peaceably conducting himself in any place where he may lawfully be, such person or any other person witnessing the attack may kill such dog while so attacking and no liability in damages or otherwise is incurred on account of such killing.

The same rule applies to dogs found chasing or worrying any domestic animal while the domestic animal is in any place it may lawfully be (Agr. & Mkts. L. Sec. 116). "Domestic animal" means domesticated sheep,

horses, cattle, goats, swine, fowl, ducks, geese, turkeys, confined domestic hares and rabbits and pheasants raised under license or permit (Agr. & Mkts. L. Sec. 107).

A magistrate, on complaint of attack or of worrying or chasing domestic animals, may order the owner or a peace officer to kill a dog or may order its confinement and if the owner refuses to kill it or confine it as ordered, it must be killed by any peace officer (Agr. & Mkts. L. Sec. 116).

DOGS RUNNING OR KILLING GAME: It is the duty of every conservation officer, forest ranger and member of the State Police to kill, and any other person may kill, any dog pursuing or killing deer at any time in the Adirondack or Catskills parks, or any wildlife on a state-owned game farm or refuge, or game management area, except a dog legally being used for hunting small game. Such killing must be reported within twenty-four hours to the nearest conservation officer (conservation officers, forest rangers and State Police need not so report) (Conserv. L. Sec. 186, subd. 2).

It is the duty of every park patrolman, park ranger, state police member, county policeman or town policeman to kill any dog pursuing or killing deer within any state park or state park reservation at any time (Conserv. L. Sec. 186, subd. 3).

From December first to May thirty-first annually, any dog pursuing or killing deer may be killed by any conservation officer, dog warden, forest ranger or state police member anywhere in the state, by any town policeman anywhere in his town, by any member of the Westchester County Parkway Police on any park, parkway or reservation owned or controlled by Westchester County (Conserv. L. Sec. 186, subd. 4).

No action for damages may be brought against any officer for killing a dog as provided in the preceding three paragraphs (Conserv. L. Sec. 186, subd. 5).

Any owner or trainer of a dog who allows it to hunt deer or run at large on enclosed lands on which wildlife is possessed under license, or in any state park, state park reservation, state owned game farm or game refuge or state owned or leased game management area, is guilty of an offense (Conserv. L. Sec. 240, subd. 1-a, Sec. 386). It is also an offense to let a dog run at large in fields or woods inhabited by deer, outside the limits of a city or village, unless they are actually farmed or cultivated by the owner or trainer or a tenant of the owner or trainer (Conserv. L. Sec. 240, sub. 1-b.)

CLIPPING OR CUTTING DOGS' EARS: It is an Unclassified misdemeanor for anyone to clip or cut off all or any part of a dog's ear or to cause or procure the same unless under anesthetic by a licensed veterinarian (punishment for a violation is imprisonment not more than one year, fine not more than $500.00, or both). (Agr. & Mkts. L. Sec. 365).

DOG STEALING OR HARBORING: A dog may be the subject of a larceny like any other property. In addition, the law makes it a violation, subject to ten dollars fine, ten days imprisonment or both, to remove a collar or license tag from a dog, or entice it for that purpose, except with permission of the owner. It is also an Unclassified misdemeanor to entice any dog being held or led by any person (except to enforce a law or regulation), or to transport any dog not lawfully in one's possession for purpose of killing or selling the dog, or to remove, seize or transport a dog for laboratory or research use without written consent of the owner. (Agr. & Mkts. L. Secs. 366, 366-a).

The unauthorized possession of a dog or dogs by other than the owner for over ten days, is presumptive evidence of larceny, unless during the ten

days the possessor notified the owner, or the local police, or the Superintendent of State Police of his possession of the dog or dogs (Agr. & Mkts. L. Sec. 363).

Harboring an unlicensed dog subjects the offender to a $10 fine (Agr. & Mkts. L. Sec. 124, subd. 2).

NON-RESIDENTS: The previously stated laws concerning dogs (except dogs running or killing deer, ear clipping or laws under dog stealing) do not apply to a dog owned by a non-resident while passing through any town, city or village, or dogs brought into the state for exhibition for not over 15 days, if confined and in immediate charge of the exhibitor (Agr. & Mkts. L. Sec. 127).

NEGLECT OF DUTY: Neglect or refusal of any officer to perform his duties in regard to dog licensing and related laws under Article 7 of the Agriculture and Markets Law is cause for removal from office (Agr. & Mkts. L. Sec. 125).

RABIES

The deadly nature of rabies requires all officers to know fully the law and procedures relating thereto. When rabies exists in or near any county, the State Commissioner of Health shall so certify to the Health Officer of such county or any local Health District contained therein. When any county or district has been certified, no dog may be at large except dogs immunized against rabies. Failures of owners or custodians of dogs to comply are offenses (Publ. H. L. Secs. 2140, 2141). Any dog found at large and not immunized may be seized and confined or killed by any dog warden or police officer (Publ. H. L. Sec. 2142). The killing must be reported to the public health officer and a fee of four dollars is payable to non-salaried officers for each dog so confined or killed (Publ. H. L. Secs. 2142, 2143).

Any county outside New York City may require compulsory anti-rabies vaccination of all dogs of age six months or more. Wilful failure or refusal to submit a dog for vaccination on request of a peace or health officer is an offense (Publ. H. L. Sec. 2145).

ANIMAL BITES: The State Sanitary Code of New York requires every physician, in a rabies certified county, to report immediately to the local Public Health Officer the full name, age and address of any person under his care or observation who has been bitten by an animal of a species subject to rabies. In case of children, where there is no physician in attendance, the same duty is placed upon the parent or guardian.

In counties not certified, it is the physician's duty to similarly report on any person bitten by an animal having rabies or suspected of having rabies (State Sanitary Code, Part 2, subd. A (1), B (1).

Violations of these or other regulations of the State Sanitary Code are Unclassified misdemeanors, as are wilful violations of the Public Health Law or regulations. Obstruction of a Health Officer or physician in performance of required duties under the Health Laws is a Class A misdemeanor (Publ. H. L. Sec. 229, 12-b, 12-c). So is wilful failure to comply with lawful orders of local boards or Health Officers.

Any animal subject to rabies which has been bitten by a known rabid animal or is known to have been in intimate contact with a rabid animal must be destroyed, or isolated for at least four months, at the owner's expense, in a veterinary hospital or a locked enclosure approved by the Public Health Officer. Dogs which were vaccinated with modified live virus vaccine, approved by the State Health Department, at any time between three weeks and four years prior to exposure, may remain at large

providing a booster injection of modified live virus vaccine is given within five days of the date of exposure (Sanitary Code, Part 2, Sec. 14, subd. a (5)).

Whenever a person is bitten by an animal and a possibility of rabies exists, (in all cases of bites by bats, rabies should be suspected) proper treatment must be given the wounded person and immediate steps taken to determine whether the biting animal had rabies.

The Sanitary Code requires that whenever a Health Officer is notified of an animal of a species subject to rabies having bitten any person, he must cause the animal to be confined for one week, unless it develops active signs of rabies within the week, when it may be killed under the direction of the Health Officer (Sanitary Code, Part 2, Sec. 14, subd. a (4)).

The Health Officer is required to secure and confine under competent observation any animal suspected of having rabies, for as long as may be necessary to determine the diagnosis. If it cannot be secured and confined, it must be killed. Biting bats are always assumed to have rabies and should be killed immediately (Sanitary Code, Part 2, Sec. 14, subd. a (4)).

Whenever any animal that has or is suspected of having rabies dies or is killed, it is the duty of the Health Officer to immediately send its head, properly packed, with a complete case history, to an approved laboratory (Sanitary Code, Part 2, Sec. 14, subd. d). (As previously set out, any magistrate may order an animal killed on complaint that it attacked a person) (Agr. & Mkts. L. Sec. 116).

POLICE ACTION—ANIMAL BITES: When an animal bite is reported to an officer, he should at once ascertain the name, age and address of the victim, the type and seriousness of the wounds, a description of the animal and identity of animal and owner, if any, the facts of the incident, whether any treatment by a physician has been had and if so the identity of the physician.

Any animal bite should be given first aid treatment as soon as possible. Wounds should be thoroughly cleansed with soap and water and severe bleeding stopped. Treatment by a physician should be obtained immediately, either from an individual physician or in hospital or clinic facilities.

The owner of the animal should be promptly informed that the Sanitary Code requires the animal to be confined for one week and that failure to do so is a misdemeanor. The officer should also promptly notify the local Health Officer.

In killing an animal, in connection with biting cases, it should never be shot in the head. It may be shot in the heart. Smaller animals may be killed with chloroform or ether. No poisons should ever be used. Where rabies may be suspected or is possible, there should be a minimum of physical contact with the animal, as rabies may be contracted through minor cuts, abrasions, etc.

If an animal is necessarily killed while attacking a person, its carcass should be carefully preserved and the local Health Officer notified at once.

The head or brain of an animal suspected of rabies, or in case of smaller animals, the whole carcass, should be promptly forwarded to an approved Laboratory. This is the legal duty of the Health Officer. Where there are circumstances indicating danger to human life, and the time element relative to the receipt and examination of the animal or its head or brain is most important, the police officer, with approval of the Health Officer, may wish to personally take the animal carcass or part directly to the Laboratory.

LABORATORY EXAMINATIONS FOR RABIES: No officer should undertake to sever the head or remove the brain of an animal for examination. This should be handled by the Public Health Officer or a veterinarian.

If the Laboratory can be reached within several hours the specimen may be transported dry, in any suitable container. If time may be extended, or where parcel or express service is used, the specimen should be placed in a waterproof container, and this container should be packed in ice. No other preservative should be used.

The Department of Health maintains Laboratory Supply Stations in various parts of the State which are equipped with suitable kits for such specimens. When an animal brain has been removed, it may be packed in a 50% glycerol solution. A supply of this material may be obtained from any Laboratory Supply Station.

LABORATORIES AVAILABLE: New York State Department of Health approved Laboratories are located at the following addresses.

1. Griffin Laboratory, New York State Department of Health, Route 310, R.D. #1, Slingerlands, N. Y.
2. Erie County Laboratory, 2100 City Hall, Buffalo, N. Y. 14202.
3. Nassau County Department of Health, 209 Main Street, Hempstead, N. Y. 11550.
4. Bureau of Laboratories, New York City Department of Health, Foot of East 16th Street, New York, N. Y. 10009.

Personal delivery specimens will be received at Griffin Laboratory and at the New York City Laboratory twenty-four hours a day (use night bell). Glycerinated or iced specimens may be sent by mail to any of the laboratories.

Satisfactory shipments to the Griffin Laboratory may be made via the United Parcel Service or Railway Express. United Parcel Service has daily deliveries to Griffin Laboratory (except Saturday and Sunday). The Railway Express Agency will deliver specimens to the New York State Department of Health in Albany daily except Sunday; these specimens will then be transferred to the Griffin Laboratory.

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26. ARSON AND FIRES

All degrees of Arson are felonies.

Under the new law it is not required that there be any actual burning of the building involved. It is only necessary to prove that the building was recklessly or intentionally damaged by an intentionally set fire or an intentionally caused explosion.

Thus, if an arsonist lights a fuse train, he starts a fire. If it goes out before there is any actual burning of the building itself, the offense is still Arson if damage to the building is caused.

There is no necessity under the new law that the fire or explosion be set in or against the building. It is sufficient that the intentional fire or explosion causes the damage, and that the damage was reckless or intentional.

The new law does not specify, for any degree of Arson, what kind of damage must be caused, nor how much damage. Any kind of damage to the building, in any amount, comes within the wording of the statute.

Another change in Arson is that the new laws do not include any burning of personal property unless it is the kind of personal property included in the definition of a building (i.e. vehicles and watercraft used as lodging or for business).

Fire damage to personal property or any property (including real estate) other than "buildings," now comes under the Criminal Mischief and Reckless Endangerment of Property statutes (see Section 49, this Manual).

BUILDING: Only a building can be the subject of Arson. "Building," in addition to its ordinary meaning, includes any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein. Where a building consists of two or more units separately secured or occupied, each unit is not deemed a separate building (P.L. Sec. 150.00). If an arsonist sets fire to a single room in an apartment building, the whole apartment building is the subject of the arson. Officers should note that this is a different definition of a building from that in the Burglary statutes. In Burglary, units separately secured or occupied are considered separate buildings.

ARSON IN THE THIRD DEGREE: It is Arson Third for any person to:

1. Recklessly,
2. Damage,
3. Any building,
4. By intentionally starting a fire, or
5. By intentionally causing an explosion (P.L. Sec. 150.05, subd. 1).

Arson Third is a Class E felony.

It is an affirmative defense to Arson Third that no person other than the defendant had either a possessory or a proprietary interest in the building (P.L. Sec. 150.05, subd. 2). An affirmative defense is one which must be established at trial by the defendant by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

"Recklessly" means starting the fire or causing the explosion while being aware of and consciously disregarding a substantial and unjustifiable risk that damage to the building will occur. The risk must be of such a nature and degree that disregard of it is a gross deviation from the standard of conduct that a reasonable person would observe in the situation. Also, a person who creates such a risk, but is unaware of it solely by reason of voluntary intoxication, also acts "recklessly" (P.L. Sec. 15.05, subd. 3).

ARSON IN THE SECOND DEGREE: A person is guilty of Arson Second who:

1. Intentionally,
2. Damages,
3. A building,
4. By starting a fire, or
5. By causing an explosion (P.L. Sec. 150.10, subd. 1).

Arson Second is a Class C felony

In any prosecution for Arson Second it is an affirmative defense that:

1. No person other than the defendant had a possessory or proprietary interest in the building, or

2. If other persons had such interests, all of them consented to the defendant's conduct, and

3. The defendant's sole intent was to destroy or damage the building for a lawful and proper purpose, and

4. The defendant had no reasonable ground to believe that his conduct might:
   a. Endanger the life or safety of another person, or
   b. Damage another building (P.L. Sec. 150.10, subd. 2).

ARSON IN THE FIRST DEGREE: A person is guilty of Arson First who:

1. Intentionally,
2. Damages,

3. A building,
4. By starting a fire, or
5. By causing an explosion,
6. When another person who is not a participant in the crime is present in the building at the time, and:
   a. The defendant knows that another person is so present, or
   b. The circumstances are such as to render the presence of such a person in the building a reasonable possibility (P.L. Sec. 150.15).

Arson First is a Class B felony.

MURDER: A person is guilty of murder when, acting alone or with one or more others he commits or attempts to commit Arson and in the course of and in furtherance of Arson or of immediate flight therefrom he or another participant causes the death of a person other than one of the participants (P.L. Sec. 125.25, subd. 3) (see Section 73, "Homicide," this Manual).

NEGLIGENTLY MANAGING AND REFUSING TO EXTINGUISH FIRES: Section 1906 of the old Penal Law concerning negligently managing and refusing to extinguish fires in marsh, wastes, forest lands or woods, has been omitted from the new law. Such actions are now covered by Reckless Endangerment, Reckless Endangerment of Property, Criminal Mischief and Criminal Tampering (see sections in this Manual under those titles). Similar violations are also covered by the following Conservation Law sections:

FIRES OR ACTS ON OR NEAR FOREST LAND: The following acts on or near forest lands are offenses (Conserv. L. Secs. 3-1923, 3-0131). If a fire is wilfully set, it is a Class E felony (Conserv. L. Sec. 3-0131, subd. 5):

1. Setting fire on or near forest land and leaving it unquenched.
2. Setting fire which endangers property of another.
3. Setting forest land on fire.
4. Negligently suffering fire on one's own land to extend to the property of another.
5. Using combustible gun wads (on forest lands only).
6. Carrying naked torch (on forest lands only).
7. Setting fire in connection with camping without first removing all inflammable material for a distance of three feet around the fire.
8. Dropping, throwing or otherwise scattering lighted matches, burning cigars, cigarettes or tobacco.
9. Defacing or destroying any notice posted containing forest fire warnings, laws or rules and regulations.

FIRES IN THE OPEN, FIRE TOWNS: It is an offense to set a fire for the purpose of burning logs, brush, stumps or any debris at all, in a fire town, without a permit from the Conservation Department (Conserv. L. Sec. 3-1925). The setting of the fire is prima facie evidence that it was set by the owner or occupant of the land (Conserv. L. Sec. 3-1961, subd. 2).

FIRE TOWNS: The following are the "fire towns" of the state, by counties (Conserv. L. Sec. 3-1907):

Clinton County: Altona, Ausable, Black Brook, Dannemora, Ellenburg and Saranac.

Delaware County: Andes, Colchester, Hancock and Middletown.

Essex County: All towns in county.

Franklin County: Altamont, Belmont, Brighton, Duane, Franklin, Harrietstown, Santa Clara and Waverly.

Fulton County: Bleecker, Caroga, Mayfield, Northampton and Stratford.

Greene County: Hunter, Jewett, Lexington and Windham.

Hamilton County: All towns in county.

Herkimer County: Ohio, Russia, Salisbury and Webb.

Lewis County: Croghan, Diana, Greig, Lyonsdale and Watson.

Oneida County: Forestport and Remsen.

Saratoga County: Corinth, Day, Edinburgh and Hadley.

St. Lawrence County: Clare, Clifton, Colton, Fine, Hopkinton, Parishville, Piercefield and Pitcairn.

Sullivan County: Neversink and Rockland.

Ulster County: Denning, Gardiner, Hardinburgh, Olive, Rochester, Shawangunk, Wawarsing and Woodstock.

Warren County: Bolton, Chester, Hague, Horicon, Johnsburgh, Lake George, Luzerne, Queensbury, Stoney Creek, Thurman and Warrensburgh.

Washington County: Dresden, Fort Ann and Putnam.

HIGHWAY RIGHT-OF-WAY: It is an offense to deposit and leave in any fire town or any town included in a fire district, any brush or inflammable material upon a highway right-of-way (Conserv. L. Secs. 3-1927, 3-0131).

A fire district is a forest fire protective area designated by the Conservation Department, in addition to the statutory Fire Towns (Conserv. L. Sec. 3-1911, subd. 2).

SPARK ARRESTERS: It is an offense to operate in, through or near forest lands, any power-generating device which burns wood, coke, lignite or coal, unless the escape of sparks, cinders or coals is prevented in a manner approved by the Conservation Department (Conserv. L. Secs. 3-1928, 3-0131).

PROCLAMATION BY GOVERNOR: The Governor may, by proclamation, forbid any person or persons to enter forests, woodlands or open lands in any part of the State, and may close any waters to the public or suspend any open hunting or fishing season. Any violation of a proclamation is an offense when committed at any time 24 hours after the Governor gives notice of the proclamation and until the proclamation is rescinded (Conserv. L. Secs. 3-1903, 3-0131).

CIVIL PENALTIES: Civil penalties may also be assessed for any of the mentioned Conservation Law violations in this section. Persons may be imprisoned for failure to pay money penalties (Conserv. L. Sec. 3-0131, subd. 8).

OBSTRUCTING FIREFIGHTING OPERATIONS: A person is guilty of Obstructing Firefighting Operations when he:

1. Intentionally, and
2. Unreasonably,
3. Obstructs the efforts of any fireman,
4. In extinguishing a fire,

It is also Obstructing Firefighting Operations to:

1. Intentionally, and
2. Unreasonably,

3. Prevent or dissaude another,

4. From extinguishing or helping to extinguish a fire (P.L. Sec. 195.15).

Obstructing Firefighting Operations is a Class B misdemeanor.

Officers should note that this law covers any fire, anywhere. Both intent to obstruct and the unreasonableness of the intent to obstruct must be shown. For example, a person who throws his arms around a fireman at a fire, to prevent him from moving, has obstructed the fireman. If he did it to prevent the fireman from being electrocuted by a fallen power line, he did not do it unreasonably. Thus, not all obstruction is necessarily the crime of Obstructing Firefighting Operations and in many instances the officer must ascertain whether there was a reason for an apparent offender to act as he did. In many cases, of course, the facts immediately establish the lack of reasonableness, such as a rioter chopping through a fire hose at the scene of a fire set by rioters.

FIRE APPARATUS: Following fire apparatus, which is traveling in response to a fire alarm, closer than 200 feet in a city, or 500 feet outside a city, is prohibited. Parking in the same block where such apparatus is stopped in a city, or within 500 feet of it outside a city is also prohibited and these violations are traffic infractions (V & T Sec. 1217).

It is also an infraction to drive a vehicle over unprotected fire department hose in any street or private driveway, without the consent of the fire department official in command (V & T Sec. 1218).

FALSE ALARMS: The false alarm statute (old P.L. Sec. 1424) has been included in the new Penal Law as one kind of Falsely Reporting an Incident (P.L. Sec. 240.50, subd. 2). False alarm cases may also now be handled as Reckless Endangerment, Reckless Endangerment of Property, Criminal Mischief, or Criminal Tampering, depending on the events resulting. See sections in this Manual under the pertinent titles and page 227.

INVESTIGATIONS

POLICE ACTION RE FIRES: The police officer can aid in reducing the occurrence of fire by taking steps to eliminate obvious fire hazards encountered during his patrols. This would include reporting deposits of rubbish or other inflammable material or seeing to it that they are removed. He should take prompt steps to eliminate bonfires which may ruin pavements, grass fires, rubbish fires and other small fires which could extend to houses or other buildings. The officer should not attempt more than he can readily accomplish, and should promptly call for fire department assistance when needed.

Blocked fire escapes and obstructions which could interfere with the movement of fire apparatus should be remedied or reported.

It is not a police function to fight fires of any consequence. Police functions are to prevent, discover, report and investigate fires. Police duties also include traffic control and preventing thefts or other offenses at fires. It is a generally well-recognized rule that the ranking officer of the Fire Department who is present will be in charge at the scene of a fire, and it is the duty of police to cooperate and assist.

Every officer should be familiar with the location of fire alarm boxes and with the exact steps to be taken to radio or otherwise send an alarm when an alarm box is not used.

When a fire occurs the police officer should promptly send in a fire alarm and if he does not do so personally must make certain that it has been sent.

If the officer does not remain at the box himself to accurately direct fire apparatus he should instruct a competent and reliable person to do so.

The officer should promptly go to the fire premises and warn people therein of their danger and assist them to the street. Where feasible, he should close doors and windows. A roof door or scuttle, if left open, may prevent fires from mushrooming out through the building and help release smoke in the hallways. The officer should then return to the street and keep space clear for the fire apparatus.

If the officer is on a post through which the fire apparatus will pass, he should proceed to the busiest street intersection near him and direct traffic, taking care that all apparatus has passed before permitting traffic to resume. People have often been injured by the second or third piece of apparatus passing when they crowded out into the street in an attempt to follow the first piece.

When possible, fire lines should be established and people moved back beyond the last working piece of apparatus. Persons having no lawful interest in the fire should be kept back of the fire lines, restricting admission to firemen, police, owners, tenants, salvage corps, fire patrol personnel and emergency people such as doctors, nurses, gas and power company crews, etc. The press may also be admitted.

Police should make certain that they do not order the removal of sick or injured firemen from the scene without notifying the ranking fire department official. Removal of other ill or injured persons from the fire premises should be carefully noted, including their destination.

POLICE OBSERVATIONS AT FIRES: While at the scene of a fire police should be alert to see and identify anyone showing an unusual interest in the fire, anyone leaving the scene in a hurry, or strange behavior of a spectator. Police should also be alert to note faces seen at other fires and identify them.

FIRE DEATHS: Officers must bear in mind the need for positive identification of fire dead. Where complete burning makes fingerprints impossible, a complete pathological examination should be made, including teeth, broken bones, prosthetic appliances such as leg braces, crutches, braces, etc., content of clothing, wallets, eyeglasses and anything else positively connected with the corpse which can be developed. Outside investigation based on such items may be necessary for proper identification. Police should never make public names of victims until such identification has been positively made.

Fingerprints should always be considered and it may be possible for experts to obtain sufficient prints for identification from a burned body when the less experienced officer would feel the task was impossible.

INVESTIGATION OF SUSPICIOUS FIRES: The American Insurance Corporation maintains a staff of experienced fire investigators and will cooperate in fire investigations. They may be contacted by telephone at headquarters in New York City (listed in Manhattan telephone directory) and through local fire insurance agents.

The elements of Arson include (1) damage to a building by (2) intentional starting of a fire or intentional causing of an explosion, plus (3) recklessness or intent to damage. The damage may be of any kind or degree.

In obtaining a confession to Arson, it must be remembered that a confession alone is not sufficient to sustain a conviction. There must be some independent evidence that a crime was actually committed.

In Arson cases, the independent evidence must include not only proof of the obvious fact of damage and that it was caused by starting a fire or

causing an explosion, but also proof that the fire starting or explosion causing involved either reckless disregard or actual intent to damage. A confession must, in other words, be supported by some proof of the corpus delicti (the damage and that the damage had a criminal cause).

INVESTIGATIVE SUGGESTIONS: Whenever Arson has occurred or is suspected, a basic investigation should include: (1) careful examination and search of scene, including photographs; (2) interview of person or persons who first reported the fire or explosion, if known; (3) interview of fire department personnel who were at the scene; (4) interviews of neighbors and others in a position to observe the scene at and immediately before the time the fire broke out; (5) interview of owner of damaged property; (6) interview of insurance company representatives, if property was insured.

Additional investigation should be determined on the basis of the information developed in conducting the basic investigation. It should be borne in mind that a very usual motive for Arson by fire is profit, from insurance or otherwise.

Additional investigation should thus include a determination of the financial situation and history of the owner or owners, and an analysis of possible profit-motives involving the particular property in connection with the owner and also in connection with possible business competitors, building wreckers, and any other types of persons who could profit through burning of the property.

An important consideration in interviewing persons who observed the initial stages of a fire is the location of flames and the color and quantity of smoke—white smoke indicates vegetable material burning, yellow smoke, cellulose material and black smoke, petroleum based products. If such things were not normally contents of burned premises, it is a possible indication of arson.

In fires set for profit, a frequent indication of Arson is finding, after the fire, that burned parts of things ordinarily on the premises, and having monetary or sentimental value, are not in the fire ruins.

The investigator may also find that there are no burned remains of merchandise, stocks, expensive machinery, furniture, typewriters, adding machines, jewelry, etc., although investigation indicated that such things were in the premises before the fire. This may indicate a planned removal and a fire of incendiary origin.

A fire may be set by an owner or one who will profit (or a confederate) or by a hired "torch" (professional arsonist) purely for profit or to recoup losses.

Incendiary fires not for profit may be set by pyromaniacs (mentally ill persons gratified by fire), by firemen or other officers desiring fire activity or a chance for heroics, by anyone for revenge, or from jealousy, or dislike, or to conceal a fraud, embezzlement, burglary, or some other crime.

Fires set by the mentally ill or persons desiring activity or a chance for heroics may reveal themselves by a similar pattern in a series of fires.

Where the Arson is by explosion, the case is less frequently a crime for profit. Arson for profit is much more easily and safely accomplished with the materials required for a burning than with explosives. Explosives are more difficult to obtain and more dangerous to manage.

Although the possibility of a profit motive should not be completely lost sight of, Arson by explosion investigations are more likely to involve hate groups, criminal aggression or mentally unstable persons than a profit motive. In the usual such case emphasis must be placed on development of suspects by logical analysis, after interviews of personnel connected with the damaged building have been conducted and all possible information as to suspects and reasons for the "bombing" have been explored.

EXPLOSIVES AND BOMBS: Information of value relative to explosives, their use, storage, experts, etc., will be found in Section 57, "Explosives and Bombs," this Manual.

INVESTIGATION AT SCENE: The scene of damage should be carefully protected and fire department cooperation in doing this should be sought from the initial stages, if there is any indication of possible Arson.

Photographs should be taken as soon as practicable, including during and after the fire or after the explosion. Any evidence found should be photographed in place before being touched or removed.

ARSON BY FIRE: Any fire may start from (1) natural causes (lightning, sun or other heat on combustibles, etc.); (2) maintenance failures (worn electrical circuit insulation, unlubricated machinery, overheated flue, etc.); (3) accidents (welding torches, careless smoking, careless cooking with open fire, etc.) or (4) Arson.

In all fire investigations, be alert for evidence of covered or painted glass in windows, doors or other openings, the possible purpose of which would be to delay discovery of the set fire until it has reached proportions out of control. In this same category, be alert for evidence that doors, windows, etc., were left open to create a draft and supply air to the fire, to ensure the burning.

Examination of the point or points of origin must be made for actual evidence of the cause. More than one point of origin lends support to a theory of arson, but evidence of the exact cause of ignition must always be sought.

Arsonists frequently feel that the fire will remove all trace of the device used to set a fire. Frequently this it not true and only the form of the devices is changed by the fire, so that the devices may be detected by field and Laboratory examination. This is true whether the device is mechanical, such as a clock radio connected to an iron laid in a gasoline soaked pile of paper, or simply a candle left burning, or a lighted cigarette rubber-banded to a paper packet of matches, or any of numberless other devices. The finding of devices which can be reasonably determined to have been connected with the unknown arsonist may offer various leads of value in either identifying possible suspects or indicating groups of possible suspects who had access to particular material which made up the devices. The aid of the Scientific Laboratory in identifying parts and materials should be considered.

In instances where damage was complete or fire hoses have washed or flodded debris, careful search may still detect traces of the devices. In addition, where liquids or other substances such as kerosene, gasoline, alcohol, excelsior, etc., were used as "accelerants" to ensure the spread of the fire, traces of them may be found in the structural material of the burned building, vehicle, etc., and/or in or on the ground below.

In collecting specimens to determine the kind and nature of accelerant, they should be placed in airtight, capped containers, to prevent loss of the more volatile constituents.

Examination should include careful search for "trails" laid from the point of the original fire-setting, to ensure complete burning, such as trails of oil soaked paper, lines hung with kerosene saturated cloths, gasoline soaked material laid in an orderly pattern, etc. Any such evidence should be fully photographed exactly as found.

Any search should be meticulous and painstaking, including sifting the ashes seeking evidence.

Careful examination must be made of fittings and fixtures to determine pipe ruptures and whether valves are in an "on" or "off" position. The condition of fuses and position of electric switches should also be checked.

Be alert to locate containers in which liquid or other accelerants may have been carried—identification, even through finger or palm prints, may be possible. It is important, because of the possibility of latent prints, not to "grab" when such items are found. They must be carefully considered from the viewpoint of protecting possible latent prints.

TIPS: When information is received from a confidential informant or other source that an Arson attempt has been or will be made, officers must bear in mind the possibilities of delayed action devices. Search for such devices should include examination of power sources, service boxes and gas lines or gas supplies to which such devices may possibly be attached. The use of building blueprints and the assistance of experienced Fire Department personnel and trustworthy building personnel should always be considered in such cases.

Where specific details cannot be furnished by the source of the "tip," the danger (from time delay devices) to officers on surveillance or searching should always be considered.

ARSON BY EXPLOSIVES: The suggestions previously set out as to investigating fires apply in general terms to the investigation of explosive cases.

In all explosion cases, bear in mind the value of locating the point of explosion and taking adequate quantities of specimens of material and debris at this point, in order to determine, through Scientific Laboratory analysis, the kind of explosive involved. Different investigative leads based on the explosive used would be followed in a case of dynamite explosion than in a case involving a military or some other explosive.

Every effort should be made to locate fragments of the devices exploded, if there is any indication that it was an explosive in a container, such as a pipe bomb. Scientific study of the pieces of the container may offer valuable leads. Fragments should be painstakingly sought, including fine-screen sifting of debris and soil.

Every effort should be made, during interviews, to determine motives for the explosion and thus possible suspects.

Eye-witnesses, if any, should be interviewed in detail to determine type of sound, force and direction of explosion, color of smoke or flame, odor of gasses released.

An immediate and detailed neighborhood inquiry should be made at and near the scene. Do not overlook routemen, such as milkmen, mailmen, bakery truck drivers and so on, who are regularly in the area. They may be valuable sources.

Logical suspects include mentally ill or disgruntled persons having some connection with the damaged building, or area.. Discharged employees (if a business firm is connected with the building) rival businesses, criminal groups, gang enemies and similar types are also logical suspects.

In all explosion cases, when the Scientific Laboratory or investigation have identified the explosive, inquiries should be made of logical sources of such explosives. Checks for thefts of explosives or unusual purchases of ammunition from which gunpowder could have been taken for an explosive charge must also be made.

Officers should obtain photographs of any suspects and display them to possible sources of materials used to prepare the bomb or explosive.

27. ASSAULT, MENACING, RECKLESS ENDANGERMENT

The experienced officer will find substantial differences in the Assault statutes under the new Penal Law as compared with the old law. A basic difference from much of the Assault law in the old Penal Law is that under the new law there can be no Assault committed unless there is an injury (or in the case of administering drugs, a stupor, unconsciousness or other physical impairment) as a result.

If there is no injury (or stupor, etc., in a drug case) the crime is not Assault and may be either Menacing or Reckless Endangerment, neither of which require an actual injury.

INJURIES DEFINED: "Physical injury" means impairment of physical condition or substantial pain (P.L. Sec. 10.00, subd. 9).

"Serious physical injury" means physical injury which creates a substantial risk of death or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ (P.L. Sec. 10.00, subd. 10).

RECKLESSLY: A person acts recklessly when he is aware of and consciously disregards a substantial and unjustifiable risk that a particular result will occur (P.L. Sec. 15.05, subd. 3).

CRIMINAL NEGLIGENCE: A person acts with criminal negligence when he fails to perceive a substantial and unjustifiable risk that a result will occur. The risks must be of such nature and degree that the failure to perceive it is a gross deviation from the standard of care that a reasonable person would observe in the situation (P.L. Sec. 15.10, subd. 4).

DEADLY WEAPON: Any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, gravity knife, billy, blackjack, or metal knuckles (P.L. Sec. 10.00, subd. 12).

DANGEROUS INSTRUMENT: Any instrument, article or substance, including a vehicle, which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious physical injury (P.L. Sec. 10.00, subd. 13).

1. A "vehicle" means a motor vehicle as defined in the Vehicle and Traffic Law, an aircraft, or any vessel equipped for propulsion by mechanical means or sail (P.L. Sec. 10.00, subd. 14).

Officers should note that under the old law the term "deadly weapon" was not restricted to a weapon exclusively designed to take life or inflict bodily injury (such as a gun, sword, bayonet or dagger) but could include such things as hammers, axe handles, baseball bats, iron bars and a number of other things. Under the new Penal Law, a "deadly weapon" can only be one of the specifically mentioned things. Hammers, axe handles, baseball bats, and anything else readily capable of causing death or serious physical injury must now be classified as "dangerous instruments."

DEGREES: In deciding on the degree of an Assault it is essential to determine the specific intent, recklessness or negligence involved, as these differ for each degree. The elements of each degree of Assault are set out in following paragraphs:

ASSAULT IN THE THIRD DEGREE: A person is guilty of Assault in the Third Degree when:

1. With intent to cause physical injury to another person, he causes such injury to such person *or to a third person* (P.L. Sec. 120.00, subd. 1); or

2. He recklessly causes physical injury to another person (PL. Sec. 120.00, subd. 2); or

3. With criminal negligence, he causes physical injury to another person *by means* of a deadly weapon or a dangerous instrument.

Assault Third is a Class A misdemeanor.

ASSAULT IN THE SECOND DEGREE: A person is guilty of assault in the second degree when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person *or to a third person* (P.L. Sec. 120.05, subd. 1); or

2. With intent to cause physical injury to another person, he causes such injury to such person *or to a third person* by means of a deadly weapon or a dangerous instrument (P.L. Sec. 120.05, subd. 2); or

3. With intent to prevent a peace officer from performing a lawful duty, he causes physical injury to such peace officer (P.L. Sec. 120.05, subd. 3); or

4. He recklessly causes serious physical injury to another person by *means* of a deadly weapon or a dangerous instrument (P.L. Sec. 120.05, subd. 4); or

5. For a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness or other physical impairment or injury to another person by administering to him, without his consent, a drug, substance or preparation capable of producing the same (P.L. Sec. 120.05, subd. 5); or

6. In the course of and in furtherance of the commission or attempted commission of a felony (other than a sex offense felony (P.L. Article 130)) or of immediate flight therefrom, he or another participant, causes physical injury to another person (P.L. Sec. 120.05, subd. 6).

Assault Second is a Class D felony.

ASSAULT IN THE FIRST DEGREE: A person is guilty of Assault in the First Degree when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person *or to a third person* by means of a deadly weapon or a dangerous instrument (P.L. Sec. 120.10, subd. 1); or

2. With intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such injury to such person *or to a third person* (P.L. Sec. 120.10, subd. 2); or

3. Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to another person (P.L. Sec. 120.10, subd. 3); or

4. In the course of and in furtherance of the commission or attempted commission of a felony or of immediate flight therefrom he, or another participant if there be any, causes serious physical injury to a person other than one of the participants (P.L. Sec. 120.10, subd. 4).

Assault First is a class C felony.

MINOR PHYSICAL CONTACT—HARASSMENT: To constitute an assault, a crime must produce either physical injury or serious physical injury. The numerous minor crimes included in assault (or disorderly conduct) under the old law, where there was physical contact but no injury (as previously defined in this Manual section) will be found to be now offenses of Harassment:

A person is guilty of one kind of Harassment when, with intent to harass, annoy or alarm another person he strikes, shoves, kicks, or otherwise subjects him to physical contact, or attempts or threatens to do the same (P.L. Sec. 240.25, subd. 1).

Harassment is a violation (see Section 54, "Disorderly Conduct, Harassment and Loitering," this Manual.

MENACING: It is the crime of Menacing for a person to, by physical menace, intentionally place or attempt to place another person in fear of iminent serious physical injury (P.L. Sec. 120.15).

Menacing is a class B misdemeanor.

1. "Menace" means a show of intention to inflict harm or injury. To be "physical" the menace must include some bodily or material menace (e.g., a threat of a stabbing, a beating with an iron bar, with fists, etc.).

2. The statute requires that there be intent to induce fear of "serious physical injury" and not fear of just "physical injury," or a slap in the face, being pushed, shoved, touched, etc.

3. No actual risk to the person menaced is required. Thus, if A menaces B with a bomb filled with sand instead of an explosive and B thinks the bomb is real, the crime has been committed, even though there was no actual risk to B. If there is an actual risk, the crime would ordinarily be the more serious offense of Reckless Endangerment (see later in this Manual section).

4. The fear produced or attempted to be produced must be fear of "imminent" injury. Imminent means immediately or in the very near future i.e., a threat to stab a person "if you move" is a threat of imminent injury. A threat to stab a person if he is still in town a week from today is not.

WHERE PHYSICAL MENACE IS LACKING: In instances where physical menace cannot be established, the offense may be Harassment under either of the following two subdivisions of Penal Law Section 240.25.

A person is guilty of Harassment when, with intent to harass, annoy or alarm another person:

1. In a public place, he uses abusive or obscene language or makes an obscene gesture (P.L. Sec. 240.25, subd. 2), or

2. He engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and serve no legitimate purpose (P.L. Sec. 240.25, subd. 5).

Harassment is a violation (see Section 54, "Disorderly Conduct Harassment and Loitering," this Manual).

RECKLESS ENDANGERMENT IN THE SECOND DEGREE: A person is guilty of Reckless Endangerment in the Second Degree when he recklessly engages in conduct which creates a substantial risk of serious physical injury to another person (P.L. Sec. 120.20).

Reckless Endangerment Second is a Class A misdemeanor.

RECKLESS ENDANGERMENT IN THE FIRST DEGREE: A person is guilty of Reckless Endangerment in the First Degree when, under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person (P.L. 120.25).

Reckless Endangerment First is a Class D felony.

CRIMES NOW INCLUDED AS RECKLESS ENDANGERMENT: Many old Penal Law crimes which were in independent sections of their

own in the old Penal Law have been omitted from the new Penal Law. Most of the offenses they used to define are now Reckless Endangerment, when the necessary recklessness, conduct and risk to another can be established. In any case where an actual physical injury results the crime is an Assault.

The following include a major part of the offenses under the old law which no longer exist as specific offenses, but can basically be considered as "Reckless Endangerment":

Acts of Intoxicated Physicians (old P.L. Sec. 1761).

Avigating an Airplane While in an Intoxicated Condition (old P.L. Sec. 1222).

Altering Signal or Light for Railroad or Vessel (old P.L. Sec. 1422).

Employment by Common Carrier of Person Addicted to Intoxication (old P.L. Sec. 1913).

Endangering Life by Maliciously Placing Explosives near Building (old P.L. Sec. 1895).

False Alarms of Fire (old P.L. Sec. 1424).

Generation of Unsafe Amount of Steam (old P.L. Sec. 1892).

Injuring Highway Boundary, Pier, Sea-wall, Dock, Rock, Buoy, Landmark, Mile-board, Pipe, Main, Sewer, Machine, Telegraph or other Property (old P.L. Sec. 1423, subd. 1, 2, 3, 10, 11, 12, 12-a).

Injuring Railroad Property and Appurtenances; Obstructing Tracks (old P.L. Sec. 1991).

Injury to Life Saving Apparatus (old P.L. Sec. 1911).

Injury to Property (includes loosening brake or blocking of railroad car, use of handcar on railroad, etc. (old P.L. Sec. 1433).

Intoxication or other Misconduct of Railroad or Steamboat Employees (old P.L. Sec. 1984).

Mismanagement of Steam Boilers (old P.L. Sec. 1893).

Overloading Passenger Vessel (old P.L. Sec. 1890).

Penalty for Selling Poisonous Beverages (old P.L. Sec. 1760-a).

Protection of the Public from Attack by Wild Animals and Reptiles (old P.L. Sec. 197).

Wilfully Poisoning Food (old P.L. Sec. 1760).

It should be noted that many of the offenses under these old laws also may now fall into the category of "Criminal Mischief" or "Reckless Endangerment of Property," as well as "Criminal Tampering."

OTHER OFFENSES: Any offense which includes the necessary elements of recklessness, conduct and risk to another is also Reckless Endangerment, regardless of the category of crime in which it might fall under the old law.

ASSAULT BY VEHICLE: The Vehicle and Traffic law gives added punishment to a conviction for Assault arising out of the operation of a motor vehicle or motorcycle—the operator's or chauffeur's license of a person convicted of such crime must be revoked and his vehicle registration may be revoked (V & T Sec. 510, subd. 2-(a). The definition of a "dangerous instrument," includes a motor vehicle as defined in the Vehicle and Traffic Law ("Every vehicle except electrically-driven invalid chairs being operated or driven by an invalid operated or driven upon a public highway by any power other than muscular power." V&T Sec. 125).

CRIMINAL NEGLIGENCE HUNTING: The old Penal Law crime of "Criminal Negligence While Engaged in Hunting Resulting in Injury to Another" is now a violation of Section 120.00, subdivision 2, Penal Law. It is one kind of Assault Third. Under the new law the shooting must be done "recklessly," as previously defined herein.

ASSAULTING AN OFFICER: The old crimes of Resisting Officer (old P.L. Sec. 1825) and Resisting Public Officer in the Discharge of His Duty (old P.L. Sec. 1851) are included in the new Penal Law crime of "Obstructing Governmental Administration" (see Section 90, this Manual). Where an officer is injured by one intending to prevent the officer from performing a legal duty, it is Assault Second.

HAZING: Hazing, formerly a violation of old Penal Law Section 1030, is now the crime of "Harassment" (see Section 54, "Disorderly Conduct, Harassment and Loitering," this Manual).

MAIMING: The Old Penal Law crime of Maiming (old P.L. Sec. 1400) is now Assault First (P.L. Sec. 120.10, subd. 2). It is no longer any defense that the person maimed completely recovered, as it was under Section 1404 of the old Penal Law.

MOB VIOLENCE: The old Penal Law crime of Mob Violence not Resulting in Death (old P.L. Sec. 1392) is now an Assault. It should be noted that the elements of Assault in any degree are much simpler than former Section 1392—there is no longer any need to establish that the defendant was a member of a mob or that the person assaulted was in custody of a peace officer or was suspected of a crime, as was required under the old law.

Thus, in mob assault situations, where an arrest is made, it will only be necessary to establish the elements of a subdivision of Section 120.05 or 120.10 of the current Penal Law. (see also Section 107, "Riots and Unlawful Assembly," this Manual).

FAMILY ASSAULTS: There are no special crimes designated as "family assault." The general criminal law previously set out on assault and related crimes apply within the family as well as otherwise. The Family Court Act gives Family Court jurisdiction of assault cases in a family.

In misdemeanor assaults in a family, the police officer should make a summary arrest if he witnesses the assault. If he has not witnessed the assault he should assist the complainant in filing a complaint in Family Court. If the complainant wishes to arrest the offender, making a citizen's arrest, the officer should render such assistance as is necessary. If an arrest is made the offender should be immediately brought before the Family Court, or a proper magistrate.

If the family assault situation involves a felony assault, the officer should arrest the offender, whether or not the officer witnessed the assault, and take a statement from the offender. The offender should be promptly arraigned.

Courts, magistrates and procedures on arraignment are discussed in Section 18, "Arrests and Bail," this Manual.

FALSE ALARMS OF FIRE: Section 1424 of the old Penal Law covered false alarms of fire and tampering with fire alarm systems. It was omitted from the new Penal Law. False alarm cases can be prosecuted under the Penal Law as Reckless Endangerment, Reckless Endangerment of Property or Criminal Mischief, or Criminal Tampering, depending on whether a substantial risk of physical injury or death was created, or only risk or damage to property, or only tampering with the system (see Section 49, "Criminal Michief and Reckless Endangerment of Property," and Section 52, "Criminal Tampering," this Manual).

WHEN USE OF FORCE IS NOT UNLAWFUL: Old Penal Law Section 246 (Use of Force Not Unlawful in Certain Cases) has been changed somewhat and is no longer in the Assault Section of the Penal

Law. Pertinent material is set out in this Manual in Section 11, "Defenses and Use of Force."

INVESTIGATIONS

INVESTIGATIVE SUGGESTIONS: (1) Verify the complaint; (2) identify the offender; (3) secure evidence of the form of and instruments used in the crime; (4) secure evidence of mental culpability (intent, recklessness or negligence) and (5) secure evidence of the injury or injuries resulting, if any.

To sustain a conviction, evidence must be available to prove beyond a reasonable doubt the culpable mental state (i.e. that the crime was done intentionally, or recklessly or negligently) required by the particular section of law applying.

The officer should establish specifically what injury, if any, was inflicted, with what, and by whom. He must also establish whether the Assault, Menacing or Reckless Endangerment was committed in connection with another crime or attempt, such as burglary, robbery, rape, etc.

The victim's injuries should be ascertained in detail both from the victim and from any attending physician.

WITNESSES: In all cases the officer must move promptly to determine eye-witnesses and identify each. Once identified, they may be interviewed at the time or later on, depending on the circumstances.

PHYSICAL EVIDENCE: Physical evidence will include the weapon used (if any) and things such as blood stains, fibres from clothing, items dropped or discarded by the offender, marks of a struggle at the scene, the condition of the victim's clothing, etc. In serious cases a complete search of the crime scene is adviseable.

The clothing of both the victim and the offender should be minutely examined for evidence of bloodstains, grass or other stains or foreign matter, as well as the condition of the clothing, whether torn, etc.

Any physical evidence obtained should always be handled as if it were certain to be sent to a Scientific Laboratory for examination, including proper notes and identification and proper packaging and storage in police custody. Laboratory examination should be requested in cases where evidence from live witnesses is lacking, is inconclusive or must be supported.

Where a weapon was used and is found at the scene or is found otherwise than in possession of the offender it should be processed for fingerprints. Take care in handling it not to destroy latent fingerprints. If it has serial numbers or is otherwise identifiable, it should be traced through the manufacturer, distributor, owner, store, State Police Pistol Permit Section (if a hand gun) and other logical sources.

PHOTOGRAPHIC EVIDENCE: Where photographs are taken, they should be handled as evidence and the chain of evidence maintained.

Photographs should be immediately taken of any injury (in all but the most minor cases). If color photographs can be taken, in addition to black-and-white, they are of added value.

When injuries to female persons are to be photographed (other than injuries of face, hands, arms) the services of a matron or other qualified female should be used for the photographs.

In serious cases, the victim's physician should be present at the photographing, if possible. No extended delay should be allowed to secure the physician's presence.

The victim's consent to photographing injuries should be secured, preferably in writing. If the victim is a minor, the consent of parent or guardian should be had.

Include in photographs all wounds, marks, discolorations of the body and the condition of specifically affected parts of the body and condition of clothing (which may be torn, soiled or otherwise give evidence of the assault).

Photographs of the crime scene may frequently be of value, particularly to show evidence of a struggle, discarded weapon, bloodstains, discarded clothing, etc.

Offenders and suspects should be promptly photographed to show any evidence of a physical struggle such as scratches, bruises, bleeding, torn clothing, etc.

PROOF OF CULPABLE MENTAL STATE. The means used and the seriousness of the matter in themselves offer evidence as to the offender's culpable mental state of either intent, recklessness or negligence. So do the kind and depth of wounds produced, if any, and the apparent objective of the Assault, Menacing or Endangerment.

The conduct and language of the offender and the victim immediately before the assault are valuable evidence of the offender's state of mental culpability.

Threats or other statements made by the offender are very pertinent. The victim and eye-witnesses are the logical sources of testimony for such proofs. Neighbors, fellow-workers and other acquaintances are logical sources of evidence concerning threats or other statements by the offender before the event.

Intent may also be shown from the relationship (if any) of the offender and victim before the assault, such as disputes, fights, etc.

Evidence that the offender had stationed himself in a place and was awaiting the victim to arrive or pass is of value in showing intent.

Evidence of another crime accomplished or attempted should be developed in detail.

ARRESTS: When the officer personally witnesses an Assault, Menacing or Criminal Endangerment he may make a summary arrest. He should identify all witnesses and take custody of any apparent physical evidence.

When the officer does not witness the crime but only receives a complaint, he must promptly endeavor to confirm the allegations of the complaint and to verify (1) that a crime did occur and (2) the kind and degree of such crime. If a witness or victim wishes to make a citizen's arrest, the officer should give necessary assistance.

In misdemeanor cases the officer should furnish the complainant sufficient instruction to permit filing a complaint before a proper magistrate so that an arrest warrant may be secured (when a citizen's arrest is not made) and the crime was not in the officer's presence.

In felony cases, where the offender is known, the officer may arrest without a warrant when he has reasonable cause to believe that an Assault or Endangerment was committed and that he is arresting the person who committed it.

In cases where the offender has left the scene and is not identified, the officer should obtain a fully detailed description of the offender and must determine the manner of flight, whether afoot, by vehicle or public conveyance. If by vehicle, a particular description of the vehicle should be obtained, including license plate number, owner, etc. All available information as to the offender's possible destination or whereabouts should be obtained. The officer should promptly consider whether to send out radio or teletype alarms, taking into account the amount and reliability of information developed and the seriousness of the crime.

FALSE ALARMS: Surveillance and invisible dye markings should always be considered in cases where the offense tends to be repeated (see in Section 82, "Larceny," this Manual, "Repeated Thefts").

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28. ATTEMPTS

ATTEMPTS DEFINED: Under the new Penal Law an "attempt" is properly called "attempt to commit a crime." A person is guilty of Attempt to Commit a Crime when:

1. With intent to commit a crime;
2. He engages in conduct;
3. Which tends to effect the commission of such crime (P.L. Sec. 110.00).

OVERT ACT: An attempt requires that there be an overt act—not just any act tending toward commission of the crime, but a step in a direct movement towards actual commission of the crime after all preparations have been made to commit the crime (Peo. vs. Collins, 234 NY 355).

An attempt, in other words, is a criminal endeavor to do a criminal act which endeavor is carried beyond merely preparing to do the act but which falls short of actually accomplishing the crime (Peo. vs. Collins, 234 NY 355).

Officers should distinguish the overt act needed for an attempt, as described in the preceding paragraphs, from the very limited kind of overt act needed to complete the crime of conspiracy.

CLASSES OF ATTEMPTS: The classification of attempts depends upon the crime attempted, as follows (P.L. Sec. 110.05):

Crime Attempted	*Class of Attempt*
Any misdemeanor	Class B misdemeanor
Any Class E felony	Class A misdemeanor
Any Class D felony	Class E felony
Any Class C felony	Class D felony
Any Class B felony	Class C felony
Murder or Kidnaping in the first degree	Class B felony

WHAT IS NOT A DEFENSE: It is no defense to a prosecution for an attempt that the crime charged to have been attempted was impossible to commit (whether for legal or factual reasons) if the crime could have been committed if the circumstances were such as the defendant believed them to be (P.L. Sec. 110.10). As an example, if a man intends to rob a bank messenger, he can be guilty of an attempt even if it turns out that the messenger at the time was not carrying any money or other property but was merely taking a walk after lunch.

WHEN CRIME IS ACTUALLY COMMITTED: Experienced officers will recall that the old Penal Law (Sec. 2) defined an attempt as an act done with intent to commit a crime and tending *but failing* to effect its

commission. Section 260 of the old Penal Law permitted convicting of an attempt even though the crime "attempted" was in fact committed.

The new Penal Law definition of an attempt does not contain the words "but failing." Thus, the provisions of Section 260 were omitted from the new law, as no longer necessary to permit an attempt conviction where it appeared the "attempt" had been actually a successful crime.

Of course, where available proof permits, the charge should be for the successful rather than the attempted crime, since the completed crime will be of a higher class than the attempt and consequently more severely punishable (except in case of some misdemeanors).

INVESTIGATIONS

"Attempt" investigations follow generally the course of investigation appropriate for the individual crime attempted. It is essential to obtain evidence of an overt act or acts by the defendant which is or are a direct movement toward actual commission of the crime, in addition to proof of intent or of acts preparatory to the actual crime itself.

In conspiracy, a mere act of preparation is enough of an overt act. Where proof of sufficient overt acts to establish an attempt is lacking, a conspiracy charge may be possible in situations involving more than one offender (see Section 43, "Conspiracy," this Manual).

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29. ATTORNEYS

ILLEGAL PRACTICE OF LAW: It is a Class A misdemeanor to practice law or to hold oneself out as an attorney, or to appear as attorney in a court of record (except when representing oneself) without having been duly licensed and admitted to practice law (Judic. L. Sec. 478, 479, 485). A court of record may summarily punish, without trial, the unlawful practice of law, as a criminal contempt (Judic. L. Sec. 750, subd. B).

EXCEPTIONS: The law specifically permits officers of the societies for the prevention of cruelty to children and animals to prefer complaints before the courts and to be guardians of children and the magistrates of the courts (as well as peace officers) are required by law to assist such officers (Judic. L. Sec. 478, 484, 485, Member Corp. L. Sec. 121). Law students in their final year of law school may practice under supervision of legal aid organization (Judic. L. Sec. 478, 484).

ADDITIONAL PROHIBITIONS AGAINST ILLEGAL PRACTICE: It is a Class A misdemeanor for a duly admitted attorney who has been disbarred, suspended or convicted of a felony, to practice (Judic. L. Sec. 486).

It is also a Class A misdemeanor for one not duly admitted as an attorney to ask or receive compensation for appearing for another as an attorney in a court or before a magistrate, or to prepare deeds, mortgages, assignments, discharges, leases or other instruments affecting real estate, or wills or any other instrument affecting disposition of property after death, or to make it a business to practice for another as an attorney in any court (Judic. L. Sec. 484, 485).

It is a Class A misdemeanor for an attorney to knowingly permit anyone (except his partner or a clerk in his office) to sue out any process or to prosecute or defend an action in his name (Judic. L. Sec. 492). (The Attorney General, a District Attorney or an attorney for a public officer or board may allow a proceeding to be taken by another attorney in his name, in certain cases).

SOLICITING LEGAL BUSINESS: It is a Class A misdemeanor to solicit legal business or to procure through soliciting any agreement authorizing an attorney to render legal service (Judic. L. Sec. 479, 485).

It is a Class A misdemeanor for any employee of, or anyone attached to, a hospital, sanitarium, police department, prison or court to communicate with an attorney for the purpose of aiding, assisting or abetting such attorney in the solicitation of legal business, retainers or agreements authorizing the attorney to perform legal services (Judic. L. Sec. 481, 485).

It is a Class A misdemeanor for any person authorized to furnish bail bonds to communicate with an attorney in solicitation or aiding solicitation of legal business (Judic. L. Sec. 481, 485).

It is a Class A misdemeanor for any attorney to employ any person for the purpose of soliciting legal business (Judic. L. Sec. 482, 485).

ADVERTISING: It is a Class A misdemeanor to maintain or permit on real property a sign to the effect that an attorney-at-law or legal services are available therein unless the full name of the attorney or the firm is set forth. The existence of an improper sign is presumptive evidence that it was maintained or permitted with the knowledge and consent of the person or persons in possession of the premises (Judic. L. Sec. 483, 485).

It is a Class A misdemeanor to advertise in any fashion offering to advise on the law of any foreign state, nation or jurisdiction for the purpose of procuring, or aiding in procuring a divorce, annulment, severance or dissolution of a marriage (Genl. Bus. L. Sec. 337).

FEE-SPLITTING OR SHARING: Fee-splitting, or sharing of a legal fee by an attorney with any person, partnership or corporation not an attorney, as an inducement for placing or in consideration for having placed a claim or action in the hands of the attorney or another, is a Class A misdemeanor (Judic. L. Sec. 491).

ENTERING HOSPITAL, PERSONAL INJURY CASES: It is a Class A misdemeanor (Judic. L. Sec. 480, 485) to enter a hospital for the purpose of negotiating a settlement or of obtaining a release or statement from any person confined in the hospital as a patient, with respect to any personal injuries for which the person is confined, within fifteen days from the date of the injury.

If the injured party has signified in writing his willingness that a release or statement be given, he may be contacted in the hospital at any time beginning five days after such writing is executed (Judic. L. Sec. 480).

These prohibitions do not apply to the attorney for the injured person or one acting on behalf of such attorney (Judic. L. Sec. 480).

The prohibition also does not apply to police officers performing their duty, as the purpose of the police inquiry is to ascertain facts which may indicate the commission of a crime (Bloodgood vs. Lynch, 293 NY 308).

OFFICERS IN COURT. The officer who investigates minor crimes and signs the information may prosecute the case, in spite of the prohibitions of Section 484 of the Judiciary Law mentioned previously (Peo. vs. James, 150 Misc. 390, Peo. vs. Black, 156 Misc. 516). The latter case indicates that a practice of police officers acting as prosecutors in minor cases is generally acceptable.

Where a District Attorney undertakes the prosecution of a misdemeanor (or lesser offense) it would be his duty to investigate and collect evidence, but this task is equally open to police officers, private individuals and lawyers who have a particular interest in the case. The prosecution of a case such as this may be done by a private individual or a lawyer hired by the complainant. A District Attorney has broad discretion in the handling of criminal matters in his county (1945 Op. Atty. Genl., pages 157, 158).

It is no longer open to question that petty crimes or offenses may be prosecuted in Courts of Special Sessions by administrative officers other than the District Attorney (Peo. vs. Czajka, 11 NY 2d 253). A traffic case could properly be prosecuted by a Deputy Sheriff and the magistrate could properly question the witness in the absence of the District Attorney (Peo. vs. De Leyden, 10 NY 2d 293). A criminal conviction need not be reversed solely because the complaining witness was allowed to conduct the prosecution (Peo. vs. Van Sickle, 13 NY 2d 61).

The Court of Appeals, in People vs. Van Sickle, on July 10, 1963, remarked that the District Attorney ought to set up a system whereby he knows of all the criminal prosecutions in his county and either appears therein in person or by assistant or consents to appearances on his behalf by other officers or private attorneys (Peo. vs. Van Sickle, 13 NY 2d 61, pages 62, 63).

MISCONDUCT BY ATTORNEY: Any attorney who is guilty of any deceit or collusion with intent to deceive the court or any party, or who wilfully delays his client's suit with a view of his own gain, or wilfully receives any money or allowance for money which he has not paid out or become answerable for, is guilty of a Class A misdemeanor and the party injured may also recover triple damages in a civil action (Judic. L. Sec. 487).

It is a Class A misdemeanor for an attorney to buy demands on which to bring law suits (Judic. L. Sec. 488).

DEFENSE ATTORNEYS: It is a Class A misdemeanor for any attorney to defend or participate in any way in the defense against a prosecution which is carried on, aided or promoted by a district attorney or other public prosecutor with whom the attorney is directly or indirectly connected as a partner, or by the attorney himself in the past (Judic. L. Sec. 493).

PRACTICE OF LAW BY SHERIFFS, CONSTABLES, OTHERS: A constable, coroner, crier or attendant of a court cannot practice as an attorney in any court.

A sheriff, under-sheriff, deputy sheriff or sheriff's clerk cannot practice law in the county in which elected or appointed (Judic. L. Sec. 473).

CONTROL OF ATTORNEY: The Appellate Division of the Supreme Court in each department is authorized to censure, suspend from practice or remove from office any attorney who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice (Judic. L. Sec. 90, subd. 2).

INVESTIGATIONS

All complaints should be taken in the form of a signed statement, where possible. If advertising or signs are involved, copies and/or photographs should be promptly secured and handled in processing as evidence.

Initial steps must include verification of the activity complained of by inspection of court, hospital or other pertinent records.

The advice of the district attorney should be sought early in the investigation. It is ordinarily desirable to make arrests in such cases only with warrants.

Inspection of court, hospital or other pertinent records should be made early in the investigation to establish verification of the activities complained of.

30. AUCTIONEERS

Any city, town or village may, by ordinance, require that auctioneers be licensed (Genl. City L. Sec. 20, subd. 13; Vil. L. Sec. 89, subd. 52, Sec. 91, subd. 1; Town L. Sec. 136 subd. 1, Sec. 137). Officers should know the provisions of their own local ordinances in this regard.

Commissioner of Public Markets in any city have the power to license auctioneers of food in public markets and to fix their commissions (Agr. & Mkts. L., Sec. 261, subd. 4, Secs. 273, 274).

It is an Unclassified misdemeanor for a person to conduct a cattle auction unless he is the holder of a domestic animal health permit granted by the Commissioner of Agriculture and Markets (Agr. & Mkts. L. Sec. 41, 90-c).

COMMISSIONS: An auctioneer in any county cannot, without a written agreement with the owner or consignee of the goods sold, charge a commission of more than two and one-half percent of the amount of any sale (Genl. Bus. L. Sec. 21). This law is not applicable in New York or Kings counties.

MOCK AUCTIONS: It is an Unclassified misdemeanor to buy or sell or to pretend to buy or sell any property (except ships, vessels, leaseholds or real estate) by auction if an actual sale and change of ownership does not take place (Genl. Bus. L. Sec. 24). A person who obtains money or property from another, or obtains the signature of another to any writing the false making of which would be forgery, by means of a pretended auction, commits a felony, loses his auctioneer's license, if any, and is forever disqualified from receiving a license to act as auctioneer (Genl. Bus. L. Sec. 24).

AUCTIONING DISEASED, SICK OR LAME ANIMALS: It is an Unclassified misdemeanor to sell or offer for sale any horse or other animal having glanders or farcy or any contagious or infectious disease dangerous to the life or health of humans or animals, or which is diseased past recovery (Agr. & Mkts. Law. Sec. 357). This law is not restricted to auctioneers and applies to any sale or offer to sell or any permitting to be offered or sold, by anyone.

It is an Unclassified misdemeanor for any licensed auctioneer to knowingly receive, or offer for sale, or sell at a public auction any horse which by reason of debility, disease or lameness or for any other cause could not be worked without violating the law against cruelty to animals. This prohibition does not apply to a sheriff's sale or a judicial sale under court order (Agr. & Mkts. L. Sec. 358).

INVESTIGATIONS

In handling cases under these laws officers must be certain of the wording of the statute or the pertinent local licensing ordinance, and should check appropriate licensing records. In mock auction cases it is necessary to locate witnesses to establish auctioning. Advertising of such auctions should be identified and the printer interviewed to establish the identity of the one who engaged the advertising. Efforts should be made to determine the existence of any sales slip or other documentary evidence and to obtain the same.

In respect to animal cases, a veterinarian's services will be required for testimony as to the condition of the animal. This should be handled promptly, at the beginning of the investigation.

31. BAD CHECKS AND FORGED CHECKS

A major part of all the fraudulent or forged documents handled by police and by the document sections of Scientific Crime Laboratories are bad checks and forged checks. They are a constant part of police business.

Under the old Penal Law, there were two kinds of checks: fraudulent checks (such as insufficient funds checks) and forged checks (such as a completely false check with false name). Issuing the former was a misdemeanor and the latter a felony.

Under the new Penal Law, what were formerly "fraudulent checks" are now "bad checks" and misdemeanor cases. Forged checks are still forged checks (although the definitions of forgery have been changed). A check forgery, under the new Penal Law, can be either a misdemeanor or a felony.

A check is an order to a bank to pay money. The new Penal Law defines a check as any check, draft or similar "sight" order for the payment of money which is not postdated with respect to the time of utterance (P.L. Sec. 190.00, subd. 1). A "check" under the law can thus be a normal check or any similar "sight" document ordering payment of money —that is, a document ordering that the money be paid when the document is presented to the payor. The bank on which a check is drawn is called the "drawee."

The person giving the order to pay money (the person signing the check) is known as the "drawer." The Penal Law defines the drawer of a check as the person whose name appears thereon as the primary obligor, whether the signature is his own or is the signature of a person authorized to draw the check on his behalf (P.L. Sec. 190.00, subd. 2). Thus, if a check is drawn by the XYZ Corporation and is signed by its treasurer, the "drawer" is the XYZ Corporation, the "primary obligor."

A "representative drawer" is a person who signs a check as drawer in a representative capacity or as agent of the person whose name appears on the check as the principal drawer or obligor (P.L. Sec. 190.00, subd. 3). In an example in the preceding paragraph, the representative drawer is the treasurer and the obligor is the XYZ Corporation.

The person named in a check to whom the money is to be paid by the drawer is the "payee." A check may be drawn to a named payee or the payee may be shown as "cash," "bearer" or some similar word or words.

When a check is "cashed" (money or property is paid out and the check accepted in return) it might be cashed either by the bank on which drawn or by anyone else. The person receiving money or property and giving the check in return is ordinarily required to "endorse" the check. To do so, he signs his name on the back of the check. The one who first cashes the check and those who later receive it in the course of business (except the drawee bank) also "endorse." Endorsements act as transfers of the right given by the check to receive money or credit from the drawee bank. Ordinarily the endorsement by the one for whom the check is "cashed" is in handwriting, often accompanied by an address, telephone number, driver's license number or other identifying matter written down by either the casher or the check passer. Later endorsements by business firms, banks and clearing houses are usually ink stamps.

UTTERING AND PASSING CHECKS: The person who gives a check initially, usually the drawer, "utters" the check. Other persons who give the check to another in return for money or property "pass" the check.

Under the new Penal Law, a person "utters" a check when, as a drawer or representative drawer thereof, he *delivers it* or causes it to be delivered *to a person who thereby acquires a right against* the drawer with respect

to such check. One who draws a check with intent that it be so delivered is deemed to have uttered it if the delivery occurs (P.L. 190.00, subd. 4).

A person "passes" a check when, being a payee, holder or bearer of a check which previously has been or purports to have been drawn and uttered by another, *he delivers it, for a purpose other than collection, to a third person who thereby acquires a right with respect thereto* (P.L. 190.00, subd. 5).

POST-DATED CHECKS: Under the new law, if a check is "post-dated" it is not a "bad check," even if the maker has insufficient funds in the bank to pay it. A "post-dated" check is one dated later than the date it is uttered or given out (P.L. Sec. 190.00, subd. 1). The theory behind this statutory rule as to post-dated checks is that such a check constitutes merely a "promissory note" or promise on the part of the maker to discharge a money obligation at a later time. The implication in giving a post-dated check is that the maker does not currently have funds on deposit to pay it, rather than that it is a good check (Peo. vs. Mazeloff, 229 App. Div. 451; Peo. vs. Kubitz, 37 Misc. 2d. 453).

The post-dated check rule does not apply to forged checks.

BAD CHECKS

A person is guilty of the crime of Issuing a Bad Check when:

1. As a drawer or representative drawer,
2. He utters a check,
3. Knowing that he (or his principal) does not then have sufficient funds with the drawee to cover the check, and
4. Intending or believing at the time of utterance that payment will be refused by the drawee upon presentation, and
5. Payment is in fact refused by the drawee when the check is presented (P.L. Sec. 190.05, subd. 1).

A person is also guilty of Issuing a Bad Check who:

1. Passes a check,
2. Knowing that the drawer of the check does not then have sufficient funds with the drawee to cover it, and
3. Intending or believing at the time of passing that payment will be refused by the drawee upon presentation, and
4. Payment is in fact refused by the drawee when the check is presented (P.L. Sec. 190.05, subd. 2).

Issuing a Bad Check is a Class B misdemeanor.

FUNDS AND INSUFFICIENT FUNDS: "Funds" means either money or credit (P.L. Sec. 190.00, subd. 6). A drawer has "insufficient funds" with a drawee to cover a check when he has no funds or no account, or has funds but in an amount less than the amount of the check (P.L. Sec. 190.00, subd. 7).

A check dishonored by a bank for "no account" (often abbreviated "NA") is also deemed to have been dishonored for insufficient funds (P.L. Sec. 190.00, subd. 7).

LEGAL PRESUMPTIONS: When the drawer has insufficient funds with the drawee at the time a check is uttered, he is presumed to know of such insufficiency (P.L. Sec. 190.10, subd. 1).

A drawer of a dishonored check is presumed to have intended or believed that the check would be dishonored if:

1. The drawer had no account with the drawee at the time the check was uttered (P.L. Sec. 190.10, subd. 2-a), or

2. The drawer had insufficient funds with the drawee at the time of utterance, and:

a. The check was presented to the drawee for payment not more than 30 days after the date of utterance, and

b. The drawer had insufficient funds with the drawee at the time of presentation (P.L. Sec. 190.10, subd. 2-b).

This presumption is different from that under the old Penal Law. Under the old law the violation occurred if there were insufficient funds at the time of uttering, no matter what the state of the account when the check was presented, and the refusal of the bank to pay was presumptive evidence of intent and knowledge on the part of the offender.

PROOF THAT CHECK WAS DISHONORED: Dishonor of a check (refusal to pay) by the drawee and insufficiency of the drawer's funds at the time the check is presented to the drawee bank (or other drawee) may properly be proved in court by introducing in evidence a notice of protest of the check or a certificate under oath of an authorized representative of the drawee declaring the dishonor and insufficiency. Such documents are presumptive evidence of the dishonor and insufficiency. Banks should be requested also to certify the account's balance on the date the check was passed.

Ordinarily, a notice of protest is attached to and returned by the drawee bank with the bad check. Banks will be familiar with the form of such documents and will provide them on request. In case of doubt, the District Attorney should be consulted as to the form of protest or certificate he feels proper (P.L. 190.10, subd. 3).

MAKING CHECKS GOOD: In any case of prosecution for issuing a bad check, it is an affirmative defense that the defendant or a person acting in his behalf made full satisfaction of the amount of the check within 10 days after it was dishonored by the drawee (P.L. Sec. 190.15, subd. 1). The defendant must prove an affirmative defense by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

EMPLOYEES DRAWING CHECKS: It is also an affirmative defense in any prosecution for Issuing a Bad Check that the defendant acted as a representative drawer and that in this capacity he was an employee who without personal benefit merely executed the orders of his employer or a superior officer or employee generally authorized to direct his activities (P.L. Sec. 190.15, subd. 2).

LARCENY: If money or property is obtained from another by means of a bad check, the utterer or passer also commits Larceny by Issuing Bad Check (P.L. Sec. 155.05, subd. c). The degree depends upon what was obtained by the bad check. See Section 82, "Larceny," this Manual, as to elements and degrees of Larceny.

FORGED CHECKS

Unlike the old Penal Law, the new Penal Law has no special sections or rules relating to forged checks and lumps them in with other forged instruments, except that forgery of checks cannot constitute Forgery First, but only a lesser degree. (See Section 67, "Forgery and Slugs," this Manual.)

There is no longer any distinction in the law between bank and corporation checks and other kinds, or checks of "characteristic form or appearance" (old Penal Law Secs. 884, subd. 5, 6; 887, subd. 3).

A forged check can be any kind of check and includes instruments which are falsely made (i.e., completely forged, often including a false

check blank) or falsely completed (i.e., signature or other part or parts only are forged), or falsely altered (i.e., valid check for $10 raised to $100). The false making, completing or altering must fit the elements of the forgery statutes.

Knowing possession of a forged check with intent to defraud, deceive or injure, is the crime of Criminal Possession of a Forged Instrument.

DISTINGUISHING FRAUDULENT AND FORGED CHECKS: The issuing of a bad check is only a misdemeanor. If money or property is obtained it becomes a larceny. The issuing of a forged check can be a felony or a misdemeanor.

A bad check is one where the signature of the maker or drawer (or endorser) is not a forgery, the check has no alteration and its only defect is that there are insufficient funds or credit to pay it, or there is no account to pay it. It is often termed a "true-name check."

A forged check may be one where the maker's name or signature is forged or where a genuine check has been altered (usually by raising the amount) or where the name of the maker is fictitious. Frequently forged checks are entire forgeries, sometimes filled out on genuine forms of a bank or company which were stolen or otherwise acquired and sometimes on forms which have been illicitly printed. The most usual forged check is one where an illicitly obtained or printed form is entirely executed by the forger. Another common forged check is one which is itself entirely genuine but where the endorsement is a forgery.

INVESTIGATIONS

BASIC STEPS: In all check cases, four steps are basic (1) promptly securing the original check, (2) examining all entries and notes on the check, (3) determining who first received the check, and (4) interviewing the person who first received the check (this may be the complainant, an employee, or another person).

Complaints on checks are ordinarily received from banks or business establishments. If the complainant is a bank, it will ordinarily want to return (or will already have returned) the check to the depositor. Arrangements should be promptly made with the bank (1) to get an immediate copy of front and back of the check (if it is still in the bank) and (2) to obtain the original as soon as possible from the depositor.

Originals of checks must be handled as evidence at all times. Promptly enclose each check in a clear cellophane envelope, with identifying data on a slip also enclosed, and seal and tape the envelope. Marking identification on the check itself may spoil latent fingerprints which could be of later value in positive identification of the offender.

Bank officials should be interviewed to determine whether any other related or prior violations by the same subject are known.

DETERMINATION OF VICTIM: Where the victim is not the original complainant, examine the check's endorsements to identify the person or establishment which first took the check. It may be necessary to request the assistance of the bank whose stamp on the check bears the earliest date to identify the endorser, if the endorsement is merely a signature.

QUESTIONING VICTIM AND ASSOCIATES: In the interview of the person who actually took the check from the subject, obtain a full physical description of the subject and any companion. Determine exact details of any credentials exhibited by the subject and all conversation with the subject. Specifically inquire as to whether subject had a car and obtain all possible identification of it.

In business establishments, it is usual for persons taking checks to make some notes on them, such as the number of a driver's license shown for identification. Always have the check or a clear photograph or copy of it to show the interviewee and determine full facts as to all such notes. Also obtain all sales slips or other records of the establishment relating to any sales to, or other dealings with the subject, to refresh the recollection of the interviewee.

Identify all persons in the establishment who had contact with the subject, such as the person who "okayed" cashing the check, or sales personnel who waited on the subject, and interview them in detail.

PHOTOGRAPHS: Many business establishments which cash or take checks have equipment which automatically photographs each person presenting a check. The equipment may be serviced by the establishment or by the protective or camera agency which installed it. Arrange to secure prints of any pertinent photographs made.

BAD CHECKS: In bad check cases, care should be taken to establish the fraud to ensure that the case does not involve mere mistake or carelessness (such as by a housewife unused to her own checking account or by a drinker who overlooked a large check drawn the night before while he was inebriated).

All logical leads to the identity of the checkpasser obtained through examination of the check, bank records, and interviews should be promptly followed.

Bank records should be promptly examined to determine whether or not on the date the check was passed there were sufficient funds on deposit or credit to cover it. If not, a certificate as to the state of the account on that date should be obtained from the bank (if one was not previously issued by the bank).

If there was no account, a sworn certificate of a bank official to this effect should be obtained.

As a practical matter, officers should require victims in check cases to promptly sign informations or depositions and should have a warrant issued as soon as the fraudulent nature of the check (or the fact that it was forged) is known.

Fraudulent check cases which are misdemeanors may be compromised, with consent of the court (CPP Sec. 664). Forged check cases, when felonies, cannot be compromised.

Officers should refrain from engaging in "collection" activity in respect to checks. This is civil practice and not police work.

FORGED CHECKS: Usually, the major problem in the case of forged checks is identifying the subject. Since such checks may constitute felonies, a teletype message to general alarm would be required. Any such message should include, in addition to the physical description of the subject, details as to his modus operandi and as to the check itself, including the company or other names shown on the check and its amount. Also indicate the type of establishment in which passed.

Professional checkpassers frequently use the device of buying merchandise and giving a check in excess of the price of the merchandise to thus obtain cash. The merchandise is often abandoned. It may be permanently retained and, of course, could be disposed of to pawn shops, etc., if of material value. Where the merchandise of material value which is clearly identifiable by serial number of other means was so obtained, it should be included in the teletype. Prompt inquiry of pawn shops, second-hand stores and known fences may be of value if such merchandise was obtained.

Professional checkpassers will often "hit" a number of establishments in the same town or area before moving on to another community for

further checkpassing. Prompt inquiries of motels, hotels, airlines and car rental agencies may prove profitable, as soon as an adequate description of the subject or subjects has been obtained, in any cases where the complaint is received shortly after the check was passed.

In all cases of professional checkpassing, inquiry should be made of surrounding departments and the nearest FBI office to determine any information known concerning the subject.

In cases of government checks, frequently involving checks stolen from the mails, both the U. S. Postal Inspector and the nearest U. S. Secret Service office should be promptly contacted.

In cases involving forged travelers' checks of large banks, or express companies, the FBI and company special agents should be promptly checked.

FEDERAL CHECK VIOLATIONS: Under Federal law it is a felony to transport (or cause to be transported) in interstate or foreign commerce (i.e., from New York to anywhere outside New York or vice versa) with unlawful or fraudulent intent, any falsely made, forged, altered, or counterfeit security knowing it to have been falsely made, forged, etc. (Title 18 U. S. Code Sec. 2314).

This law includes checks, except that Federal courts have held that "true name" checks, (those signed with a person's true name) do not come within the law, even though otherwise fraudulent.

Violations of this law are handled by the FBI, which has a very active "business" in check cases.

The usual Federal case in New York is where the check is passed in New York, drawn on an out-of-state bank (thus the offender causes the check to move in interstate commerce through usual banking channels).

In any case involving apparent professional checkpassing or an out-of-state drawee bank, inquiry should be made of the local FBI office to determine any information known to it concerning the subject or subjects.

FILE SEARCHES AND FINGERPRINTS: The FBI Laboratory at Washington, D. C. maintains Fraudulent Check Files. These files are composed mainly of forged checks. In instances where the checkpasser is not identified through local investigation, a request may be made to have the FBI Laboratory files searched.

Such file searches require that the original check or a clear photographic copy of the front and back of the check be submitted. Since the check is valuable evidence in any prosecution, photographs are to be preferred, to avoid risk of loss of the original evidence.

Latent fingerprints may appear on any check, including fingerprints of the subject who passed it. Due to the usual large number of persons who handle such items before they come into police hands, it is not practical to request that latent prints found on a check be searched through general fingerprint files to identify a subject. However, if a subject or good suspect is known, a latent print may be checked against his fingerprints in efforts to positively identify the subject or suspect as having handled the check. This technique should never be overlooked.

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32. BIGAMY

BIGAMY DEFINED: A person is guilty of Bigamy who:

1. Contracts or purports to contract,
2. A marriage with another person,

3. At a time when
   a. He (or she) has a living spouse, or
   b. The other person has living spouse (P.L. Sec. 255.15).

Bigamy is a Class E felony.

UNLAWFULLY PROCURING A MARRIAGE LICENSE: It is Unlawfully Procuring a Marriage License to procure a license to marry another person at a time when one has a living spouse or the other person to the marriage has a living spouse. This is a Class A misdemeanor (P.L. Sec. 255.10).

DEFENSES: In any prosecution for Bigamy or for Unlawfully Procuring a Marriage License, it is an affirmative defense that the defendant acted under a reasonable belief that both he (or she) and the other person to the marriage or prospective marriage were unmarried (P.L. Sec. 255.20). An affirmative defense is one which the defendant has the burden of establishing by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

ENOCH ARDEN CASES AND OTHER EXCEPTIONS: The Enoch Arden situation is where a spouse is missing and is presumed dead. Under the old Penal Law, it was not bigamy if the spouse of the person marrying again had been absent for five consecutive years without being known to be living and was believed by the person marrying to be dead (old P.L. Sec. 341, subd. 1). The new law does not include this specific exception. However, it is possible, under Sections 220 and 221 of the Domestic Relations Law, to obtain a dissolution of one's marriage on the grounds one's spouse has been missing for five years.

In addition, under recent law (Domestic Relations Law, Section 170) it is now possible to obtain a divorce on various other grounds. A divorce dissolves a marriage, so that the marriage partners are no longer spouses.

Under Section 140 of the Domestic Relations Law it is also possible to have a marriage declared void or to have it annulled on various grounds, including lack of age of consent, idiocy, physical incapacity, consent obtained by duress, etc.

INVESTIGATIONS

In conducting Bigamy investigations, officers should be alert to determine whether the alleged spouse of the reported bigamist was in fact, at the time of the alleged Bigamy, a spouse or whether the marriage has been dissolved, or there was a divorce, voidance or annulment.

The key points in bigamy cases are (1) proof of a valid, continuing first marriage; (2) proof that the first spouse was living at the time of the second marriage; (3) proof of the second marriage; (4) proof of the identity of the defendant as the same person who contracted both marriages.

It does not matter where the first marriage was contracted, so long as it was a valid marriage at that place. The second, bigamous marriage must have occurred in New York.

Copies of marriage licenses and marriage certificates, testimony of marriage witnesses and of the persons officiating at the marriages and testimony of the spouses should all be sought in establishing both the first and the second marriage. Care must be taken to obtain certification or formal guarantee of validity of license and certificate copies particularly when securing such documents as to marriages outside New York. The District Attorney should be requested to spell out the form in which such copies and their validation by public officials shall be obtained from outside jurisdiction.

Photographs of the defendant should always be obtained, for use in identification during the investigation. Handwriting specimens of the defendant should also be obtained, for comparison with signatures on marriage documents as proof of identity.

In making arrests in this type of case, and in view of the possible difficulty of independent identification, officers should be alert for all opportunity to obtain admissions or a confession.

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33. BILLIARD AND POCKET BILLIARD ROOMS

Pocket billiard rooms are often referred to as "pool rooms." However, the General Business Law provides (Section 469) that the word "pool" shall be discontinued as a descriptive word referring to a pocket billiard room or place and the word "pool" cannot appear on any window, sign, building or stationery used for or in connection with a billiard or pocket billiard room. Violations are Class A misdemeanors (Genl. Bus. L. Sec. 469, 468).

LICENSES: Except in cities with a population of four hundred thousand or more (New York and Buffalo), every public billiard or pocket billiard room or public place of any description in which these games are played which is conducted as a public place of business for profit must be licensed by the Department of State (Genl. Bus. L. Secs. 460, 461).

Village Law, Sec. 91, subd. 3 and Town Law, Sec. 136, subd. 3 both provide for local licensing of billiard or pool rooms. The Attorney General has stated that the General Business Law provisions by implication repealed the Village Law on local licensing of billiard and pool rooms (1922 Op. Atty. Gen. 130; 1929 Op. Atty. Genl. 185).

In cities over four hundred thousand population (New York and Buffalo) officers should inform themselves as to local ordinances governing billiard and pocket billiard rooms.

Licenses are issued for one year or part of a year, on or after September first, and all licenses expire on the August thirty-first next following the date of their issuance (Genl. Bus. L. Sec. 461).

Licenses may not be issued to anyone convicted of a felony (unless pardoned or given certificate of good conduct by parole board) or to anyone who is not a citizen or has not filed certificate of intention to become a citizen, except that an Indian freeholder of New York need not be a citizen or have filed a certificate of intention (Genl. Bus. L. Sec. 461).

A license certificate is issued by the Department of State and must be enclosed in a wood and metal frame having a clear glass face and a substantial wood or metal back and be posted and at all times displayed in a conspicuous place in the room where the licensed business is carried on (Genl. Bus. L. Sec. 464).

A public place having only one table not more than 3 feet by 6 feet in size and cue sticks made of light material need not be licensed (Genl. Bus. L. Sec. 460).

Bonafide social clubs not open to the public do not require licenses.

RULES RE PREMISES: Any window in the billiard or pocket billiard room must have its lower third of clear class, not screened or curtained at any time of day or night and nothing may be placed in the window so as to prevent a full, clear view into the room (Genl. Bus. L. Sec. 466).

No inclosed box, stall or private room or partitions are permitted in such rooms. Any interior billiard room must have a principal entrance door and this door and all other doors must have a section of clear glass sufficient to afford a clear view of such room from the outside. Washrooms, toilet rooms and storage closets may be maintained (Genl. Bus. L. Sec. 466).

EMPLOYMENT: It is a misdemeanor to knowingly employ any person convicted of a felony who has not received a pardon or certificate of good conduct in a billiard or pocket billiard room, or any person whose billiard or pocket billiard license has been revoked, until one year after the revocation (Genl. Bus. L. Sec. 467).

WHAT IS PROHIBITED: Any violations of the laws previously mentioned in this Manual section are Class A misdemeanors (Genl. Bus. L. Sec. 468). In addition, the following specific sections of the General Business Law apply and violations are also misdemeanors (Genl. Bus. L. Sec. 468):

1. Keeping billiard premises open after midnight and before seven o'clock in the morning (Genl. Bus. L. Sec. 465, subd. 4).

2. Permitting a minor under sixteen to enter or remain in the premises unless accompanied by parent or guardian (Genl. Bus. L. Sec. 465, subd. 3).

   a. Officers should note that Section 260.20 of the Penal Law, relating to Children, makes it a misdemeanor to admit or allow to remain in any "public pool or billiard room" any child actually or apparently under the age of sixteen years, unless accompanied by its parent or guardian or an adult person authorized by its parent or guardian. In billiard room cases, officers may charge the violation under the Genl. Bus. L. Sec. 465, subd. 3 or Penal Law Sec. 260.20.

3. Suffering or permitting the premises to become disorderly (Genl. Bus. L. Sec. 465, subd. 2).

4. Suffering or permitting dice games, raffles, card games or gambling in any manner on a wager of money or property or for a prize. This violation applies not only in the billiard room but also to any yard, booth, garden or other place connected therewith (Genl. Bus. L. Sec. 465, subd. 1).

5. Selling, bartering, furnishing or possessing in the billiard room or place any intoxicating liquor or any spiritous, vinous, malt or fermented liquids by whatever name called, containing one-half of one percent or more of alcohol (Genl. Bus. L. Sec. 465, subd. 5).

6. Selling, bartering, furnishing or possessing in the billiard room or place any habit forming drugs or appliances for administering the same (Genl. Bus. L. Sec. 465, subd. 6).

DISCRIMINATION: It is an unclassified misdemeanor to deny full and equal accommodation or privileges in any billiard or pool parlor to any person on account of race, creed, color or national origin. The offender is also subject to a money penalty to be recovered in a civil suit (Civ. Rts. L. Sec. 40, 41).

INVESTIGATIONS

Officers should be familiar with all billiard and pocket billiard rooms in their jurisdictions or assigned patrol areas, noting particularly persons of no apparent occupation who may frequent them. Knowledge of such

persons may be of value in developing sources of information and suspects in criminal matters not related to the billiard room.

The General Business Law provides that it shall be the duty of every sheriff, deputy sheriff, police officer, constable, state trooper or other peace officer having notice or knowledge of any violation of sections 460 through 471 of the General Business Law to immediately notify the district attorney by a statement under oath. It is the duty of the district attorney to forthwith cause the arrest and attend the examination of the offender (Genl. Bus. L. Sec. 470).

Any court convicting an offender of a violation of General Business Law Sections 460 through 471 is required to notify the Secretary of State in writing within ten days (Genl. Bus. L. Sec. 470).

34. BRIBERY AND RELATED CRIMES

The new Penal Law includes three separate classes of bribe-giving and bribe-receiving type crimes. All of them are dealt with in this section of the Manual. The pertinent laws are contained in Articles 180, 200, and part of Article 215, Penal Law.

ARTICLE 180 (GENERAL BRIBERY LAWS): Article 180 includes commercial bribery, labor official bribery, bribery in relation to sports, tampering with sports contests and rent gouging.

ARTICLE 200 (PUBLIC SERVANT BRIBERY): Article 200 covers bribery of public servants and giving unlawful gratuities to such persons. A public servant is any public officer or employee and the term includes a person exercising the functions of a public officer or employee as well as a person elected or designated to be a public servant.

This article also includes bribe-giving for public office.

ARTICLE 215 (WITNESSES AND JURORS): Sections 215.00 through 215.30 of Article 215 include the bribery type laws relating to witnesses and jurors.

BRIBERY AND COERCION OR EXTORTION: Bribery is distinguished from Coercion and from Larceny by Extortion by the fact that the substance of bribery is a voluntary giving to influence the one bribed. The substance of coercion or extortion is duress on the giver.

Under the old Penal Law, it was held that bribery and extortion were mutually exclusive crimes, so that, for example, bribe receiving by a labor official and extortion by a labor official could not exist on the same set of facts—the crime had to be one or the other, and if he extorted money he could not be guilty of bribe receiving (Peo. vs. Dioguardi, 8 NY 2d 260). This old rule has been changed, to avoid questions as to which crime could or should be charged or prosecuted.

Under the old law, for instance, if a licensing official demanded money for issuing a license to one he knew was entitled to the license, he very clearly committed extortion. And if he issued a license to someone he knew was not entitled to it and took a gratuity for issuing the license, he very clearly committed taking a bribe. But the various factual situations possible between such clear extremes presented serious problems as to whether a bribery or a coercion or extortion had been committed or attempted.

Under the new Penal Law the problem has been done away with through new definitions of these crimes. In the license issuing cases mentioned, the violation is always a bribe receiving. It may in addition be coercion or extortion, depending on the facts (see Section 60, "Extortion and Coercion," this Manual).

Under the new Penal Law a defense based on the rule of the mutual exclusiveness of bribery and coercion or extortion no longer exists. It is no longer any defense to a prosecution for Coercion, or Larceny by Extortion, that the defendant is also guilty of bribe receiving (P.L. Sec. 135.70, 155.10). The reverse is also true: it is no defense to bribe receiving that the defendant is also guilty of Coercion or Larceny by Extortion (P.L. Sec. 180.30, 200.15). This is true whether the crime is an attempt or has been completed.

In addition, the new Penal Law provides that it is a complete defense to a charge of bribe giving that the bribe was given because of coercion or extortion (or attempts) by the bribe receiver (P.L. Sec. 180.20, 200.05). Such a defense can only be overcome by the prosecution by disproving it beyond a reasonable doubt (P.L. Sec. 25.00, subd. 1).

Note: the rules described in the preceding two paragraphs do not apply to bribery of or bribe receiving by a witness or juror and Article 215 does not set out either such lack of defense or such defense, where the bribery concerns a witness or juror.

COMMERCIAL BRIBING: A person is guilty of Commercial Bribing who:

1. Confers or
2. Offers or agrees to confer,
3. Any benefit,
4. Upon any:
   a. Employee, or
   b. Agent, or
   c. Fiduciary
5. Without the consent of the employee's, agent's or fiduciary's employer or principal.
6. With intent to influence the conduct of the employee, agent or fiduciary,
7. In relation to his employer's or principal's affairs (P.L. Sec. 180.00).

Commercial Bribing is a Class B misdemeanor.

COMMERCIAL BRIBE RECEIVING: A person is guilty of Commercial Bribe Receiving who:

1. Being an employee, agent or fiduciary,
2. And without the consent of his employer or principal,
3. Solicits, or
4. Accepts or agrees to accept,
5. Any benefit from another person,
6. Upon an agreement or understanding that such benefit will influence his conduct,
7. In relation to his employer's or principal's affairs (P.L. Sec. 180.05).

Commercial Bribe Receiving is a Class B misdemeanor.

BRIBING A LABOR OFFICIAL: A person is guilty of Bribing a Labor Official who:

1. With intent to influence a labor official,
2. In respect to:
   a. Any of his acts as such labor official, or
   b. Any of his decisions as such labor official, or
   c. Any of his duties as such labor official,

3. Confers, or
4. Offers or agrees to confer,
5. Any benefit,
6. Upon such labor official (P.L. Sec. 180.15).

Bribing a Labor Official is a Class D felony.

A "labor official" is any duly appointed representative of a labor organization, or any duly appointed trustee or representative of an employee welfare trust fund (P.L. Sec. 180.10).

It is a defense to this crime that the benefit was conferred or agreed upon as a result of the labor official committing or attempting Coercion or Larceny by Extortion (P.L. Sec. 180.20). The prosecution must disprove such a defense beyond a reasonable doubt (P.L. Sec. 25.00, subd. 1).

BRIBE RECEIVING BY A LABOR OFFICIAL: A person is guilty of Bribe Receiving by a Labor Official who:

1. Being a labor official,
2. Solicits, or
3. Accepts or agrees to accept,
4. Any benefit from another person,
5. Upon an agreement or understanding that such benefit will influence him in respect to any of his:
   a. Acts as such labor official, or
   b. Decisions as such labor official, or
   c. Duties as such labor official (P.L. Sec. 180.25).

Bribe Receiving by a Labor Official is a Class D felony.

It is no defense to this crime that by reason of the same conduct the defendant is also guilty of Coercion or of Larceny by Extortion or of an attempt to commit either (P.L. Sec. 180.30).

SPORTS BRIBING: A person is guilty of Sports Bribing when he:

1. Confers, or
2. Offers or agrees to confer,
3. Any benefit,
4. Upon a **sports participant,**
5. With intent to influence the sports participant,
6. To not give his best efforts,
7. In a sports contest (P.L. Sec. 180.40, subd. 1).

A person is also guilty of Sports Bribing when he:

1. Confers, or
2. Offers or agrees to confer,
3. Any benefit,
4. Upon a **sports official,**
5. With intent to influence the sports official,
6. To perform his duties improperly (P.L. Sec. 180.40, subd. 2).

Sports Bribing is a Class D felony.

SPORTS CONTEST: A "sports contest" is any professional or amateur sport or athletic game or contest viewed by the public (P.L. Sec. 180.35, subd. 1).

SPORTS PARTICIPANTS AND OFFICIALS: A "sports participant" is any person who participates or expects to participate in a sports contest as a player, contestant, or member of a team, or as a coach,

manager, trainer or other person directly associated with a player, contestant, or team (P.L. Sec. 180.35, subd. 2).

The term "sports official" includes any person who acts or expects to act in a sports contest as an umpire, referee, judge or otherwise to officiate at a sports contest (P.L. Sec. 180.35, subd. 3).

SPORTS BRIBE RECEIVING: A person is guilty of Sports Bribe Receiving who:

1. Being a sports participant,
2. Solicits, or
3. Accepts or agrees to accept,
4. Any benefit from another person,
5. Upon an agreement or understanding that he will thereby be influenced,
6. To not give his best efforts,
7. In a sports contest (P.L. Sec. 180.45, subd. 1).

A person is also guilty of Sports Bribe Receiving who:

1. Being a sports official,
2. Solicits, or
3. Accepts or agrees to accept,
4. Any benefit from another person,
5. Upon an agreement or understanding that he will perform his duties improperly (P.L. Sec. 180.45, subd. 2).

Sports Bribe Receiving is a Class E felony.

TAMPERING WITH A SPORTS CONTEST: A person is guilty of Tampering with a Sports Contest who:

1. With intent to influence the outcome of a sports contest,
2. Tampers,
3. In a manner contrary to the rules and usages purporting to govern such a contest,
4. With any:
   a. Sports participant, or
   b. Sports official, or
   c. Animal, or
   d. Equipment or other thing,
5. Involved in the conduct or operation of such sports contest (P.L. Sec. 180.50).

Tampering with a Sports Contest is a Class A misdemeanor.

The word "tamper" is not specifically defined in the Penal Law. It may be taken by officers to mean to meddle or to interfere, or to make damaging changes, or to use corrupt measures, or some scheme or plot.

RENT GOUGING: Rent gouging is an extortion-bribery kind of crime connected with renting or leasing of real estate, most usually apartment dwellings.

A person is guilty of Rent Gouging who:

1. In connection with the leasing, rental or use of real property:
   a. Solicits, or
   b. Accepts or agrees to accept,
2. From any person,
3. Some consideration of value in addition to lawful rental and other lawful charges,

4. Upon an agreement or understanding that:
   a. The furnishing of such consideration will increase the possibility that some person may obtain the lease, rental or use of such property, or
   b. A failure to furnish such consideration will decrease the possibility that some person may obtain the lease, rental or use of such property (P.L. Sec. 180.55).

Rent Gouging is a Class B misdemeanor.

Officers should note that either an owner or any owner's agent or representative may be guilty of Rent Gouging. The crime is not limited to building superintendents who may "shake down" apartment seekers to put them on a waiting list or some similar scheme. The crime does not require that a lease be signed or that any money shall pass, and a mere solicitation is sufficient.

BRIBERY: The crime designated by the Penal Law as plain "Bribery" includes only bribery of a public servant. A person is guilty of Bribery who:

1. Confers, or
2. Offers or agrees to confer,
3. Any benefit,
4. Upon a public servant,
5. Upon an agreement or understanding that such public servant's:
   a. Vote, or
   b. Opinion, or
   c. Judgment, or
   d. Action, or
   e. Decision, or
   f. Exercise of discretion,
6. As a public servant,
7. Will thereby be influenced (P.L. Sec. 200.00).

Bribery is a Class D felony.

It is a defense to a charge of bribery that the defendant conferred or agreed to confer the benefit upon the public servant as a result of Coercion or Larceny by Extortion, (or attempts to commit the same) by the public servant (P.L. Sec. 200.05). Such a defense must be disproved by the prosecution beyond a reasonable doubt (P.L. Sec. 25.00, subd. 1).

DEFINITION OF PUBLIC SERVANT: A public servant is:

1. Any public officer or employee of:
   a. The state, or
   b. Any political subdivision of the state, or
   c. Any governmental instrumentality within the state, or

2. Any person exercising the functions of such a public officer or employee, or

3. Any person who has been elected or designated to become a public servant (P.L. Sec. 10.00, subd. 15).

BRIBE RECEIVING: Only a public servant can be guilty of plain Bribe Receiving. Persons receiving a bribe who are not public servants cannot be guilty of Bribe Receiving but can be guilty of Commercial Bribe Receiving, Bribe Receiving by a Labor Official, Sports Bribe Receiving, Bribe Receiving by a Witness, Bribe Receiving by a Juror, or Bribe Receiving for Public Office.

A person is guilty of Bribe Receiving who:

1. Being a public servant,
2. Solicits, or
3. Accepts or agrees to accept,
4. Any benefit,
5. From another person,
6. Upon an agreement or understanding that such public servant's:
   a. Vote, or
   b. Opinion, or
   c. Judgment, or
   d. Action, or
   e. Decision, or
   f. Exercise of discretion,
7. As a public servant
8. Will thereby be influenced (P.L. Sec. 200.10).

Bribe Receiving is a Class D felony.

It is no defense to a charge of Bribe Receiving that by reasons of the conduct charged the defendant also committed Coercion, or Larceny by Extortion or an attempt to commit such crimes (P.L. Sec. 200.15).

REWARDING OFFICIAL MISCONDUCT: Bribery is a crime committed in expectation that a public servant will do something. Rewarding Official Misconduct is a similar crime, committed *after* the public servant has done something. A person is guilty of Rewarding Official Misconduct who:

1. Knowingly:
   a. Confers, or
   b. Offers or agrees to confer,
2. Any benefit,
3. Upon a public servant,
4. For having violated his duty as a public servant (P.L. Sec. 200.20)

Rewarding Official Misconduct is a Class E felony.

RECEIVING REWARD FOR OFFICIAL MISCONDUCT: Bribe Receiving is committed at a point in time before the public servant takes the step for which bribed. Receiving Reward for Official Misconduct is committed when the benefit follows the wrongful step. A person is guilty of Receiving Reward for Official Misconduct who:

1. Being a public servant,
2. Solicits, or
3. Accepts or agrees to accept,
4. Any benefit,
5. From another person,
6. For having violated his duty as a public servant (P.L. Sec. 200.25)

Receiving Reward for Official Misconduct is a Class E felony.

UNLAWFUL GRATUITIES: Bribery or Rewarding Official Misconduct relate to improper conduct by the public servant, whether such conduct is expected in the future or has been engaged in. Unlawful Gratuities violations are misdemeanor type offenses involving only situations where the public servant is legally required to do or has proper authority to do the thing for which a benefit is given or promised to him, and has done it.

A person is guilty of Giving Unlawful Gratuities who:

1. Knowingly:
   a. Confers, or
   b. Offers or agrees to confer,
2. Any benefit
3. Upon a public servant,
4. For having engaged in official conduct which the public servant was:
   a. Required to perform, or
   b. Authorized to perform
5. And for which he was not entitled to:
   a. Any special compensation, or
   b. Any additional compensation (P.L. Sec. 200.30).

Giving Unlawful Gratuities is a Class A misdemeanor.

RECEIVING UNLAWFUL GRATUITIES: A person is guilty of Receiving Unlawful Gratuities who:

1. Being a public servant:
   a. Solicits, or
   b. Accepts or agrees to accept,
2. Any benefit,
3. For having engaged in conduct which the public servant was:
   a. Required to perform, or
   b. Authorized to perform,
4. And for which he was not entitled to:
   a. Any special compensation, or
   b. Any additional compensation (P.L. Sec. 200.35).

Receiving Unlawful Gratuities is a Class A Misdemeanor.

BRIBE GIVING FOR PUBLIC OFFICE: A person is guilty of Bribe Giving for Public Office who:

1. Confers, or
2. Offers or agrees to confer,
3. Any money or other property,
4. Upon either:
   a. A public servant, or
   b. A party officer,
5. On an agreement or understanding that some person will or may be:
   a. Appointed to a public office, or
   b. Designated as a candidate for public office, or
   c. Nominated as a candidate for public office (P.L. Sec. 200.45).

Bribe Giving for Public Office is a Class D felony.

PUBLIC SERVANT AND PARTY OFFICER: A public servant is defined previously in this Manual section under the heading "Definition of Public Servant".

A party officer is any person who:

1. Holds any:
   a. Position, or
   b. Office,
2. In a political party,
3. Whether by:
   a. Election, or
   b. Appointment, or
   c. Otherwise (P.L. Sec. 200.40).

BRIBE RECEIVING FOR PUBLIC OFFICE: A person is guilty of Bribe Receiving for Public Office who:

1. Being:
   a. A public servant, or
   b. A party officer,
2. Solicits, or
3. Accepts or agrees to accept,
4. Money or property,
5. From another person,
6. On an agreement or understanding that some person will or may be:
   a. Appointed to public office, or
   b. Designated as a candidate for public office, or
   c. Nominated as a candidate for public office (P.L. Sec. 200.50).

Bribe Receiving for Public Office is a Class D felony.

BRIBING A WITNESS: A person is guilty of Bribing a Witness who:

1. Confers, or
2. Offers or agrees to confer,
3. Any benefit,
4. Upon any:
   a. Witness, or
   b. Person about to be called as a witness,
5. In any action or proceeding,
6. On an agreement or understanding that:
   a. The testimony of such witness will thereby be influenced, or
   b. The witness will absent himself from the action or proceeding, or
   c. The witness will otherwise avoid appearing or testifying at the action or proceeding, or
   d. The witness will seek to avoid appearing or testifying at the action or proceeding (P.L. Sec. 215.00).

Bribing a Witness is a Class D felony. The possibility that the witness may have been a victim of the crime of Coercion should always be considered, (see Section 60, "Extortion and Coercion," this Manual). The proof required for Bribing a Witness and for Coercion vary. The officer should bear the elements of both crimes in mind during investigation.

BRIBE RECEIVING BY A WITNESS: A person is guilty of Bribe Receiving by a Witness who:

1. Being a witness, or
2. Being a person about to be called as a witness,
3. In any action or proceeding,
4. Solicits, or
5. Accepts or agrees to accept,
6. Any benefit,
7. From another person,
8. On an agreement or understanding that:
   a. His testimony will thereby be influenced, or
   b. He will absent himself from the action or proceeding, or
   c. He will otherwise avoid appearing or testifying at the action or proceeding, or
   d. He will seek to avoid appearing or testifying at the action or proceeding (P.L. Sec. 215.05).

Bribe Receiving by a Witness is a Class D felony.

In all such cases, the officer must bear in mind the possibility that the witness in fact committed the crime of Coercion or Larceny by Extortion (see Section 60, "Extortion and Coercion," this Manual).

TAMPERING WITH A WITNESS: A person is guilty of tampering with a witness who:

1. Knowing that a person is called or is about to be called,
2. As a witness in any action or proceeding,
3. Wrongfully induces or attempts to induce such person,
4. To:
   a. Absent himself from such action or proceeding, or
   b. Otherwise avoid appearing or testifying at such action or proceeding, or
   c. Seek to avoid appearing or testifying at such action or proceeding (P.L. Sec. 215.10, subd. a).

A person is also guilty of Tampering with a Witness who:

1. Knowing that a person is called or is about to be called,
2. As a witness in any action or proceeding,
3. Knowingly:
   a. Makes any false statement, or
   b. Practices any fraud, or
   c. Practices any deceit,
4. With intent to affect the testimony of such witness (P.L. Sec. 215.10, subd. b).

Tampering with a Witness is a Class A misdemeanor.

BRIBING A JUROR: A person is guilty of Bribing a Juror who:

1. Confers, or
2. Offers or agrees to confer,
3. Any benefit,
4. Upon any juror,
5. On an agreement or understanding that the juror's:
   a. Vote, or
   b. Opinion, or
   c. Judgment, or
   d. Decision, or
   e. Other action as a juror,
6. Will thereby be influenced (P.L. Sec. 215.15).

Bribing a Juror is a Class D felony.

BRIBE RECEIVING BY A JUROR: A person is guilty of Bribe Receiving by a Juror who:

1. Being a juror,
2. Solicits, or
3. Accepts or agrees to accept,
4. Any benefit,
5. From another person,
6. Upon an agreement or understanding that his:
   a. Vote, or
   b. Opinion, or
   c. Judgment, or
   d. Decision, or
   e. Other action as a juror,

7. Will thereby be influenced (P.L. Sec. 215.20).

Bribe Receiving by a Juror is a Class D felony.

TAMPERING WITH A JUROR: A person is guilty of Tampering with a Juror who:

1. With intent to influence,
2. The outcome of any action or proceeding,
3. Communicates with a juror in such action or proceeding,
4. Except as authorized by Law (P.L. Sec. 215.25).

Tampering with a Juror is a Class A misdemeanor.

MISCONDUCT BY A JUROR: A person is guilty of Misconduct by a Juror who:

1. Being a juror,
2. Agrees to give a:
   a. Vote, or
   b. Opinion, or
   c. Judgment, or
   d. Decision, or
   e. Report,
3. For or against any party,
4. In any action or proceeding:
   a. Pending before such juror, or
   b. About to be brought before such juror (P.L. Sec. 215.30).

Misconduct by a Juror is a Class A misdemeanor.

INVESTIGATIONS

Officers should take all complaints of these bribery-type crimes in great detail. Signed statements should always be taken if possible. The exact words said during the alleged transactions and the specific details of the circumstances surrounding them should be fully developed in the first interview with the complainant or complainants.

In all instances, where the complaint is received before the scheme has been completed, a planned pay-off under police surveillance should be considered, for evidentiary purposes, if it is possible to arrange.

Consideration should also be given to monitoring conservations and/or telephone calls, either under court order or with the consent of one of the parties to the conversations or telephone calls, if such party is a complainant or the facts otherwise permit.

It should be borne in mind that these crimes can be committed without any money passing or any physical evidence existing. It is therefor important that the officer take all possible steps to develop admissible evidence.

The investigation must develop all pertinent and necessary information as to the case proceeding, labor dispute, commercial matter, game, etc., which gave rise to the bribe giving, receiving, or other crime. The essence of these kinds of crime is that a benefit was offered, promised or given for a purpose. Convincing proof must therefore be obtained as to the purpose of the benefit offering, soliciting, etc.

The value of checking banks and other financial firms', brokerage records, where pertinent, should not be overlooked. Even though payment was not by check, stock certificate, etc., but was cash, excellent supporting evidence may possibly be obtained from such records. For example, if it is alleged that a thousand dollars in cash was the bribe paid, prompt inquiry should

be made to determine if such an amount was withdrawn from the bank by one party or and/or deposited by another, or was given to a party's broker to purchase stock, etc.

35. BURGLARY

Burglary in the first degree can only be committed in the night (P.L. Sec. 140.30). Night means the period between 30 minutes after sunset and 30 minutes before sunrise (P.L. Sec. 140.00, subd. 4). The exact time of sunset and sunrise may be ascertained from newspaper files in larger cities where papers regularly carry this information, and from U. S. Weather Bureau stations or observatories. The advice of the District Attorney should be sought as to the means of proof of the time of sunrise or sunset when such proof may be material.

Officers should note that it is not necessary that a burglary offender's intent be to steal something—he may intend any other crime. Intent is ordinarily established by proof of the action taken by the burglar.

BURGLARY IN THE THIRD DEGREE: It is the crime of Burglary Third to:

1. Knowingly enter, or
2. Unlawfully remain in,
3. Any building,
4. With intent to commit a crime therein (P.L. Sec. 140.20).

Burglary third is a Class D felony.

UNLAWFUL ENTRY AND TRESPASS: The former crime of Unlawful Entry (entering a building with intent to commit a crime under circumstances not amounting to burglary, old P.L. Sec. 405) was omitted from the new Penal Law. Some of the situations which would have been violations under former Section 405 are Burglary Third, under current law.

A new crime of Criminal Trespass involves situations where there is an unlawful entering or remaining on premises, but no proof of intent to commit a crime therein (see Section 53, "Criminal Trespass," this Manual).

BURGLARY IN THE SECOND DEGREE: A person is guilty of Burglary Second who:

1. Knowingly enters, or
2. Unlawfully remains in,
3. Any building,
4. With intent to commit a crime therein, and
5. He or another participant when effecting entry, or while in the building, or when in immediate flight from the building:
   a. Is armed with explosives or a deadly weapon (P.L. Sec. 140.25, subd. 1-a), or
   b. Causes physical injury to any person who is not a participant in the crime (P.L. Sec. 140.25, subd. 1-b), or
   c. Uses or threatens the immediate use of a dangerous instrument (P.L. Sec. 140.25, subd. 1-c), or
6. The building is a dwelling and the entering or remaining occurs at night (P.L. Sec. 140.25, subd. 2).

Burglary Second is a Class C felony.

DEADLY WEAPONS AND DANGEROUS INSTRUMENTS: A deadly weapon is any loaded weapon from which a shot readily capable of producing death or other serious injury may be discharged, or a

switchblade knife, gravity knife, billy, blackjack or metal knuckles (P.L. Sec. 10.00, subd. 12). A dangerous instrument is any instrument, article or substance, including a vehicle, which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious physical injury. The word "vehicle" means a motor vehicle as defined in the V&T Law, or any aircraft or any vessel (P.L. Sec. 10.00, subd. 13, 14).

BURGLARY IN THE FIRST DEGREE: A person is guilty of Burglary First who:

1. Knowingly enters, or
2. Unlawfully remains in,
3. Any dwelling,
4. At night,
5. With intent to commit a crime therein, and
6. He or another participant when effecting entry, or while in the dwelling, or when in immediate flight from the dwelling:
   a. Is armed with explosives or a deadly weapon (P.L. Sec. 140.30, subd. 1), or
   b. Causes physical injury to any person who is not a participant in the crime (P.L. Sec. 140.30, subd. 2), or
   c. Uses or threatens the immediate use of a dangerous instrument (P.L. Sec. 140.30, subd. 3).

Burglary First is a Class B felony.

PUNISHMENT FOR CRIME IN BUILDING BY BURGLAR: Under the former law (old P.L. Sec. 406), when a person entered a building under circumstances amounting to burglary and committed any crime in the building, he was punishable for that crime as well as for the burglary. He could be prosecuted for each separately, or in the same indictment.

Under the new Penal Law it is still possible to prosecute and convict a person for two or more offenses committed through a single act, when the act in itself constitutes one offense and is a material element of the other. The new Penal Law permits prosecution for both the burglary and the crime committed in the building or dwelling. If the defendant is convicted of both, however, the sentences must run concurrently (P.L. Sec. 70.25, subd. 2).

BREAKING: Experienced officers will recall that under the former burglary statutes it was necessary that there be a "breaking" as well as an entry. The old law required both the "break" and the "entry". This is no longer the law. There is now no requirement in any degree of burglary that there be a "break". It is only necessary that there be a knowing entry or an unlawful remaining in.

A breaking, of course, would be excellent proof tending to establish the required knowledge and intent, but a breaking is no longer an element which must necessarily be proved.

ENTER OR REMAIN UNLAWFULLY: A person enters or remains unlawfully in a building or dwelling when he is not licensed or privileged to do so (P.L. Sec. 140.00, subd. 5).

1. A person who enters or remains in a building or dwelling which is at the time open to the public does so with license and privilege. This is true whether he intends to commit a crime therein or whether he enters without any criminal intent (P.L. Sec. 140.00, subd. 5).
   a. Example: a person enters a department store during business hours intending to steal from a counter. He has not committed Burglary Third by so entering.

2. A person who defies a lawful order not to enter or remain in a building or dwelling which is at the time open to the public has neither license nor privilege to enter or remain therein, if the lawful order is personally communicated to him by:

a. The owner of the building or dwelling, or

b. Any other authorized person (P.L. Sec. 140.00, subd. 5).

3. A license or privilege to enter or remain in a building or dwelling which is only partly open to the public is not a license or privilege to enter or remain in the part not open to the public (P.L. Sec. 140.00, subd. 5).

a. Example: a person is licensed or privileged to enter a department store during business hours but is not licensed or privileged to go into a stock room of the store, since this is not open to the public.

BUILDING: Under the burglary laws, the word "building" has its ordinary meaning and in addition includes:

1. Any structure, vehicle or watercraft,

a. Used for overnight lodging of persons, or

b. Used by persons for carrying on business therein (P.L. Sec. 140.00, subd. 2).

Where a building consists of two or more units separately secured or occupied, each unit is deemed to be both a separate building in itself and a part of the main building as well. (P.L. Sec. 140.00, subd. 2.)

1. Example: A building includes 6 separate housekeeping apartments, all opening onto a hallway to the front door, but all secured by a separate private entrance onto the hallway. Each apartment would be a separate "building" for purposes of the burglary law. The same would be true of a hotel, with numerous individual rooms "separately . . . occupied." Each room would be a "building" for purposes of the burglary laws.

DWELLING: A dwelling means a building which is usually occupied by a person lodging therein at night (P.L. Sec. 140.00, subd. 3).

Experienced officers will recall that under the old Penal Law definition of Burglary First, it was necessary that there be a breaking and entering of the dwelling house of another in which there was at the time a human being. This is no longer the law.

Under the new Penal Law definitions of Burglary First (or Second) it is only necessary to prove that the dwelling was "usually occupied" by a person lodging at night. The fact that a person was not lodging in the dwelling on the particular night of the burglary does not matter, if it was usual for a person to do so.

It should be borne in mind that the dwelling must be "usually occupied" at night. One usually occupied during the day does not fit the law and would not be a dwelling, even if the day-time use included such things as a night worker sleeping during the day.

POST OFFICE BURGLARIES: Forcibly breaking or attempting to break into a Post Office or any building used as a Post Office, with intent to commit any larceny "or other depredation," is punishable by imprisonment not over 5 years, fine not more than $1,000 or both, under Title 18, U. S. Code, Section 2115.

It is also a Federal crime to enter by violence a post office car or any part of a car or vessel assigned to the use of the mail service, or to wilfully and maliciously assault or interfere with any postal clerk in discharge of his duties in the car or vessel (Title 18 U. S. Code, Sec. 2116).

Violations of these Federal laws are also offenses under state laws. The Federal crimes are ordinarily investigated by U. S. Postal Inspectors, who should be promptly informed of any such occurence.

FEDERAL FREIGHT AND EXPRESS OR BAGGAGE VIOLATIONS: Federal criminal law creates a special group of burglary-type crimes in respect to any railroad car, vessel, aircraft, motor truck, wagon or other vehicle containing any interstate or foreign shipment of freight or express.

It is a Federal crime to break a seal or lock of any such carrier with intent to commit a larceny therein, even if no entry is effected. It is also a Federal crime to enter such a carrier, with intent to commit a larceny, therein, even if no breaking occurs. Penalties are imprisonment not more than 3 years, fine not over $3,000 or both (Title 18, U. S. Code, Sec. 2117).

Interstate shipments include all shipments originating in New York and going outside the state, even if the consignee is inside the state (such as a shipment by motor truck from New York City through Northern New Jersey to Northern New York). They become interstate as soon as they are delivered to a carrier or a pick-up agency by the consignor. Interstate shipments also include any shipment originating outside New York and coming into New York, up until the time it is actually delivered to the consignee (even where it only passes through New York enroute to another place).

Actual larceny of interstate shipments, freight or baggage or larceny of anything from a railroad car, vessel, etc., containing interstate shipments is a violation of Title 18, U. S. Code, Sec. 659.

Violations relating to interstate goods or carrier are both local and Federal crimes. The FBI handles investigations of this type of Federal violation and should be promptly informed of offenses.

POSSESSION OF BURGLAR'S TOOLS: A person is guilty of the crime of Possession of Burglar's Tools when he:

1. Possesses
2. Any tool, instrument or other article,
3. Adapted, designed or commonly used for committing or facilitating offenses involving:
   a. Forcible entry into premises; or
   b. Larceny by a physical taking, or
   c. Theft of services in violation of Penal Law Section 165.15, subdivisions 4, 5, or 6
4. Under circumstances evincing:
   a. Intent to use them or,
   b. Knowledge that some person intends to use them,
   c. In the commission of an offense involving:
      (1) Forcible entry into premises, or
      (2) Larceny by a physical taking, or
      (3) Theft of Services in violation of Penal Law Section 165.15, subdivisions 4, 5, or 6 (P.L. Sec. 140.35).

The word "evincing" may be taken by officers to mean "making evident." The word "possess" means to have physical possession or otherwise exercise dominion or control over (P.L. Sec. 10.00, subd. 8).

Experienced officers will recall that under the old Penal Law crime of "Burglar's Instruments" (old P.L. Sec. 408) the tool or instrument had to be either one specifically designed for committing a crime (such as a burglar's take-down jimmy), or one commonly used for committing a crime, (such as a lock-pick). The mere fact that an instrument could be used on committing a burglary did not make it a burglar's instrument

under the law. This was true even when possessed by a person with a prior record likely to commit a burglary, such as a case where the instruments were merely a pair of rubber gloves and a claw hammer. The law would not say that such common items became burglar's tools when in possession of a burglar, in the absence of evidence that they were used by the defendant in commission of a burglary (Peo. vs. Spillman, 309 NY 295). This is still the law. However, under current law, the definition of burglar's tools is somewhat expanded over the old law and it now includes not only tools and instruments designed or commonly used for breaking into premises, safes, etc., but also tools adapted to or used to facilitate breaking in, etc., stealing, tampering with, etc. The tool or instrument must be possessed under circumstances constituting evidence of intent to use it, or of knowledge that some person intends to use it, in commission of a crime. An example would be where a suspicious man seen by a policeman looking at houses flees from the policeman and attempts to hide a jimmy (Peo. vs. Thompson, 33 App. Div. 177).

INVESTIGATIONS

COMPLAINT OF BURGLARY IN PROGRESS: Where persons report prowlers entering a neighboring residence or in any circumstances where a burglary in progress is reported, the police approach to the premises must be quiet and cautious. No siren should be used. Lights should be dimmed or cut off before arrival. It may be useful to coast to a stop, to avoid alerting the subject. Prompt search should be initiated outside, checking persons on foot who do not fit the neighborhood, looking under cars and above ground (trees, shed roofs, trellises, etc.). Officers should plan any search so that they will be aware of each other's whereabouts and will not miss parts of the premises. Be alert for possible confederates parked nearby. In continuing a search indoors, at night, leave interior lights off, use flashlight, holding it well away from body. Turning on lights leads to temporary light blindness for the officer, affording an advantage to any burglar actually present. Be alert for sudden crashes. Burglars have been known to throw something through a window, yell "he's over here" and then make a safe escape on the other side of the house when officers rush to scene of crash. Plan to avoid confused search and to maintain surveillance of assigned areas, where more than one officer participates.

COMPLAINT OF COMPLETED BURGLARY: Complainants should always be instructed not to attempt to clean up the premises or disturb anything until an officer can investigate. It is a key point in burglary cases to prevent cleaning up, sweeping debris, etc., at the burglarized premises before all crime scene searching and processing is complete.

The primary initial steps in burglary investigations are:

1. Interview persons whose premises were burglarized.
2. Start thorough search of the crime scene, both inside and outside.

The interview should quickly get at basic facts and particularly anything as to identity of suspects. Exact detail on other things, such as lists of stolen property, may safely be deferred, in the usual case, until the crime scene is completely handled.

INTERVIEW OF PERSON WHOSE PREMISES WERE BURGLARIZED: The initial interview should be with the person having responsibility for and detailed knowledge of the premises—interviews with the actual owner, business manager, etc., may be at a later time. Prompt interview of a responsible, knowledgeable person is the thing to be sought. In the interview determine at once facts relating to immediate apparent

losses, method of entry, time of entry, time entry discovered, how burglar may have determined safe time of entry, how burglar may have determined existence and location of property taken, persons with legitimate reasons for being in or near the premises at the time of the burglary, brief history of important property taken and to whom its presence on burglarized premises was known, any past breaking, entering or burglary of the premises and by whom investigated, subject's identity, appearance, mode of transportation and possible suspects. Officers should bear in mind that a burglary may be faked to conceal other crimes, or to profit through insurance or otherwise, and that in such instances the offender may be the person interviewed or another person connected with the premises. The officer's consideration of this point should not be disclosed to the persons interviewed.

Detailed notes should be made by the officer.

SEARCH OF SCENE: Locate point of entry. A search must be made both outside and inside the premises, at this point.

The outside search should be sufficiently broad to cover toolmarks, scratches, bits of clothing fiber caught on roughnesses at the point of entry, broken tool-tips, footprints and fingerprints. Where terrain permits, search should be broadened to include areas where vehicle tracks may be found. The exact means of entry should be determined.

The inside search should cover particularly search for footprints, fingerprints and bits of clothing fiber caught on roughnesses, as well as any other foreign material possibly pertinent to the entry. Be alert for foot marks on paper or other debris on the floor of the burglarized premises. In some instances footprints will offer positive identification with a particular piece of foot wear.

The smallest item found may be the major piece of identifying evidence at trial—a small part of a screwdriver tip or a burnt paper match torn from a paper book of matches offer possibilities of positive identification. All possible evidence should be handled accordingly.

DAMAGE INSIDE THE PREMISES: Where the burglar has committed acts of damage inside the premises, breaking into locked rooms, cabinets, cutting open safes, etc., particular care should be devoted to examination of these areas or things for fingerprints, any foreign material possibly associated with the burglar and the exact method of execution of the damage.

MODUS OPERANDI: In the interview and more particularly during the search of the scene the officer should be alert to ascertain all facts relating to the burglar's modus operandi (manner of operating). Burglars tend to repeat techniques they have used successfully in the past. Exact knowledge as to the modus operandi in any burglary may offer considerable hope of identifying the kind of burglar involved, whether novice or experienced, possibly even which known burglar should be suspected of guilt in the particular matter.

This rule is easily seen in safe burglaries, where it may safely be concluded that a box-safe with the door neatly blown out with nitroglycerin was not the work of burglars who would do a novice "chop job," cutting out the bottom of the safe with steel tools. The officer will readily see that there are few safe-men sufficiently expert and knowledgeable to neatly blow off a safe door, and thus careful analysis of a blown safe in a safe burglary case could indicate certain logical suspects.

The same rule applies in some degree to all burglaries.

OTHER INVESTIGATION: The initial interview and crime scene search are merely preliminary steps in any adequate burglary investiga-

tion. In addition to leads furnished by any items found at the scene and including the results of Laboratory examination of possible evidence, attention should be devoted to:

1. Complete list, including means of identification and serial or other numbers, of property stolen.

2. Periodic checking of list at places where burglars may have disposed of the same (generally burglars fence their loot as soon as possible).

3. Consideration of interviews with and checking alibis of known burglars whose modus operandi fit the technique used in the case under investigation.

Development of good sources of information and informants amongst known burglars and their associates, and persons and businesses in a position to buy stolen goods, including actual fences, is essential to doing the best police work in burglary cases.

BURGLARY AND PATROL: Officers on patrol should consider checking vehicles where tail light or license plate light is not illuminated. Criminals will sometimes install cut-off switches for an unlawful purpose and to avoid detection. Check pick-up trucks carrying torches or acetylene bottles, since these items are in common use in burglaries. Burglars tools may often be found wrapped in burlap or other material and secreted between front grille and face of radiator rather than in trunk or interior of a vehicle.

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36. CANALS

By law, a canal is defined as the channel and adjacent state-owned land of the inland waterways of New York constructed, improved or designated as canals, including canalized rivers and lakes, canal water supply reservoirs, feeder channels and necessary appertaining structures (Canal Law, Sec. 2, subd. 6). Traffic on a canal is referred to as "floats" (Canal Law, Sec. 2, subd. 18).

The designated canals of New York are the Erie Canal (Waterford to Tonawanda), the Oswego Canal (Three Rivers to Oswego), the Champlain Canal (Waterford to Whitehall) and the Cayuga and Seneca Canals (from near Montezuma, through Cayuga and Seneca Lakes to Ithaca and Montour Falls). The "Great Lakes—Hudson River Waterway" is the portion of the Erie Canal from Waterford to Three Rivers Point and the Oswego Canal from there to Oswego (Canal Law Sec. 2, subds. 8, 9, 10, 11, 21).

POLICE AUTHORITY: CANAL PERSONNEL: Officers should know that the Superintendent of Public Works and any officer or responsible employee in the Department of Public Works in charge of Canal Structures or forces having any duty in connection with the canal system, has all the authority of a peace officer with a warrant, to arrest any person for a crime affecting the canal system or its operation or any person whom he has reasonable cause to believe has committed such crime. This is far broader power to arrest in misdemeanor cases than is given peace officers or police officers generally (Canal Law Sec. 112).

REFUSE IN CANALS: It is forbidden to throw or otherwise deposit refuse or other matter of any description into canal waters. Violations are subject to damages in an amount which will compensate the state for the expense of restoring canal waters to useful condition (Canal Law, Sec. 82). Canal authorities should be informed of violations.

INJURING OR TAKING WATER FROM CANAL: The current Penal Law omitted the former special Penal Law sections relating to canals. Thus, under current law, a person who without authority wilfully inflicts injury upon any canal or any work or equipment connected with it, or who operates or attempts to operate any canal lock, bridge, dam or gate is guilty of Criminal Mischief, Criminal Tampering or Reckless Endangerment of Property, depending on the facts. (see Section 49 "Criminal Mischief and Reckless Endangerment of Property," and Section 52, "Criminal Tampering," this Manual.

Drawing water from a canal or feeder or reservoir, without authority, to the detriment of navigation, would be prosecuted as Criminal Mischief or Criminal Tampering.

CANAL LANDS: Under the current law a person who removes from canal lands or property, without authority, any tree, timber, hay, rock, stone, sand or gravel or any other natural materials would be guilty of Larceny. A person on canal lands or property under certain circumstances could be guilty of Criminal Trespass (see Section 82, "Larceny" and Section 53, "Criminal Trespass," this Manual).

BOUYS AND BEACONS ON CANALS: A person who wilfully or maliciously removes or destroys a lawfully placed buoy or beacon in any waters of the state, or causes it to break from its moorings or become upset or have its light extinguished could be arrested and prosecuted for Manslaughter, Reckless Endangerment, Reckless Endangerment of Property, Criminal Mischief or Criminal Tampering, depending on the facts and the injury caused by the offense. The old special Penal Law on buoys or beacons was omitted from the current law.

SABOTAGE OF CANALS: It is a class E felony to wilfully and maliciously injure, destroy, obstruct or tamper with any canal with intent to interfere with or delay the transportation of any military or naval stores, vessels, implements, etc. (State, Federal or friendly Foreign Government) or with intent to hinder or delay any military, naval operation or defense (Mil. L., Sec. 238-B).

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37. CARNIVALS, CIRCUSES AND FAIRS

Licenses for circuses and carnivals may be provided for by local ordinances (Genl. City L. Sec. 20, subd. 13; Town L. Sec. 136, subd. 3; Sec. 137; Vill. L. Sec. 89, subd. 52, Sec. 91, subd. 3).

Fairs or expositions are required to be held annually by all agricultural and horticultural corporations, the American Institute in the City of New York and the New York State Agricultural Society. The various such county and town corporations may fix the place where the annual fair is to be held (Member. Corp. L. Sec. 204).

A state fair must be held annually by the Department of Agriculture and Markets (Agr. & Mkts. L. Sec. 31-B).

Regulations for the conduct of public amusements or exhibitions may be provided for by local ordinance (Genl. City L. Sec. 20, subd. 13, Town L. Sec. 130, subd. 12, Vill. L. Sec. 89, subd. 52).

POLICING CARNIVALS, CIRCUSES AND FAIRS: Officers policing carnivals, circuses and fairs should prepare themselves by studying pertinent local ordinances regulating the conduct thereof. Statutory violations specifically relating to such entertainments and exhibitions are set out hereinafter in this section. Where legal judgments must be made as to the legality of particular procedures or exhibitions, the officer should consult with the District Attorney as to the proper action to take.

It is the duty of the New York State Police to enforce the prohibitions against indecent shows and gambling at the annual agricultural society fairs, as set out in Section 288, Agriculture and Markets Law.

Agricultural and horticultural corporations may appoint a Chief of Police and persons to act as policemen at their fairs or exhibitions. Any justice of the peace of the county may hold a court of special sessions on such fair or exhibition grounds (Member. Corp. L. Sec. 205).

VIOLATIONS RE ADMISSIONS AND TICKETS: Anyone who wrongfully and fraudulently enters any agricultural fair grounds without paying the entrance fee commits Criminal Trespass (P.L. Sec. 140.05-140.15). (See Section 53, "Criminal Trespass," this Manual).

Any person who seeks to induce a candidate who has been nominated for any elective office to purchase any ticket or admission to any fair is guilty of a Class A misdemeanor (Election Law Sec. 453).

Section 40, Civil Rights Law, forbids denial of admission or other privileges at fairs to any person on account of race, creed, color or national origin. Offenses against Section 40 are unclassified misdemeanors (Civ. Rts. L. Sec. 41).

REGULATION OF AERIAL ENTERTAINMENT AND RIDES: No person may participate in any public performance involving a risk of serious injury to himself or others without a life-net or other safety device. A height of fall of over twenty feet is presumed to create a substantial risk of serious injury (Labor L. Sec. 202-a).

The Industrial Code of the State of New York provides for safety precautions for aerial performances in Chapter 1, Part 41. Chapter 1, Part 45 of the Code sets out load tests, inspection requirements and other regulations for amusements devices, including rides. The Industrial Commissioner must be notified in writing before aerial performances are given or before an amusement device is first used. Any person who violates any provision of the Labor Law or the Industrial Code is guilty of an Unclassified misdemeanor (Labor L. Sec. 213).

LOITERING: It is a violation to loiter or remain in a public place for the purpose of gambling with cards, dice or other gambling paraphernalia (P.L. Sec. 240.35, subd. 2).

GAMES AND GAMBLING: Gambling devices, instruments or contrivances for betting, wheels of fortune and games of chance are prohibited on the grounds of any annual meeting, fair or exposition of any county, town or other agricultural society (Agr. & Mkts. L. Sec. 288). Violations are Unclassified misdemeanors (Agr. & Mkts. L. Sec. 41).

In determining whether any "game" on a fairgrounds or in the midway of a fair is illicit or unlawful, the rule is that a game involving a test of skill is not illegal. The giving of a prize or premium in such a game is not illegal (Peo. vs. Lyttle, 251 NY 347, Peo. vs. Cohen, 160 Misc. 10). However, even if a game does involve a test of skill, no betting on it is permitted (P.L. Sec. 225.05, Genl. Oblig. L. Sec. 5-401).

Most of the midway games at carnivals, circuses and fairs can be "gaffed" or "gimmicked," to cheat the player. This can be done mechanically, or by rapid miscounts of points scored by concealment of parts of numbers ringed or scored, and in various other ways. Gaffed or gimmicked games constitute violations of the Larceny provisions of the Penal Law, as larcenies by means of False Pretense or by Trick (P.L. Sec. 155.05). The specific violation under old Penal Law Section 988, called "Cheating at Gambling" has been omitted from the new law. Gambling cheats are now charged as larcenies (see Section 82, "Larceny," this Manual).

SHOWS FORBIDDEN AT CARNIVALS, CIRCUSES AND FAIRS: The following kinds of shows are absolutely prohibited and cannot be given nor licensed in any way. It is a violation to knowingly produce, operate, manage, furnish premises for, or in any way promote, or participate in, any of the following exhibitions in the nature of public entertainment or amusement:

a. A firearm is discharged, or a knife, arrow or other sharp or dangerous instrument is propelled at or towards a person (P.L. Sec. 245.05, subd. 3).

b. A person is projected for a considerable distance by a cannon or comparable device (P.L. Sec. 245.05, subd. 4).

c. A person is held up to ridicule or contempt by voluntarily submitting to indignities (such as throwing balls or other articles at his head or body) (P.L. Sec. 245.05, subd. 2).

d. A person competes continuously without respite for a period of more than 8 consecutive hours in a dance, bicycle or other contest involving physical endurance (P.L. Sec. 245.05, subd. 1). (See Section 91, this Manual, "Offensive Exhibitions").

Immoral, lewd, obscene or indecent shows are specifically prohibited at agricultural fairs and exhibitions (Agr. & Mkts. L. Sec. 288) and are prohibited everywhere in the state under general statutes (see Section 88 "Obscenity and Pornography," this Manual).

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38. CHILDREN

Procedures relating to Juvenile Delinquents, Youthful Offenders and Persons in Need of Supervision are set out in Section 17, "Procedures re Children and Youths," this Manual.

SEX OFFENSES AGAINST CHILDREN: Offenses formerly charged as "carnal abuse" (old P.L. Sec. 483) or "contributing to delinquency" (old P.L. 494) have been grouped together in the new Penal Law as "Endangering the Welfare of a Child" (P.L. Sec. 260.10), with considerably broader provisions. Endangering the Welfare of a Child is set out in detail later in this section.

Other sex offenses involving children fall within the general classes of crimes applicable to adults and children alike, such as sodomy, rape, sexual misconduct and sexual abuse, which may be found in detail in this Manual in Section 114, "Sex Offenses (including Sodomy)" and Section 105, "Rape."

Officers must bear in mind in connection with such sex crimes that a person is legally incapable of giving consent to sexual misconduct, sexual intercourse, sodomy or sexual abuse if he or she is under age 17 (P.L. Sec. 130.05, subd. 3).

In addition, sexual intercourse with a female under 17 even when consented to may be Rape third (P.L. Sec. 130.25, subd. 2), under 14, Rape second (P.L. Sec. 130.30) and under 11, Rape first (P.L. Sec. 130.35).

Deviate sexual intercourse with a person under 17 even when consented to may be Sodomy third (P.L. Sec. 130.40, subd. 2), under 14 Sodomy second (P.L. Sec. 130.45), and under 11, Sodomy first (P.L. Sec. 130.50, subd. 3).

In sexual abuse cases, it is an affirmative defense that the victim is at least 14 and less than 17, and the offender is less than five years older.

Sexual abuse of a victim under 17, even with the victim's consent, may be Sexual Abuse third (P.L. Sec. 130.55), of a victim under 14, Sexual Abuse second (P.L. Sec. 130.60, subd. 2) and of a victim less than 11, Sexual Abuse first (P.L. Sec. 130.65).

ENDANGERING THE WELFARE OF A CHILD (BY ANY PERSON): A person is guilty of Endangering the Welfare of a Child (a Class A misdemeanor) when such person:

1. Knowingly
2. Acts in a manner likely to be injurious to:
   a. The physical welfare, or
   b. The mental welfare, or
   c. The moral welfare,
3. Of a child under 16, or
4. Directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his life or health (P.L. Sec. 260.10, subd. 1).

ENDANGERING WELFARE OF A CHILD (BY PARENT, GUARDIAN, ETC.): A parent, guardian or other person charged with the care or custody of a child is guilty of Endangering the Welfare of a Child (a Class A misdemeanor) when:

1. The child is:
   a. A male less than age 16, or
   b. A female less than 18, and
2. The parent, guardian or person fails or refuses,
3. To exercise reasonable diligence in the control of the child to prevent the child from becoming:
   a. A neglected child (P.L. Sec. 260.10, subd. 2).
      (1) A "neglected child" is a male less than sixteen years of age or a female less than eighteen years of age:
         (i) whose parent or other person legally responsible for his care does not adequately supply the child with food, clothing, shelter, education, or medical or surgical care, though financially able or offered financial means to do so; or
         (ii) who suffers or is likely to suffer serious harm from the improper guardianship, including lack of moral supervision or guidance, of his parents or other person legally responsible for his care and requires the aid of the court; or
         (iii) who has been abandoned or deserted by his parents or other person legally responsible for his care (FCA Sec. 312); or
   b. A juvenile delinquent (P.L. Sec. 260.10, subd. 2).
      (1) A "juvenile delinquent" is a person over seven and less than sixteen years of age who does any act which, if done by an adult, would constitute a crime (FCA Sec. 712, subd. (a); or
   c. A person in need of supervision (P.L. Sec. 260.10, subd. 2).
      (1) A "person in need of supervision" is a male less than sixteen years of age or a female less than eighteen years of age who is an habitual truant or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of parent or other lawful authority (FCA Sec. 712, subd. (b)).

ENDANGERING THE WELFARE OF A CHILD (MEDICAL CARE) DEFENSE: In any prosecution for Endangering the Welfare of a Child, pursuant to section 260.10, based upon an alleged failure or refusal to provide proper medical care or treatment to an ill child, it is an affirmative defense that the defendant:

1. is a parent, guardian or other person legally charged with the care or custody of such child; and
2. is a member or adherent of an organized church or religious group the tenets of which prescribe prayer as the principal treatment for illness; and

3. treated or caused such ill child to be treated in accordance with such tenets (P.L. Sec. 260.15).

UNLAWFULLY DEALING WITH A CHILD (UNDER 16): A person is guilty of unlawfully dealing with a child when:

1. **AMUSEMENTS, BARS, ETC.**—Being an owner, lessee, manager or employee of a public dance hall, public pool or billiard room, public bowling alley, theatre, motion picture theatre, skating rink, or of a place where alcoholic beverages are sold or given away, he permits a child less than sixteen years old to enter or remain in such place unless:

a. The child is accompanied by his parent, guardian or an adult authorized by a parent or guardian; or

b. The entertainment or activity is being conducted for the benefit or under the auspices of a non-profit school, church or other educational or religious institution; or

c. Otherwise permitted by law to do so (P.L. Sec. 260.20, subd. 1). This offense is a Class B misdemeanor.

CHILDREN ATTENDING SKATING RINKS UNDER CERTAIN CONDITIONS: Notwithstanding any other provision of law, the owner, lessee, proprietor, operator, attendant or employee of any skating rink may admit or allow to remain in any such skating rink any child under the age of fourteen years, unaccompanied by the parent, guardian or other adult person authorized by the parent or guardian of such child, at any time other than while school classes of such child are in session, but not after six o'clock in the afternoon, provided that on the premises of such skating rink a qualified matron shall be in attendance at all times.

1. This section shall not apply to any skating rink within which, or connected with any premises within which, the sale of any wine, spiritous or malt beverages or liquor is allowed, pool or billiard tables are used or bowling alleys are maintained.

2. Children of the age of fourteen years and less than sixteen years of age, however, may remain in such skating rink until ten o'clock in the evening, in pursuance of the provisions of this section, of any day preceding a day on which school classes will not be in session, and not later than nine o'clock in the evening on other days (Genl. Bus. L. Sec. 398-c).

CHILDREN ATTENDING PUBLIC BOWLING ALLEYS UNDER CERTAIN CONDITIONS: Notwithstanding any other provision of law, it is lawful for the owner, lessee, proprietor, operator, attendant or employee of any public bowling alley to admit or allow to remain in any such public bowling alley, and to bowl therein, any child between the ages of nine and sixteen, daily, except Sunday, between the hours of nine in the morning and seven o'clock in the afternoon when school is not in session, and on Sunday between the hours of one in the afternoon and six o'clock in the afternoon, when such child is accompanied or directly supervised at such public bowling alley by a parent or by a responsible adult, or when such child is a member of an organized group under the supervision of a responsible adult or when such child is participating in an organized bowling league under the supervision of a responsible adult provided that no alcoholic beverages of any kind are dispensed on such premises during the time that such child is on the premises as a member or participant of such organized group, or league as shall be permitted by a local law or ordinance heretofore or hereafter adopted by the common council or other legislative body of a city, town or village permitting any

such child to be admitted, or allowed to remain or to bowl in any such public bowling alley as herein provided (Gen. Bus. L. Sec. 399-d).

UNLAWFULLY DEALING WITH A CHILD (UNDER 18): A person is guilty of Unlawfully Dealing with a Child who:

1. **SEX, NARCOTICS**—Knowingly permits a child less than eighteen years old to enter or remain in a place where illicit sexual activity or illegal narcotics activity is maintained or conducted (P.L. Sec. 260.20, subd. 2); or

2. **TATTOOING**—Marks the body of a child less than eighteen years old with indelible ink or pigments by means of tattooing (P.L. Sec. 260.20, subd. 3); or

3. **ALCOHOL**—Gives or sells or causes to be given or sold any alcoholic beverage, as defined by section three of the Alcoholic Beverage Control Law, to a child less than eighteen years old; except that this subdivision does not apply to the parent or guardian of such child (P.L. Sec. 260.20, subd. 4); or

4. **TOBACCO**—Sells or causes to be sold tobacco in any form to a child less than eighteen years old (P.L. Sec. 260.20, subd. 5).

It is no defense to a prosecution pursuant to 3 (alcoholic beverages) or 4 (tobacco) that the child acted as the agent or representative of another person or that the defendant dealt with the child as such an agent.

These offenses are Class B misdemeanors.

PROCURING ALCOHOLIC BEVERAGES FOR PERSONS UNDER THE AGE OF EIGHTEEN YEARS: Any person who misrepresents the age of a minor person under the age of eighteen years for the purpose of inducing the sale of any alcoholic beverage to such minor, is guilty of an offense punishable by fine not over fifty dollars, imprisonment not more than five days, or both. (ABC Sec. 65-a). Under Section 55.10, subd. 3 of the Penal Law, such offenses are now "violations."

OFFENSE FOR ONE UNDER AGE OF EIGHTEEN YEARS TO PURCHASE OR ATTEMPT TO PURCHASE AN ALCOHOLIC BEVERAGE THROUGH FRADULENT MEANS: Any person under the age of eighteen years who presents or offers to any licensee under the Alcoholic Beverage Control Law, or to the agent or employee of such licensee, any written evidence of age which is false, fraudulent or not actually his own, for the purpose of purchasing or attempting to purchase any alcoholic beverage, may be arrested or summoned and be examined by a magistrate having jurisdiction on a charge of Illegally Purchasing or Attempting to Illegally Purchase an Alcoholic Beverage. If the determination is made sustaining such charge the court or magistrate must release such person on probation for a period not exceeding one year, and may in addition impose a fine not exceeding ten dollars (ABC Sec. 65-b, subd. 1).

No such determination operates as a disqualification on any such person subsequently to hold public office, public employment, or as a forfeiture of any right or privilege or to receive any license granted by public authority; and no such person can be denominated a criminal by reason of such determination, nor can such determination be deemed a conviction. (ABC Sec. 65-b, subd. 2)

Under the rules in Section 55.10 of the Penal Law, these offenses are "violations."

SALE OF CIGARETTES, CIGARS OR OTHER TOBACCO PRODUCTS: Any person, firm, partnership, company or corporation operating a place of business wherein cigarettes, cigars or tobacco products are sold

or offered for sale shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, **"SALE OF CIGARETTES, CIGARS OR OTHER TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW."** Such sign shall be printed on a white card in red letters at least one-half inch in height.

Any person, firm, partnership, company or corporation operating a vending machine which dispenses cigarettes, cigars or tobacco products must affix thereto in a prominent place a legible notice in accordance with the preceding paragraph.

A violation of any of the provisions of this law constitute an offense punishable by fine not more than fifty dollars. (Genl. Bus. L. Sec. 399-e)

Under Penal Law Section 55.10, such offenses are "violations."

ABANDONMENT OF A CHILD: A person is guilty of Abandonment of a Child who:

1. Being a:
   a. Parent of, or
   b. Guardian of, or
   c. Any other person legally charged with the care of custody of,
2. A child less than 14 years old,
3. Deserts such child in any place,
4. With intent to wholly abandon it (P.L. Sec. 260.00).

Abandonment of a Child is a Class E felony.

NONSUPPORT OF A CHILD: A person is guilty of nonsupport of a Child who:

1. Being a:
   a. Parent of, or
   b. Guardian of, or
   c. Any other person legally charged with care or custody of,
2. A child less than 16 years old,
3. Fails or refuses, without lawful excuse,
4. To provide support for such child,
5. When he is able to do so (P.L. Sec. 260.05).

Nonsupport of a Child is a Class A misdemeanor.

SUBSTITUTION OF CHILDREN: A person is guilty of Substitution of Children who:

1. Having been temporarily entrusted with,
2. A child less than one year old, and
3. Intending to deceive a:
   a. Parent, or
   b. Guardian, or
   c. Other lawful custodian of such child,
4. Substitutes, produces or returns to such person,
5. A child other than the one entrusted (P.L. Sec. 135.55).

Substitution of Children is a Class E felony.

INJURIES TO CHILDREN UNDER SIXTEEN: Any physician, surgeon, dentist, osteopath, optometrist, chiropractor, podiatrist, resident, intern, registered nurse or Christian Science practitioner who has reasonable cause to suspect that a child under 16 who has come before him or her for examination, care or treatment, has had serious physical injury inflicted other than by accident, or whose condition gives any indication of serious

abuse or maltreatment, must report or cause a report to be made in accordance with Section 383-b of the Social Welfare Law.

Section 383-b provides that if the person required to report is acting on the staff of a hospital or similar institution at the time he or she sees the child, he must notify the head of the institution, who in turn must make the required report.

The law requires an oral report as soon as practicable by telephone, to be followed within 48 hours by a report in writing to the public welfare official of the city or county, who must investigate or cause investigation and offer protective social services to the child.

Acting in good faith to make a report gives immunity from any civil or criminal liability for reporting. In any judicial proceeding, the physician-patient privilege and the privilege of husband-wife not to disclose confidential communications do not apply, where the child's injuries, abuse or maltreatment are concerned.

Reports must include:

1. Name and address of child.
2. Name and address of parents or other person responsible for the child's care (if known).
3. Child's age.
4. Nature and extent of injuries, abuse or maltreatment, including:
   a. Any evidence of prior injuries, abuse or maltreatment, and
   b. Any information which is believed possibly helpful in establishing cause of injuries and identity of person or persons responsible.

The State Department of Social Welfare is required by law (Soc. Welf. L. Sec. 383-a) to keep an up-to-date statewide register of all cases of child abuse reported in the State of New York. Every public welfare official receiving a report under Sec. 383-b must transmit a copy of the report to the Department (Soc. Welf. L. Sec. 383-b, subd. 2).

Any wilful failure to comply with any provisions of Section 383-b is a Class A misdemeanor (Soc. Welf. L., Sec. 389; P.L. Sec. 55.10, subd. 2).

INDECENT MATERIAL TO MINORS: It is a Class A misdemeanor to knowingly disseminate any indecent motion pictures, still pictures, books or magazines, etc. to any person under age 17. (P.L. Sec. 235.21) (see Section 88, this Manual, "Obscenity and Pornography").

PAWNBROKERS AND JUNK DEALERS: Pawnbrokers and junk dealers may not deal with or purchase from children under 16. It is no defense that the child acted as the agent of an older person (Genl. Bus. L. Sec. 47-a (Pawnbrokers); Sec. 63-a (Junk Dealers). Sections 51 and 64 of the General Business Law specify the offenses involved.

TELEPHONE CALLS TO CHILDEN: The old Penal Law (Sec. 555, "Malicious Telephone Calls") made it a misdemeanor to use a telephone for the purpose of using obscene language to a person of the female sex or a male child under the age of 16. This old law has been supplanted by "Aggravated Harassment," Section 240.30, subd. 1, Penal Law, which makes it a Class A misdemeanor for any person to harass, annoy or alarm another by communicating with any person (whether anonymously, or when known, or otherwise) in a manner likely to cause annoyance or alarm. Any form of written communication may be used to violate this law, as well as telephones or telegrams. This statute also specifically forbids making a telephone call with no purpose of legitimate communication and with intent to harass, annoy or alarm another (see "Disorderly Conduct, Harassment and Loitering," Section 54, this Manual).

EMPLOYMENT OF CHILDREN

MINORS UNDER FOURTEEN: Minors under age 14 cannot be employed in a trade, business or service, except as follows:

1. As a child performer, in compliance with Section 3229 of the Education Law (Labor L. Sec. 130, subd. 2-a).
2. As a child model, in compliance with Section 3230 of the Education Law (Labor L. Sec. 130, subd. 2-b).
3. A boy 12 or 13 as a newspaper carrier with a badge or certificate from school authorities, in compliance with Section 3228 of the Education Law (Labor L. Sec. 130, subd. 2-c).
4. A minor 12 or 13 by his parents or guardians on the home farm or in outdoor work, outside of school hours (Labor L. Sec. 130, subd. 2-d).
5. A minor over age 12 who has a farm work permit may do hand-harvesting of berries, fruits and vegetables for not over four hours between 9:00 A.M. and 4:00 P.M. outside school hours, if accompanied by a parent or when presenting to the employer a written consent of a parent or person with whom he resides (Labor L. Sec. 130, subd. 2-e).

POLICE ENFORCEMENT: The Education Law specifically requires that the police shall enforce the provisions of law relating to newspaper carrier boys (Educ. L. Sec. 3228, subd. 7).

MINORS AGES FOURTEEN OR FIFTEEN: Minors fourteen or fifteen years of age cannot be employed in or in connection with any trade, business or service when their attendance upon instruction is required by the Education Law (Labor L. Sec. 131, subd. 1).

Outside school hours, minors fourteen or fifteen may be employed (except in or in connection with a factory) if they have an employment certificate or permit issued under the Education Law (Labor L. Sec. 131, subd. 2).

Minors fourteen or fifteen do not need an employment certificate for employment as caddies on a golf course, as a baby sitter or for casual employment consisting of yard work and household chores not involving the use of power-driven machinery (Labor L., Sec. 131, subd. 3-a (1), (2), (3)).

No employment certificate is needed to work for parent or guardian on a home farm or at other outdoor work not connected with or for any trade, business or service (Labor L. Sec. 131, subd. 3-a (4)).

Minors fourteen or fifteen may be employed as performers if done in compliance with Sections 3216-c and 3229, Education Law and as models in compliance with Section 3230 of the Education Law.

In certain cases, minors found incapable of profiting from further school may obtain special employment certificates and are exempted from the previously mentioned employment laws (except they may not work in a factory) (Labor L. Sec. 131, subd. 3-e).

STREET TRADES: Boys under fourteen and girls under eighteen may not be employed in street trades as bootblacks or selling newspapers (except newspaper carriers). Boys ages fourteen to eighteen may be so employed if they have a badge or certificate issued by their school authorities (Educ. L. Sec. 3227).

MINORS UNDER EIGHTEEN: It is forbidden to employ any person under eighteen without an employment certificate or work permit, in any trade, business or service (Educ. L. Sec. 3215, subd. 1).

No minor may be employed during school hours if school attendance is required (Educ. L. Sec. 3215, subd. 2). Minors 16 or 17, with proper employment certificates, may be employed at such times (Labor L. Sec. 132, subd. 2).

Minors age sixteen and over may work on a farm without an employment certificate (Educ. L. Sec. 3215, subd. 4).

Minors age 16 or 17 may be employed outside school hours, without employment certificates as caddies, baby sitters, etc., same as minors 14 or 15 (Labor Law Sec. 132).

VIOLATIONS ARE MISDEMEANORS: Violations in respect to the above statutes are Unclassified misdemeanors or violations on the part of the employer or person permitting the employment rather than the child (Educ. L. Sec. 3233, Labor Law, Sec. 213).

The certificates or permits required by the law are generally issued by the local school authority and officers should feel free to consult with Superintendents of Schools and other such authorities in connection with child labor requirements and violations.

EMPLOYMENT PROHIBITED TO CHILDREN: No minor age fifteen or under may be employed in or in connection with any factory (Labor L. Sec. 131, subd. 2). However, minors between fourteen and sixteen who have vacation work permits may be employed in delivery and clerical employments in a factory office or in connection with dry cleaning stores, tailor shops, shoe repair shops and similar service stores so long as the employment does not involve the use of dangerous machinery or equipment or chemical processes (Labor L. Sec. 131, subd. 4).

A number of sections of the Labor Law flatly prohibit certain employment of minors and women and regulate the hours they may work. Thus, women may never be employed in foundries under certain conditions or in mines or quarries, minors may not be employed in tunnels as hoisting engineers or locomotive drivers, female minors may not be employed as telegraph messengers, children under eighteen may not operate polishing and buffing wheels of certain kinds or explosive powered tools or work in underground tunneling operations or as window cleaners, etc.

In addition, Federal regulations set up various forbidden employments in firms in interstate commerce.

EXPLOSIVES: No explosives may be sold, given or delivered to any person under age 18, whether such minor is acting for himself or for another (Labor Law 458, subd. 5).

GUNS AND WEAPONS: It is a Class A misdemeanor to dispose of any of the following to any person under sixteen years of age: any air gun, spring gun, or other instrument or weapon in which the propelling force is a spring or air, or any gun, or any instrument or weapon in or upon which any loaded or blank cartridges may be used, or any loaded or blank cartridges, or ammunition therefor, or any dangerous knife (P.L. Sec. 265.10, subd. 5).

Any person under age 16 who possesses any of the guns or weapons specified in the preceding paragraph must be adjudged a juvenile delinquent. Any such person who possesses any bomb, bombshell, firearm silencer, machine-gun, or firearm or weapon simulating a machine gun, or loaded firearm, or a firearm and ammunition for it, or a firearm, or gravity knife, switchblade knife, billy, blackjack, bludgeon, metal knuckles, sandbag, sandclub or slungshot must also be adjudged a juvenile delinquent (P.L. Sec. 265.05, subd. 4).

The preceding laws are those specifically applying to persons under age 16. It should be borne in mind that all the firearms laws apply to

such persons, the same as to older persons except as stated in the preceding two paragraphs (see Section 65, Firearms and Weapons," this Manual).

MARRIAGE OF CHILDREN

Any marriage in which the man is under sixteen or the woman is under age fourteen is prohibited. Knowingly issuing a marriage license to any such person is a violation (Dom. Rel. L. Sec. 15-a, P.L. Sec. 55.10, subd. 3-a). It is a misdemeanor for a minister or magistrate to solemnize a marriage when either of the parties is known to him to be under the age of legal consent (P.L. Sec. 255.00, Dom. Rel. L. Sec. 17).

INVESTIGATIONS

BASIC DATA: Officers should always determine the child's full name and address and obtain proof of the child's identity. The parent, guardian or person responsible for the child should be identified, with full name, address and occupation. The child's place and date of birth are also required.

The age of children, for court purposes, may be proved by bringing the child before the magistrate or into court for personal inspection, or by having the child examined by physicians, whose opinions would be evidence of age. A copy of a church baptismal record, a copy of a public birth record or an entry from a family bible are all acceptable proofs.

Where children are foreign born, a copy of the passenger manifest from the steamship company or airline on whose carriers they immigrated to the United States will be of assistance in showing age, in the absence of other proofs. The United States Immigration and Naturalization Service files on immigrants may also be of assistance.

SEX VIOLATIONS: Officers must bear in mind that proof against offenders must be beyond a reasonable doubt and every effort should be made to secure corroboration. Interviews with children must be carefully handled. Care should be taken to recognize incorrect elaboration, fantasy, improper identification and lying. Consideration should be given to having parents or representatives of social welfare agencies present at interviews.

In interviewing child victims, schoolmates, playmates and other possible witnesses, officers should carefully pin down complete accurate descriptive data on offenders, including physical description, clothing worn, particular physical characteristics or abnormalities, vehicle used and its make, color, license, things in it, noticeable characteristics such as twin aerials, odd wheel covers, etc., and any evident body damage.

Ascertain exactly what was said to child, what offers or inducements were made and complete details of the occurrences.

Physical examination should be made by a qualified doctor in pertinent sex cases, and a statement obtained from the doctor.

The crime scene should be carefully searched and the victim's clothing should be obtained and handled as evidence, for laboratory examination in appropriate cases.

IDENTIFYING SUSPECTS: Investigative attention should be directed to identifying possible suspects through searching the files of one's own and other police agencies on sex deviates and checking on releases of sex deviates from correctional institutions, hospitals, and persons who are parolees from such offenses.

Neighborhood inquiries should be made in detail to locate any persons who, from senility, abnormal mental condition, unusual interest in chil-

dren, or for other reasons, may be suspect. Consider also those apparently normal persons who would have been in a position to be at the scene and who could have been the subject. Photographs of suspects, so developed or the suspects themselves should be exhibited to the victims. Always arrange the exhibitions so that the victim may view a suspect without apparent awareness on the part of the suspect. If a child victim is frightened by the viewing procedure, the child may resort to falsehood.

In all interviews with suspects, be certain to develop not only the exact facts of the violation but all details surrounding it, so that as much corroboration as possible may be obtained.

OTHER VARIATIONS: In employment violations, carefully check records for proof of the employment. Obtain full details of dates worked, work done, amounts paid. Obtain testimony of fellow employees and customers where required to verify the employment. Be careful in such inquiries that correct identification of the child is made. Check employment certificates, permits or badges with the issuing authority.

Officers may consult with their local school authorities when a specific problem of child employment arises or they may consult with New York State Department of Labor offices, located in Albany, Binghamton, Buffalo, Hempstead, New York City, Rochester, Syracuse, Utica and White Plains (listed in local telephone directories under New York State, Labor, Department of).

Officers should bear in mind that Labor Law violations are all violations (first offense) or Unclassified misdemeanors under Section 213, Labor Law.

Care should be taken to fully identify any possible physical evidence (the tobacco, the alcoholic beverage, the tool sold a pawnbroker) as well as to determine possible witnesses, in the sale to minor type of "Endangering" case.

In abandonment cases proof of age is a basic element of the case. Welfare officials and neighbors are logical sources of information and leads. In a major number of cases, warrants will be sworn and the case, for the officer, will turn on locating the wanted parent, guardian, etc.. When handling such cases, officers should refer to Section 125, "Wanted Persons," this Manual.

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39. CIVIL RIGHTS

The civil rights of individuals are guaranteed by the Constitutions of the United States and of the State of New York. Both constitutions primarily insure the individual against invasions of his various civil rights by Federal, State or local governments or the officials of such governments. In addition, special Federal and State laws have been passed to make the constitutional guarantees effective by punishing those who transgress the civil rights of others. These laws are discussed in this section of the Manual. The United States and the State of New York have both civil and criminal laws dealing with "civil rights." The Federal civil law is set out in Title 42, United States Code, beginning with Section 1971, embodying the Civil Rights Acts. These laws provide for certain administrative and court procedures, including suits by the Attorney General of the United States, to secure individuals' voting rights, rights in places of public accommodation, in public education and rights to nondiscriminatory practices in employment and in government subsidized activities.

The New York civil law is set out in Article 15 of the Executive Law, known as "The Law Against Discrimination," (Exec. L. Sec. 290). This

law is administered by the State Commission for Human Rights (Exec. L. Sec. 293). It deals with discrimination against any inhabitant of New York because of race, creed, color or national origin and gives the Commission general jurisdiction and power to eliminate and prevent discrimination in employment, in places of public accommodation, resort or amusement, in housing accommodations and in commercial space (Exec. L. Sec. 290).

In addition, the governing board of any county, city, village or town may also create a Commission on Human Rights to deal with its community (Genl. Munic. L. Sec. 239-o through 239-r; Optional County Govt. L. Sec. 1016-b). Officers should inform themselves as to any commission existing in their community.

POLICE ACTION UNDER CIVIL RIGHTS LAWS: Police action may be taken only in respect to criminal laws relating to civil rights. Cases where Federal and/or state civil laws are to be invoked do not involve police action.

Persons desiring the aid of Federal agencies, or the U. S. Attorney General, under Federal laws, should be referred to the nearest FBI office or resident agency. Persons desiring the aid of the State Commission for Human Rights (or a local Commission) should be referred to such agency.

Complaints in respect to rights in places of public accommodation must, by Federal Law, be referred (in writing) to the State Commission on Human Rights.

If the civil rights violation is a crime, police action may be taken as in any other case. An arrest may be made on the grounds usual for any crime. The complainant should execute an information and a warrant should be obtained, following which the officer may make the arrest. In view of the emotional aspects of this type of violation, it is well to consult the District Attorney when clarification of rights or legal interpretations appear desirable.

EQUAL RIGHTS IN PLACES OF PUBLIC ACCOMMODATION, RESORT OR AMUSEMENT: All persons in New York State are entitled to the full and equal accommodations, advantages, facilities and privileges of any places of public accommodations, resort or amusement, subject only to the conditions and limitations established by law and applicable alike to all persons (Civ. Rts. L. Sec. 40).

1. No person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any such place shall directly or indirectly refuse, withold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or directly or indirectly publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed, color or national origin, or that the patronage or custom thereat, of any person belonging to or purporting to be of any particular race, creed, color or national origin is unwelcome, objectionable or not acceptable, desired or solicited.

2. The production of any such written or printed communication, notice or advertisement, purporting to relate to any such place and to be made by any person being the owner, lessee, proprietor, superintendent or manager thereof, shall be presumptive evidence in any civil or criminal action that the same was authorized by such person (Civ. Rts. L. Sec. 40).

A place of public accommodation, resort or amusement includes inns, taverns, road houses, hotels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants, or eating houses, or any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or enclosure where spirituous or malt liquors are sold; ice cream parlors, confectioneries, soda fountains, and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises; retail stores and establishments, dispensaries, clinics, hospitals, bath-houses, barber-shops, beauty parlors, theatres, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool parlors, public libraries, kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses, and all educational institutions under the supervision of the regents of the state of New York; and any such public library, kindergarten, primary and secondary school, academy, college, university, professional school, extension course, or other educational facility, supported in whole or in part by public funds or by contributions solicited from the general public; garages, all public conveyances operated on land or water, as well as the stations and terminals thereof; public halls and public elevators of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants. With regard to institutions for the care of neglected and/or delinquent children supported directly or indirectly, in whole or in part, by public funds, no accommodations, advantages, facilities and privileges of such institutions shall be refused, withheld from or denied to any person on account of race or color (Civ. Rts. L. Sec. 40).

1. Nothing here contained modifies or supersedes any of the provisions of the social welfare law or the domestic relations court act of New York city in regard to religion of custodial persons or agencies or to include any institution, club, or place of accommodation which is in its nature distinctly private, or prohibits the mailing of a private communication in writing sent in response to a specific written inquiry.

No institution, club, organization or place of accommodation which sponsors or conducts any amateur athletic contest or sparring exhibition and advertises or bills such contest or exhibition as a New York state championship contest or uses the words "New York state" in its announcements can be deemed a private exhibition within the meaning of this law (Civ. Rts. L. Sec. 40).

Any offense against the provisions of Civil Rights Law Section 40 subjects the offender to a civil penalty of up to $500, collectible in civil court by the aggrieved person. It is also an Unclassified misdemeanor, punishable by fine not less than $100 nor more than $500, imprisonment not less than 30 nor more than 60 days, or both (Civ. Rts. L. Sec. 41).

DISCRIMINATION GENERALLY: All persons within the jurisdiction of the State of New York are entitled to the equal protection of the laws of the state or any subdivision of it. No person can lawfully, because of race, creed, color, or national origin, be subjected to any discrimination in his civil rights by any other person, or by any firm, corporation or institution, or by the state or any agency or subdivision of the state (Civ. Rts. L. Sec. 40-c). Violations are Unclassified misdemeanors, punishable by fine of $100 to $500, imprisonment 30 to 90 days, or both (Civ. Rts. L. Sec. 40-d).

DISCRIMINATION AGAINST PERSON OR CLASS IN PRICE FOR ADMISSION: A person is guilty of a Class A misdemeanor who:

1. Owns, occupies, manages or controls a building, park, inclosure or other place, and

2. Opens the same to the public generally at stated periods or otherwise,

3. And discriminates against any person or class of persons in the price charged for admission thereto (Civ. Rts. L. Sec. 40-f).

PROTECTING CIVIL AND PUBLIC RIGHTS. It is a violation to

1. Exclude a citizen of this state, by reason of race, color, creed, national origin or previous condition of servitude, from:

a. Any public employment or employment in any capacity in industries engaged in defense contracts, or from

b. The equal enjoyment of any accommodation, facility or privilege furnished by innkeepers, common carriers, theatres or other places of amusement, or by teachers and officers of common schools and public institutions of learning; or,

2. Exclude a citizen of this state by reason of race, color, national origin or previous condition of servitude from the equal enjoyment of any accommodation, facility or privilege furnished by a cemetery association or associations; or

3. Deny or aid or incite another to deny to any other person because of race, creed, color or national origin:

a. Public employment or employment in any capacity in industries engaged in war contracts, or

b. The full enjoyment of any of the accommodations, advantages, facilities and privileges of any hotel, inn, tavern, restaurant, public conveyance of land or water, theater or other place of public resort or amusement.

Punishment is fine not less than $50 nor more than $500 (Civ. Rts. L. Sec. 44-a).

INNKEEPERS OR CARRIERS REFUSING TO RECEIVE GUESTS AND PASSENGERS: It is a Class A misdemeanor for a person who on his own account or as agent or officer of a corporation, carries on business as innkeeper, or as common carrier of passengers, to refuse, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger (Civ. Rts. L. Sec. 40-e).

CONVICT PROTECTED BY LAW: A convict sentenced to imprisonment is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he were not sentenced or convicted (Civ. Rts. L. Sec. 79-c).

DISCRIMINATION AGAINST UNITED STATES UNIFORM: A person who excludes from the equal enjoyment of any accommodation, facility or privilege furnished by innkeepers, common carriers, amusements or resorts any person lawfully wearing the uniform of the army, navy, marine corps or revenue cutter service of the United States (U. S. Coast Guard) because of that uniform, is guilty of a Class A misdemeanor (Civ. Rts. L. Sec. 40-g).

DISCRIMINATION AGAINST SIGHTLESS PERSONS ACCOMPANIED BY SEEING EYE DOGS:

1. A person who either on his own account or on behalf of any partnership, association or corporation excludes from the equal enjoyment of any accommodation, facility or privilege furnished by inn-

keepers, common carrier, theatres, restaurants, hotels or other public places of amusement or resort (except motion picture theatres),

2. Any sightless person accompanied by a seeing-eye dog, because of that fact (because of the dog)

3. Unless the admission of such person and dog would tend to create a dangerous situation,

4. Is guilty of a Class A misdemeanor (Civ. Rts. L. Sec. 40-h).

ORGANIZED MILITIA ENLISTMENTS AND DISCRIMINATION: It is a Class A misdemeanor for any person to deprive of employment or prevent employment of or obstruct or annoy any other person because the person is a member of the Organized Militia, or to dissuade anyone by threats to his employment or business from enlisting in it. (Mil. L. Sec. 251).

It is also a Class A misdemeanor for any association or corporation organized for promoting the success of the trade, employment or business of the members (unions, business clubs, trade associations, manufacturer's associations, etc.), to discriminate against any member of an Organized Militia on account of his membership (Mil. L. Sec. 252).

DISCRIMINATION AGAINST CHILDREN IN CITY DWELLINGS: Any person, firm or corporation in a city owning or having charge of an apartment house, tenement house or other dwelling who refuses to rent to a person or family solely on the ground that the person or family has or have a child or children, is guilty of a violation (fine $50-$100 each offense) (Real Property Law Sec. 236). The Real Property Law classifies this offense as a "misdemeanor," but Section 55.10, subd. 3a, Penal Law makes such offenses violations.

Having any lease clause that the tenant must remain childless or not bear children is a Class A misdemeanor (Real Property Law Sec. 237).

FEDERAL CIVIL RIGHTS CRIMES: The primary Federal criminal statutes are Sections 241 and 242 of Title 18, United States Code. All violations are investigated by the FBI.

CONSPIRACY OR DISGUISE STATUTE: This statute requires that two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the exercise or enjoyment of any right or privilege secured to him by the Constitution and laws of the United States. Note that persons cannot individually violate this provision—it requires a conspiracy. The conspiracy must be against a citizen, not merely a resident. It does not matter why the victim is oppressed—it is merely required that the oppression be wilful and intentional.

This law also prohibits two or more persons going in disguise on the highway or on the premises of another with intent to prevent or hinder his exercise or enjoyment of any right or privilege secured by the Constitution or the laws of the United States. Note that this part of the law does not mention "citizens" but applies to any victim. It cannot be violated by a single individual. It requires only a general criminal intent (Title 18 U.S. Code, Sec. 241). Penalties are severe for either violation—not more than $5,000 fine or 10 years imprisonment, or both.

COLOR OF OFFICIAL RIGHT: This Federal statute provides that "whoever, under color of any law, statute, ordinance, regulation or custom," deprives any inhabitant of any right, privilege or immunity under the Constitution or laws of the United States, or subjects any inhabitant to different punishments, pains or penalties, than citizens on account of his being an alien, or by reason of his color or race, is punishable by a fine of not more than $1,000 or imprisonment for not more than one year, or both (Title 18 U. S. Code, Sec. 242).

Note that this statute covers two violations—one the improper action under color of law, etc., the other subjecting a person to different punishments, etc., because he is an alien or because of his color or race. The first violation requires only general criminal intent and has nothing to do with color, race, creed, etc. The second violation requires the act be done because the victim is an alien or because he is of a particular race or color.

A usual case involving this statute has officers as subjects, ordinarily on charges of abuse of rights of prisoners or persons in custody. Note that private persons ordinarily do not act under "color of law," or subject persons to punishment, and so would not violate this law. A policeman exceeding his authority by the use of excessive or unnecessary force would violate it—a private individual beating his neighbor in a quarrel would not.

STATE CRIME OF OPPRESSION: A public officer or person pretending to be such who unlawfully and maliciously, under pretense of official authority, arrested another or detained him against his will or seized or levied upon his property or dispossessed him, committed the crime of Oppression under the old Penal Law (Sec. 854). Such crimes are now Criminal Impersonation (Section 75, this Manual, or Official Misconduct, Section 92, this Manual).

DISCRIMINATION IN EDUCATION (Educ. L. Secs. 3233, 3201—Violation and Misdemeanor). No person shall be refused admission to or be excluded from any public school in the State of New York on account of race, creed, color or national origin. Failure to comply is, for the first offense, a violation. All subsequent offenses are Unclassified misdemeanors (Educ. L. Sec. 3233).

INVESTIGATIONS

In receiving a complaint of a civil rights violation, officers should interview the complainant in full detail, taking signed statements if possible, and bearing in mind that they must determine not only that there was an exclusion or some other discriminatory act, but also the reason, since the law does permit a good deal of discrimination or choice. Thus, cemeteries can discriminate because of creed, race tracks can discriminate because of gambling background, a hotel can refuse to permit a man and woman of different races to register as a couple if it knows or honestly believes they are not married to each other, and so on.

Officers should take care to ascertain all pertinent statements made by the defendant, prior statements known, evidence of past exclusionary acts, classes of persons admitted and not excluded, and similar pertinent material which is or may be evidence of the specific reason for the discrimination complained of.

In case of any violation of the Federal civil rights laws, the FBI shall be immediately notified and furnished full facts.

Where seemingly pertinent, complainants should be informed of the local Commission for Human Rights, the State Commission for Human Rights or the availability of the United States Attorney General through the FBI (when there is no crime involved or only civil action seems to be required).

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40. COMMUNICATIONS

RADIOS IN AUTOMOBILES: It is an unclassified misdemeanor for any person who is not a peace officer to either equip an automobile with or knowingly use an automobile equipped with a radio receiving set capable of receiving signals on the frequencies allocated to police use.

Police officers are excepted, as are holders of Federal amateur radio operator's licenses operating a receiver in connection with a mobile transmitter (V&T Sec. 397).

POLICE RADIO MESSAGES: It is a like misdemeanor to in any way knowingly interfere with the transmission of radio messages by police without first having secured a permit to do so from the person authorized to issue such a permit by the local municipal governing body or board.

Violations are punishable by fine not over $1,000, imprisonment not more than 6 months, or both (V&T Sec. 397).

The law excepts persons who hold a valid amateur radio operator's license issued by the Federal Communications Commission and who operate a duly licensed portable transmitter-receiver on frequencies allocated by the Federal Communications Commission to licensed radio amateurs (V&T Sec. 397).

TELEPHONE AND TELEGRAPH COMMUNICATIONS: A person is guilty of Tampering with Private Communications when, knowing that he does not have the consent of the sender or receiver, he obtains or attempts to obtain from an employee, officer or representative, of a telephone or telegraph corporation, by connivance, deception, intimidation or in any other manner, information with respect to the contents or nature thereof of a telephonic or telegraphic communication (P.L. Sec. 250.25, subd. 3).

A person is also guilty of Tampering with Private Communications when, knowing that he does not have the consent of the sender or receiver, and being an employee, officer or representative of a telephone or telegraph corporation, he knowingly divulges to another person the contents or nature thereof of a telephonic or telegraphic communication. The provisions of this subdivision do not apply to such person when he acts to report a criminal communication under the requirements of Penal Law Section 250.35 (see next paragraph) (P.L. Sec. 250.25, subd. 4). Tampering with Private Communications is a Class B misdemeanor.

FAILING TO REPORT CRIMINAL TELEPHONE OR TELEGRAPH COMMUNICATIONS: It is the duty of a telephone or telegraph corporation and of any employee, officer or representative thereof having knowledge that the facilities of such corporation are being used to conduct any criminal business, traffic or transaction, to furnish or attempt to furnish to an appropriate law enforcement officer or agency all pertinent information within his possession relating to such matter, and to cooperate fully with any law enforcement officer or agency investigating such matter. A person is guilty of Failing to Report Criminal Communications when he knowingly violates any duty prescribed in this section (P.L. Sec. 250.35).

Failing to Report Criminal Communications is a Class B misdemeanor.

The prohibitions in Section 250.25, Penal Law do not apply to a law enforcement officer who obtains information from a telephone or telegraph corporation pursuant to Section 250.35 of the Penal Law (P.L. Sec. 250.25, subd. 3).

UNLAWFULLY OBTAINING COMMUNICATIONS INFORMATION: A person is guilty of Unlawfully Obtaining Communications Information when, knowing that he does not have the authorization of a telephone or telegraph corporation, he obtains or attempts to obtain, by deception, stealth or in any other manner, from such corporation or from any employee, officer or representative thereof:

1. Information concerning identification or location of any wires, cables, lines, terminals or other apparatus used in furnishing telephone or telegraph service; or

2. Information concerning a record of any communication passing over telephone or telegraph lines of any such corporation (P.L. Sec. 250.30).

Unlawfully Obtaining Communications Information is a Class B misdemeanor.

LETTERS, MAIL, ETC.

TAMPERING WITH PRIVATE COMMUNICATIONS: A person is guilty of Tampering with Private Communications when:

1. Knowing that he does not have the consent of the sender or receiver, he opens or reads a sealed letter or other sealed private communication (P.L. Sec. 250.25, subd. 1); or

2. Knowing that a sealed letter or other sealed private communication has been opened or read in violation of subdivision one of this section, he divulges without the consent of the sender or receiver, the contents of such letter or communication, in whole or in part, or a resume of any portion of the contents thereof (P.L. Sec. 250.25, subd. 2).

Tampering with Private Communications is a Class B misdemeanor.

It is a Federal crime, punishable by $2,000 fine or 5 years imprisonment or both, to take a letter, postcard or package out of any post office or authorized depository or from a mail carrier or to take such thing which has been in the mails before it is delivered to a person to whom directed, with intent to obstruct the correspondence or to pry into the business or secrets of another. This violation includes taking mail left by the carrier or from private mail boxes where deposited by the carrier.

It is also a Federal violation to steal or obtain mail by fraud from the post office or any postal facility.

These Federal violations are investigated by U. S. Postal Inspectors, who should be promptly notified of violations (Title 18 U. S. Code, Secs. 1703, 1708).

OFFENSES IN USE OF COMMUNICATIONS

PARTY LINES: A person commits the crime of Unlawfully Refusing to Yield a Party Line when, being informed that a party line is needed for an emergency call, he refuses to immediately relinquish the line (P.L. Sec. 270.15, subd. 2).

Unlawfully Refusing to Yield a Party Line is a Class B misdemeanor. A "party line" is a subscriber's line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number (P.L. Sec. 270.15, subd. 1-a). An "emergency call" is a telephone call to a police or fire department, or for medical aid or ambulance service, necessitated by a situation in which human life or property is in jeopardy and prompt summoning of aid is essential (P.L. Sec. 270.15, subd. 1-b).

ANNOYING OR ALARMING COMMUNICATIONS: It is the crime of Aggravated Harassment to communicate with a person, anonymously or otherwise, by telephone, telegraph, mail or any other form of communication, in a manner likely to cause annoyance or alarm, with intent to harass, annoy or alarm another (P.L. Sec. 240.30, subd. 1). Aggravated Harassment is a Class A misdemeanor.

JAMMING, OTHER NON-LEGITIMATE PHONE CALLS: It is also Aggravated Harassment for any person to make a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication and with intent to harass, annoy or alarm another (P.L. Sec. 240.30, subd. 2).

THEFT OF SERVICES (TELEPHONE, TELEGRAPH): A person is guilty of Theft of Services when, with intent to avoid payment by himself or another person of the lawful charge for any telecommunications service, he obtains or attempts to obtain such service or avoid or attempts to avoid payment therefor by himself or another person by means of

1. Tampering or making connection with the equipment of the supplier, whether by mechanical, electrical, acoustical or other means, or
2. Any misrepresentation of fact which he knows to be false, or
3. Any other artifice, trick, deception, code or device (P.L. Sec. 165.15, subd. 4).

Theft of Services is a Class A misdemeanor. It includes use of illicit credit cards.

EAVESDROPPING

A person is guilty of eavesdropping when he unlawfully engages in wiretapping or mechanical overhearing of a conversation. Eavesdropping is a Class E felony (P.L. Sec. 250.05).

1. Wiretapping is the intentional overhearing or recording, with instrument, device or equipment, of either a telephone communication or a communication by telegraph by someone other than the sender or receiver and without the consent of either the sender or the receiver (P.L. Sec. 250.00, subd. 1).
   a. There is no "wiretapping" in listening to a telephone conversation or telegraph message when the listening is "bare-eared," without any instrument, device or equipment, or when one is authorized to use an instrument, device or equipment by either the sender or receiver. For example, Officer Jones understands Morse code, and while in a local telegraph station, with exposed machine, hears code coming in over the wire and writes down the message. He has not "wiretapped."
2. Mechanical overhearing of a conversation means the intentional overhearing or recording of a conversation or discussion without the consent of at least one party to it, when done by a person not present at the conversation or discussion, and by means of an instrument, device, or equipment (P.L. Sec. 250.00, subd. 2).
   a. There can be no "mechanical overhearing" when the overhearing is accomplished without any instruments, device or equipment and only the naked ear is used, or when one party consents.
3. The wiretapping or mechanical overhearing is "unlawful" when it is not specifically authorized under Sections 813-a or 813-b of the Code of Criminal Procedure (P.L. Sec. 250.00, subd. 3).

EXEMPTIONS FROM EAVESDROPPING: The law exempts from wiretapping (but not from mechanical overhearing of a conversation) the normal operation of a telephone or telegraph corporation and the normal use of the services and facilities furnished by such corporation pursuant to its tariffs (P.L. Sec. 250.00, subd. 1).

POSSESSION OF EAVESDROPPING DEVICES: It is Possession of Eavesdropping Devices, a Class A misdemeanor, for any person, under circumstances evincing an intent to use or to permit the same to be used in violation of the eavesdropping law (P.L. Sec. 250.05) to possess any instrument, device or equipment designed for, adapted to or commonly used in wiretapping or mechanical overhearing of a conversation (P.L. Sec. 250.10).

FAILURE TO REPORT WIRETAPPING: A telephone or telegraph corporation is guilty of Failure to Report Wiretapping when, having knowl-

edge of the occurrence of unlawful wiretapping, it does not report such matter to an appropriate law enforcement officer or agency (P.L. Sec. 250.15).

Failure to Report Wiretapping is a Class B misdemeanor.

POLICE MONITORING OF COMMUNICATIONS LINES AND CONVERSATIONS

Section 813-a of the Code of Criminal Procedure permits a Supreme Court Justice or a County Judge to issue an order on a confidential basis and without notice to anyone ("ex parte order") permitting wiretapping or mechanical overhearing of a conversation by officers; the order must be based on an affidavit of an officer above the rank of sergeant that there is reason to believe that evidence of crime may thus be obtained.

Officers should note that the use of eavesdropping is not restricted by law to the investigation of any particular kind or degree of crime. The order may cover eavesdropping on a telephone or telegraph line or on conversations. The subject of the eavesdropping must be particularly described and the number of the line, if any, must be set out in the order.

Such orders are effective for the period set by the judge but not for more than two months in any case. At the expiration of the time set, orders may be renewed by the issuing judge.

ON JUNE 12, 1967, IN THE CASE OF BERGER VS. NEW YORK, THE SUPREME COURT OF THE UNITED STATES HELD THAT SECTION 813-a OF THE CODE OF CRIMINAL PROCEDURE PERMITTING EX PARTE ORDERS FOR EAVESDROPPING WAS TOO BROAD, RESULTING IN TRESPASSORY INTRUSION, AND WAS UNCONSTITUTIONAL.

MONITORING PERMITTED WITHOUT AN ORDER: In any case where any law enforcement officer has reasonable grounds to believe that evidence of a crime may be obtained by mechanical overhearing of a conversation and that time does not permit application for a court order before such monitoring commences, he may monitor such conversations. However, an application for a court order must be made as previously described, within twenty-four hours of the time monitoring begins. In addition, the application must contain the time when such eavesdropping commenced. Holidays are not considered in computing the twenty-four hours. If the order is denied, monitoring must cease at once. This privilege does not apply to wiretapping, which always requires a court order (CCP Sec. 813-b).

DIVULGING AN EAVESDROPPING ORDER: A person is guilty of Divulging an Eavesdropping Order when, possessing information concerning the existence or content of a court order issued pursuant to Section 813-a, Code of Criminal Procedure or concerning any circumstances attending an application for such an order, he discloses such information to another person. Such disclosure is not criminal or unlawful when made in a legal proceeding, or to a law enforcement officer or agency connected with the application for such order or to a Legislative Committee or Temporary State Commission, or to the telephone or telegraph corporation whose facilities are involved (P.L. Sec. 250.20).

Divulging an Eavesdropping Order is a Class A misdemeanor.

EVIDENCE OBTAINED BY MONITORING: Evidence obtained by legal monitoring whether from lines tapped or otherwise monitored or conversations monitored, is admissible in any civil or criminal action, in New York Courts, in spite of Federal statutory prohibitions against interception and disclosure of communications in Title 47 U. S. Code, Sec. 605 (Peo. vs. Dinan, 11 NY 2d. 350).

INVESTIGATIONS

In any case involving police-frequency radio in automobiles, care must be taken to ensure that an actual test of the illicit receiver is made, to establish receipt of police frequencies. In addition, an expert in radio mat-

ters should make an examination of the radio, for expert testimony that the radio could receive police frequencies.

In taking complaints dealing with divulging information in communications, the officer must be certain to pin down specific facts and details of the matter divulged, with exact times, dates and facts as to identification of violators.

In cases involving "jamming" telephones, it is proper to take detailed written statements from complainants, setting down the time and date of the calls and specific words said. Any factual information the victim may have to identify the offender should be obtained in detail. Where positive proof of identity is lacking, obtain permission to monitor the victim's telephone and consider obtaining an order to monitor the telephone of any suspect. Telephone companies may be able to offer valuable technical assistance in respect to crimes of this kind and the possibilities should be explored with ranking telephone company officials in proper cases.

In party line telephone cases, the officer must establish that the offender was in fact informed that the line was needed for an emergency call and that the emergency met the terms of the statute. A factor of identification of the offender is always present and if the complainant is not familiar with the offender, arrangements may be made for telephone and personal confrontation of the complainant and each potential user of the party line who could be the offender, for identification purposes. Officers should not overlook the value of proper interrogation of suspects in this kind of case.

In cases involving theft of services, officers should always work closely with telephone company sections assigned responsibility for attempting to determine to whom calls should properly be billed, since these persons are frequently able to make associations of persons and numbers which cannot be done by anyone not constantly working with such things.

POLICE RADIO COMMUNICATIONS

Police radio transmitters must be licensed by the Federal Communications Commission (FCC). Each Base Station transmitter must be licensed. All mobile stations are included under the main license. The FCC will assign appropriate frequencies and call letters. Police radio falls in the category of "Public Safety Radio Services" in FCC terminology and is covered by FCC Rules and Regulations, Part 89.

All adjustments and tests which may affect the proper operation of police radios must be made only by holders of first or second class commercial radio operator's licenses. Such license holders may be either a department member or an outsider, such as a radio shop owner or employee.

Police officers and dispatchers broadcasting over police voice radios are not required to have individual licenses.

FCC Rules and Regulations, Sec. 89.151, require that all police transmissions, regardless of their nature, shall be restricted to the minimum practical transmission time.

In all police agencies with radio broadcasting systems, clear general instructions should be in effect to ensure that the headquarters transmitter is in charge of the air and may order other units silenced for priority messages, regardless of the rank of persons using mobile equipment, including radio cars, in the field.

In an emergency, the headquarters transmitter can temporarily transfer command of the air to a ranking officer in the field. This should be a rare occasion and should be done on a formal basis. There should be no informal monopolizing of the air by mobile units in the field.

A list of emergency telephone numbers should be maintained at the dispatcher's desk. The list should be regularly checked and kept current

and complete. It should include hospitals, ambulance service, doctors available for emergencies, fire departments, coroner and medical examiners, garages, etc.

GENERAL REQUIREMENTS FOR PROPER TRANSMISSIONS: All transmission must be clearly enunciated. The microphone should be held exactly in front of the speaker's lips and about two inches away. The voice should always be free of emotion or stress. The speaker must be certain that a very brief pause is made after pressing the transmitter button and before speaking and that another very brief pause is made before releasing the button after speaking, to avoid chopping off parts of the transmission.

Inexperienced officers commonly fail to clearly enunciate and often chop off parts of their transmissions by pressing or releasing the transmitter button too late or too soon. All officers using any transmitter should receive substantial training to ensure that they use it properly. (A microphone-amplifier-loudspeaker or a tape recorder set-up should be used in training and not any actual radio transmissions).

Training should include practice in the use of established radio procedure of the department and in brief, clear wording of transmissions, whether information messages, requests for information or instructions.

Headquarters radio transmitters are distinguishable by sound from the mobile transmitters. It is thus not necessary for headquarters to always identify itself. FCC rules require only that the main station shall identify itself with its assigned call letters at least once each thirty minutes during each period of operation. Mobile transmitters (radio cars, walkie-talkies, etc.) must identify themselves with the geographic name of the governmental subdivision under whose name the main station is licensed (e.g., car two of the Southton, N. Y., Police Department would call itself "Southton two").

A usual, clear and brief routine would thus be: "Car two" (from headquarters); "Southton two" (from the mobile unit), "Complaint, Mrs. John Doe, one Main Street, family disturbance" (from Headquarters); "Southton two okay" (from the mobile unit). With these brief messages, headquarters has located car two in service, issued instructions to investigate a family disturbance based on a complaint, given the identity of the complainant and the location of the disturbance and has been informed by car two that the message was understood and that the instructions would be complied with.

Established procedures should also include routines for mobile units to inform headquarters when they go into service at the beginning of a tour of duty and when they go out of service from time to time during the tour. The initial call at the beginning of the tour will automatically give a check of the operating condition of the mobile units' radio equipment. The officer or officers using the equipment during the tour should be identified in this initial call.

A usual routine would be: "Southton two" (from the mobile unit); "Car two" (from headquarters); "In service, occupant 113" (from the mobile unit); "Okay two" (acknowledgement from headquarters, specifying which car is being acknowledged).

"Occupant 113" identifies the officer in Southton Car two in the preceding example. It is best to use numbers, usually badge or shield numbers, to identify officers on the air. It is more secure against unauthorized listeners and is more accurate and brief than using names. The headquarters radioman should of course have a complete list of officers' names and numbers, arranged in numerical sequence and also in name order. He should record the mobile units in use and the officers using them, as they call in.

In larger departments, where air time is very limited due to a large number of mobile units in use, it may be desirable to use a two-number code or the ten-system number code to save air time. Such codes permit added brevity. They require some training of officers in their use and it is necessary to provide officers with copies of the code.

Every department with radio should have standing instructions specifying what code, if any, may be used in radio transmissions and no codes should be used unless officially permitted.

A usable ten-system code is as follows:

10–1 Unable to copy
10–2 Signal good
10–4 Affirmative-granted-will do
10–5 Relay to
10–6 Busy
10–7 Signing off or out-of-service
10–8 In service now
10–9 Repeat
10–10 On detail, but subject to call
10–11 Remain in service
10–12 Visitors or officials present
10–13 Weather and road conditions
10–14 Correct time
10–15 Have in possession
10–16 Pick up
10–17 Urgent—Rush present detail
10–18 Any message for me?
10–19 No message for you.
10–20 What is your (the) location
10–21 Call . . . by telephone
10–22 Report in person to . . .
10–23 Arrived at scene
10–24 Finished with last assignment
10–25 Disregard last information
10–26 Holding subject, rush reply
10–27 Operator or officer on duty
10–28 Check motor vehicle department for name and description of registered owner and car description on license . . . or check motor vehicle department for chauffeur or operators license and all data on . . .
10–29 Check records for . . .
10–31 Is lie detector available?
10–32 Is drunkometer available?
10–34 Trouble at station, help needed
10–35 Major crime alert
10–36 Confidential information
10–41 Beginning tour of duty
10–42 Ending tour of duty
10–44 Message received by all concerned
10–50 Auto accident
10–51 Wrecker needed
10–52 Ambulance needed
10–55 Driving while intoxicated (DWI)
10–59 Convoy or escort
10–60 What is next number?
10–63 Any answer to our message
10–64 Message for local delivery
10–66 Cancellation
10–70 Fire
10–79 Report of progress on fire
10–87 Your paycheck is at . . .
10–88 Advise present phone number of
10–89 Radioman (needed or will arrive)
10–91 Too weak, talk closer to mike
10–92 Too loud, talk farther from mike
10–93 Frequency check
10–94 Give me a test transmission

Accuracy is of prime importance in radio work. Names should be spelled out in any instance where a file check is required or it is otherwise important that the correct spelling be known. Names should be spelled with a word-code by the officer transmitting. The following word code is good:

A	Adam	I	Ida	R	Robert
B	Boy	J	John	S	Sam
C	Charles	K	King	T	Tom
D	David	L	Lincoln	U	Union
E	Edward	M	Mary	V	Victor
F	Frank	N	Nora	W	William
G	George	O	Ocean	X	X-ray
H	Henry	P	Paul	Y	Young
		Q	Queen	Z	Zebra

In using the word-code for spelling, transmit as follows:

"... JONES, J-JOHN, O-OCEAN, N-NORA, E-EDWARD, S-SAM." Do not say: "J AS IN JOHN" or "J LIKE IN JOHN" or similar wordy recitals.

In cases where numbers must be transmitted, such as license and serial numbers, the receiving officer should repeat each completed number on the air so that the sending officer can verify that it was correctly heard and understood.

HEADQUARTERS TRANSMISSIONS: A ranking officer should always be in command of headquarters radio. A dispatcher trained in radio procedures may be permitted to send out routine complaints or other items as received, but all important messages, including instructions to make arrests, alarms of major crimes and similar things should be screened by the ranking officer to insure that proper instructions are issued, that important instructions are not overlooked and that problems of identification, force to be used, road blocks and similiar matters requiring police skill and experience are correctly handled. It should be the ranking officer's duty to also coordinate closely the work of the radio dispatcher and any complaint desk or officer, if complaint duties are not handled by the radio dispatcher.

FIELD TRANSMISSIONS: In order to keep transmission brief, officers should eliminate the use of unnecessary expressions or formal courtesies, such as "Roger," "Wilco," "Over and out," "Do you want to," "Will you please," "Yes, sir," "Thank you" and so on. Transmissions must be brief, businesslike and impersonal.

LISTENERS: It must always be remembered that police frequencies may be overheard by anyone on a large number of radio receivers purchasable almost anywhere. Consequently, matters of a confidential nature should not be put over the air except in extreme emergencies.

AUTHORITY: Standing instructions should exist in all departments having radio as to the authority of the headquarters dispatcher to make assignments of mobile units and officers and procedures for instances where mobile units have current assignments when they are called by the dispatcher to take a new assignment, or to take some police action of higher priority.

Generally speaking, the dispatcher should have final and complete authority as to assignments and all should understand that he is working closely with and expressing the instructions of the ranking officer in charge of communications.

The dispatcher should log all assignments as made and the exact time, for immediate reference and for a permanent record.

RADIO LOGS: Federal Communications Commission rules require that a radio log be maintained at each base (fixed) station from which transmissions are made (Federal Communications Commission Rules and Regulations, Section 89.175). Maintaining a log is also in accordance with proper police practice and procedure. Logs maintained by police agencies should include all transmissions and messages received and the exact time of each. Abbreviations may be used to reduce the work involved. These logs should also contain notations of exact time station identifying call letters were broadcast, and the full signature of the operator, showing time at beginning and end of his period of responsibility or tour of duty.

Mobile unit operators should not be required to keep radio logs. It is dangerous, since they will often be driving while receiving or transmitting.

POLICE TELETYPE SYSTEM

The Police Teletype System of the State of New York was instituted by law (Chapter 633, Sec. 1, Laws of 1931, now Executive Law, Sec. 217-220). It is referred to in the law as "the basic system."

Its purpose is the prompt collection and distribution of information throughout the State of New York as the police problems of the State require (Exec. Law Sec. 217). The law provides for establishment, operation and maintenance of the basic system by the Superintendent of State Police (Exec. L. Sec. 218).

The basic system may be used by any municipal, county, town, village, railroad or other special police department lawfully maintained by any corporation in New York, subject to the approval of the Superintendent of State Police, if, as and when in his discretion such use is requisite and necessary for the best interests of the entire system. Such local police agencies must, by law, agree to assume and pay all rentals for stations and any and all costs of installation and operation. The State Police will pay all rental for necessary wire mileage required to connect local police agency stations to the basic system (Executive L. Sec. 219).

No message may be sent on the basic system except upon the authority of a member of an organized police agency. The basic system is for official use only. No messages of a personal or private nature may be sent on it.

The basic system covers New York State. It is under control of the Communications Section, New York State Police Headquarters, Albany. The Section is supervised by the Director of Communications, New York State Police, through whom the Superintendent of State Police exercises control under Sec. 220 Executive Law. The system is computer-controlled by an electronic computer in the Communications Section.

MESSAGES TO NEW YORK DEPARTMENTS NOT ON THE BASIC SYSTEM: Messages will be automatically sent to the teletype station nearest or most accessible to the department to which directed, for forwarding by telephone or personal delivery, if such department is not on the basic system. No special instructions are required in messages to secure this service. However, it will only be done in case of messages sent direct to or for the attention of a particular department. General alarms will be sent only to stations on the basic system and if it is desired that one or more police agencies not on the basic system shall receive an alarm an individual direction to such agency or agencies is required.

MESSAGES OUTSIDE NEW YORK STATE: The basic system in New York is associated with police teletype networks throughout the country. Teletype messages, including general alarms, may be sent to out-of-state agencies so connected. There is no extra charge for this service.

MESSAGES FROM POLICE AGENCIES NOT ON THE BASIC SYSTEM: All stations on the basic system, including State Police Stations, will accept police messages from departments without teletypewriter service, for transmission without charge.

TELETYPE MESSAGES REQUIRED BY LAW: When any peace officer or police agency in New York receives a complaint that a felony has been committed and if the perpetrator thereof has not been apprehended within five hours after such complaint was received, such police agency shall cause information of such felony to be dispatched over the police communications system. Police agencies not connected with the basic system shall transmit such information to the nearest or most convenient teletypewriter station, from where it will be immediately dispatched in conformity with the regulations governing the system (Executive L. Sec. 221).

PERSONS WANTED: A teletype message requesting an arrest on authority of an officer of an organized police department in New York or elsewhere is ample authority (and reasonable grounds) for making arrests in those instances where officers may arrest without warrant for crimes not committed in their presence (Burton vs. New York Central RR, 210 NY 567; Opinion Attorney General, 11/29/32).

1. In those instances where an officer is only permitted by law to make an arrest with a warrant in his possession, a teletype message cannot lawfully be used as a substitute for the warrant.

2. Messages on persons wanted from agencies in states other than New York may be handled in accordance with Section 843 of the Code of Criminal Procedure, which permits arrest without a warrant upon reasonable information that the defendant stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year.

3. Messages on persons wanted from Canada or any foreign country must be handled in accordance with Federal law. Defendants can only be extradited by Canada or other foreign countries through the government of the United States, in accordance with Federal statute, treaties and conventions. Section 3184 of Title 18, United States Code, provides that any justice or judge of the United States, any United States Commissioner authorized by a U.S. District Court or any New York judge of a court of record of general jurisdiction may, on complaint made under oath, issue a warrant of arrest for a person charged with a crime in the jurisdiction of any foreign government, if the crime is one provided for by treaty or convention between the United States and that foreign government. The teletype message may be used as the basis for complaint by New York officers in such cases.

WARRANT AND EXTRADITION: All messages on persons wanted (whether File 5, or other classifications) must state whether a warrant has been issued or facts justifying arrest without a warrant. If no warrant has been issued and one is required the message must state "CHECKING ON WARRANT."

1. If a message is directed outside New York State, it must also state whether the requesting authority will extradite (e.g., "WARRANT ISSUED, WILL EXTRADITE") and if this fact has not been determined must state "CHECKING ON EXTRADITION."

2. No message concerning a person wanted will be relayed outside New York State unless it has a statement as to warrant and extradition.

3. An "ADDED INFORMATION" message should be directed to the same points as the original message as soon as the facts have been ascertained as to warrant and extradition if the original message stated "CHECKING ON WARRANT" or "CHECKING ON WARRANT AND EXTRADITION" or "WARRANT ISSUED, CHECKING ON EXTRADITION."

In cases where an arrest cannot lawfully be made without a warrant in possession of the arresting officer, a person wanted message may be sent restricted to New York only, stating that a warrant has been (or will be) issued and requesting a discreet investigation to locate the wanted person, with notice to the requesting department if the subject's whereabouts is determined so that the warrant may be forwarded to the locating department to make the arrest.

1. Wording such as "HOLD FOR INVESTIGATION," "DETAIN FOR THIS DEPARTMENT," etc., cannot be used in any messages

on persons wanted and messages containing such phrases will not be forwarded.

Messages on persons wanted should include all available information required to accurately identify the persons to be taken into custody, including the exact time of the crime or incident when known, in order to protect arresting officers.

1. When the fingerprint analysis (abbreviated "FPA") or the fingerprint classification (abbreviated "FPC") of a wanted person is known it shall be included in the person wanted message. If both are known, it is preferable to set out the fingerprint analysis.

2. Such messages shall also include any information known that the wanted persons are armed with a dangerous weapon or are otherwise dangerous or have suicidal tendencies.

CASES INVOLVING PROPERTY: In any case involving property in which the complainant's only or primary interest is recovery of the property a message must not be sent unless a warrant has been issued. This rule is for the protection of arresting officers.

STOLEN CARS: Whenever a stolen car is reported by a message on the basic system, and is recovered, it should not be released to any person unless and until a full cancellation of the message reporting it stolen has been sent by the department which originated the stolen message and has been received by the department which recovered the car.

EMERGENCY MESSAGES: Emergency messages may include only matters requiring immediate transmission and attention, such as hit-and-run, armed robbery, temporary whereabouts of wanted person, or other urgent matters.

CRIMINAL RECORD REQUESTS—NEW YORK STATE IDENTIFICATION AND INTELLIGENCE SYSTEM (NYSIIS): Requests directed to NYSIIS for record information will be sent to and handled by NYSIIS between 8:30 A.M. and midnight every day.

1. NYSIIS does its utmost to handle teletypwriter messages requesting information on an immediate basis. It is an imposition to request and in most cases an impossibility for them to check and reply on a long list of names on a teletype request. Except in a rare case of extreme emergency, lengthy lists of names to be checked should be sent by mail or otherwise and not over the basic system.

FIREARMS RECORDS: New York State Police Headquarters (Pistol Permit Section) maintains records of all pistol licenses issued in New York. It also keeps a lost or stolen weapons file, licensed pistol registration file and records of weapons purchased and sold by gun dealers (except gun dealer's records on purchases and sales in New York City). These files will be searched on request. Messages should be directed to "SP ALBANY, ATTN: PISTOL PERMIT SECTION." Requests to check New York City files on gun dealers' purchases and sales should be directed to the New York City Police Department.

BASIC SYSTEM ORGANIZATION: The basic system is a network of teletypewriter circuits throughout the state, terminating in a computer located at New York State Police Headquarters, Albany. This headquarters controls the computer and all circuits.

The computer, through automatic switching, relays all messages to and from the instruments in a New York State Police troop's area to their intended destination and to the troop Headquarters. The network of circuits is divided into districts, which are generally co-extensive with the territory covered by the various New York State Police installations, including the troop headquarters.

There are from one to ten teletypewriter machines on each circuit. They are located in State Police installations, in city, county and town police departments, and in sheriffs' offices and certain other agencies. All machines are equipped with "Selective Coding Equipment," which enables the individual machines to receive only those messages addressed to them. All machines are under the control of the computer.

COMPUTER CONTROL—GENERAL: There are a number of differences between an ordinary teletype system and one under computer control. The computer will perform the switching of messages, and do accounting of message traffic on an automatic basis.

It permits storing in the computer at Albany (and a computer in the Nationwide Crime Information Center (NCIC) at Washington, D. C.), data on license plates and property which can be almost instantly retrieved and sent by the computer to any machine inquiring, through the proper circuits.

It also permits "intercept" procedures. The computer at Albany can "hold" teletype traffic for a station whenever the station is out-of-service (due to routine maintenance, service trouble, or even change of paper). It can then forward the traffic when the station has returned to service.

Automatic sending machines can be used, in high-volume stations, to speed traffic.

In order to achieve the advantages which the computer permits, standard operating procedures and approved message format must be used at all times, and must be strictly adhered to. If proper procedures are not followed, the computer will not accept the message and will so notify the originating station.

All traffic will be transmitted exactly as received. The responsibility for the content of each message rests with the officer in charge of the originating station.

PREPARING TELETYPE MESSAGES

All messages transmitted over the basic system must be in the prescribed form and as brief as possible without losing clarity.

For detailed instructions on preparing and sending messages, officers are referred to The New York State Police Computer-Oriented Teletypewriter Operating Manual (prepared and published by the New York State Police), which may be found at all stations on the basic system or may be obtained from the Division of State Police, Albany.

MESSAGE CONTENT: Messages which do not conform in form or content will not be sent but will be returned to point of origin for correction. It is realized that content must be flexible due to conditions existing at the time a crime is committed, however, conformity to procedure will assist every department in the performance of its duty and minimize the danger of unnecessary delay in handling the original message and any added information or replies. It will also give maximum protection to the police officer when he acts on the information received over the teletypewriter system.

EXAMPLE: Messages consist of a heading, a body, an authority and a sender. Messages sent over the basic system must be in the form indicated by the following example:

1st line)	....NYAZ	
2nd line)	214	FILE 12 PD NYC APR 4-67 REPLY
3rd line)	....TO	PD JAMESTOWN NY CODE SIG 77

4th line) ....

5th line) ....MESA 381 FILE APR 3-67 DCT UNK W M

6th line) ....SUSPECT HARRY ROE WAS IN GLENTON NY FROM 8-30 AM TO 12:00 MID APR 2-67 ACCORDING TO RELIABLE WITNESSES-NO FURTHER INVESTIGATION BEING CONDUCTED ON ROE-WRITTEN REPORT FOLLOWS

Body of Message

2nd line below body) AUTH LT J H ROE SPACKLE 6-18 PM

1. The line preceding every message shall contain the Call Directing Code (CDC). The CDC is a necessary instruction to the computer so that it can route the message to its proper destination (in example, line 1).

2. The heading shows identity of message, origin and destination (in example, lines 2 and 3). It includes the message number, classification (kind) of message, department of origin, date, whether first or a later message in the matter of destination, any special handling desired (by "code signal") and in some specified instances, the subject of the message.

a. Each message must be designated by a number. Message numbers for each station run consecutively, starting with "1" for the first message sent from a station January 1, straight through to the last message on December 31 and beginning again with "1" the next year on January 1.

3. The reference line (if one is used) shows to what prior message the message relates. The reference is on line 5.

4. The body consists of the material following the heading and reference (except the last line). In preceding example the body begins with line 7.

5. The authority, sender and time sent make up the last line of any message. They show who authorized dispatch, the teletype operator and time message transmissions complete. In the preceding example, authority is "LT J H DOE," the sender is "SPACKLE." The time is always entered by the teletype operator.

PUNCTUATION: Punctuation marks are not used in messages and dashes must be used in place of commas, colons, semi-colons and periods.

NUMBERS: All numbers in messages must be in numerals except that decimals and fractions shall be in words, e.g., "ONE HALF" (not ½); "TEN AND SIXTEEN HUNDREDTHS" (not 10.16) or "FOUR AND THREE SIXTEENTHS (not 4 3/16).

SECOND LINE OF MESSAGES: The second line of every message must show, in order: Message Number, File Classification, name of department originating message, the date (and in every message except an original message, whether it is an added information, cancellation, correction, part cancellation and correction, part cancellation or a reply).

THIRD LINE OF MESSAGES: The third line of every message must show the direction of the message (to what station or stations or alarm it is being sent) and any code signal.

FOURTH LINE OF MESSAGES: The fourth line of every message is left blank.

FIFTH LINE OF ORIGINAL MESSAGES: In original messages the fifth line begins the body of the message, except messages dealing with (1) persons wanted or missing, (2) stolen motor vehicles, trailers or motorcycles, (3) vehicles used in or connected with a crime, and (4) lost or stolen license plates.

1. Messages concerning persons wanted or missing should list the persons' full names or brief descriptions, if names are unknown (e.g., "unknown white male," "unknown colored female"), and the license plate number of any vehicle in their possession, on the fifth line of the message. Sixth line is blank. Body of message begins on seventh line.

2. Stolen motor vehicle, trailer or motorcycle ("File 1") messages must carry the license plate number as the first item on line five in all such messages.

3. The license number shall be shown on the fifth line of all messages dealing with vehicles used in or connected with a crime.

4. The plate number of lost or stolen license plates must be shown as the first item on the fifth line of all messages dealing with such plates ("File 16" messages).

FIFTH LINE, OTHER THAN ORIGINAL MESSAGES: The fifth line of all messages other than original messages is the reference line. The reference line shall show: (1) whether the message relates to a prior message from the sending station ("REF," or "VOID" on cancellations), or from another station ("MESA"); (2) the message number of the original message; (3) the date of the original message; (4) whether the original message was sent direct ("DCT") or to all points ("APB"); and (5) the subject of the original message, including the name of persons first listed on the fifth line of the original message (if any such listing in the original).

1. The license plate number of any stolen motor vehicle, motorcycle, trailer or lost or stolen plate must be the first item on line five of any message relating to stolen vehicles or lost or stolen plates ("File 1" or "File 16" messages).

BODY OF MESSAGE: The body of every message should be as brief as possible. All messages are required to be clear and accurate. Telegraph style must be used in messages, leaving out all connecting words and which are not essential to clarity.

1. The first word in the body of every original message should, where possible, indicate the purpose of the message, e.g., "STOLEN," "WANTED," "BURGLARY," "RECOVERED," etc. This rule does not apply to File 1 or File 16 messages.

2. The crime involved must be specified by name in all original messages relating to crimes. The pertinent section of the Penal Law, Code of Criminal Procedure, etc. may be added for clarity where deemed necessary.

3. Where the bare name of the crime is not sufficiently descriptive, a brief notation of what the crime involved may be added, e.g., "CRIMINALLY NEGLIGENT HOMICIDE-HUNTING."

The time and place of the crime must always be set out in an original message. They should be set out in the first part of the message.

Information in the body of a message shall be set out in the following sequence, when applicable:

1. Name of subject (unless listed above the body of the message on the fifth line of an original message or in the reference line of any other message).

2. Name and brief facts of crime.

3. Time and place of crime.

4. Warrant data, whether will extradite.

5. Descriptions of persons, with items of description set out in the following order:

Racial description (White, Colored, American Indian, Chinese, etc.); Sex, age, height, weight, color hair and eyes;

Complexion, build;

Clothing, marks and scars, peculiarities;

Addresses, occupation, relatives.

EXAMPLE:

"W-F-28-5-5-120 LIGHT BRN HAIR-BRN EYES-FAIR COMP-MED BLD-BLUE PLAID KERCHIEF ON HEAD-BLK TOPCOAT-DK GREEN DRESS-BLK LOW HEEL SHOES-BLK BAG OVER SHOULDER-NO MARKS OR SCARS-UNDER MENTAL STRAIN-RESIDES 1 MAIN STREET-COHOES NY-UNEMPLOYED-MOTHER MRS JOHN R DOE-SAME ADDRESS"

6. Description of Motor Vehicles, with items of description set out in the following order:

License plate number, motor number and/or vehicle serial or identification number, year, make, model, color, distinguishing marks.

7. Description of Property, with items of description set out in the following order:

Name, make, model, serial number, color, material, size, peculiarities and markings.

EXAMPLES:

TYPEWRITER-ROYAL PORTABLE-SER 1J4813996-GREEN PLASTIC FRAME-CHEMICAL SYMBOLS ON KEYBOARD -NO CASE

WRISTWATCH-WALTHAM-SPRITE-SER UNK-WHITE GOLD-SMALL BAGUETTE DIAMONDS EACH SIDE-BRAIDED NARROW YELLOW GOLD WRIST BAND-ENGRAVED ON BACK CASE-TO JANE WITH LOVE

AUTHORITY FOR MESSAGES: Every message must show the rank and surname of the police member authorizing and responsible for the message (and his department if different from the department sending the message). "Authority" is shown by typing at left margin, on the second line below the body of the message, the abbreviation "AUTH" followed by the rank and name of authorizing officer.

FILE CLASSIFICATION CHART: The following File Classification Chart is required to be posted at every teletypewriter location associated with the basic system. This chart must be rigidly adhered to and the proper File Classification Number placed on every message. The File Classification Number assigned an original message must be used on all subsequent messages pertaining to and sent in connection with the same case. The File Classication number is used for message filing.

FILE CLASSIFICATION CHART

FILE	CLASSIFICATION
1	STOLEN MOTOR VEHICLES AND MOTORCYCLES

2 MOTOR VEHICLES—INFORMATION REQUESTS
3 EMERGENCY REPORTS TO DIVISION HEADQUARTERS
4 HIT AND RUN DRIVERS
5 PERSONS—WANTED OR ESCAPED
6 PERSONS—MISSING
7 BURGLARY
8 ROBBERY AND HOLDUP
9 PROPERTY—LOST OR MISSING
10 PROPERTY—STOLEN (LARCENY)
11 ASSAULT
12 HOMICIDE
13 GENERAL POLICE INFORMATION
14 ORDERS AND ADMINISTRATIVE MESSAGES
15 REQUESTS FOR INFORMATION (MISC.)
16 LOST OR STOLEN LICENSE PLATES
20 CRIMINAL INVESTIGATIONS (BCI ONLY)
24 LEGAL BULLETINS AND OPINIONS
25 MISCELLANEOUS MESSAGES
26 TROUBLE REPORTS
27 WEATHER BUREAU FALLOUT DATA
28 ROAD CONDITIONS AND WEATHER REPORTS
44 TEST MESSAGES

File 1: Use for all messages reporting stolen motor vehicles, trailers or motorcycles. In some agencies associated with the basic system, outside New York, stolen car messages are filed by license number and in others by motor, serial or identification number. It is thus necessary that all cancellations of File 1 messages list not only the license number but also the motor, serial or identification number, exactly as set out in the original message. The license plate number of the stolen vehicle must always be the first item on line five of any File 1 message except cancellations.

File 2: Use only for message involving requests for motor vehicle, trailer, motorcycle or drivers' license information either from outside New York or from the New York State Department of Motor Vehicles. Whenever possible, File 2 messages must include the subject's full name, including middle name or initial and his address and date of birth.

1. Where a message is sent to the New York State Department of Motor Vehicles concerning only a check of a name, the message should be directed to one of three sections of that Department, depending on the first letter of the subject's last name, as follows:

"TO DMV SEC 1"—(for A through G)
"TO DMV SEC 2"—(for H through O)
"TO DMV SEC 3"—(for P through Z)

2. Whenever a license plate number check is desired, the direction should be merely "TO DMV".

3. Department of Motor Vehicles conviction records are maintained on electronic data processing equipment and it takes several days to furnish complete information, as the data tapes are not updated every day, but at stated intervals. Accurate and prompt service can only be provided if the Department is given accurate and complete information. The subject's name, date of birth, sex and license identification

number must be furnished exactly as they appear on the person's operator's or chauffeur's license.

4. The following information should be considered as a guide to requesting information from the New York State Department of Motor Vehicles files to avoid unnecessary work and delayed communications:

a. Where only the previous record for Driving While Intoxicated or while Ability is Impaired is required, do not request complete record of all convictions.

b. Where only data on previous suspension or revocation of license are wanted, do not request complete record of all convictions.

c. Where only convictions in past 18 months are wanted, so specify.

d. In requesting check on nonresidents, specify that the subject is a nonresident, and pinpoint information desired. DMV maintains a file specifically showing speeding convictions and all vehicle and traffic misdemeanors involving nonresidents arrested in New York.

5. The electronic data processing includes only moving violations, vehicle and traffic misdemeanors and suspension and revocation data. Equipment violations, overload violations and non-moving violations (other than misdemeanors) are not included.

6. Where a complete accident and conviction record (known as a "safety record") is desired on a driver, the message should be sent promptly after the driver's arrest since the limitations of the electronic data processing will delay the reply. The request should specify "COMPUTER ABSTRACT REQUIRED."

Photostats from Department of Motor Vehicles: When photostats of drivers' licenses or any records are desired from the Department of Motor Vehicles, they should be requested directly of the Department by mail and no teletype message should be sent requesting photostats.

File 3: This classification is only used by the New York State Police.

File 4: This classification is solely for hit-and-run (leaving the scene of accident) motor vehicle or motorcycle violations. Original messages must always include as much information as possible pertinent to the wanted motor vehicle and driver. File 4 classification applies whether the hit-and-run involves property damage, personal injury or both.

File 5: Use for messages concerning crimes other than assaults, burglaries, homicides and robberies (which are File 11, File 7, File 12 and File 8 respectively). File 5 should also be used for messages requesting arrest or announcing that persons are wanted and subject to arrest, including escapees from prisons, jails and mental institutions. File 5's concerning escapees from mental institutions should be restricted to New York only, unless the authorities of the institution specifically desire dissemination outside New York. All File 5 original messages on persons wanted must begin the body of the message with "WANTED," followed by the name of the crime or other item justifying the arrest.

File 6: Do not use for persons wanted for a crime. Use only in cases of persons missing over 24 hours, except no waiting period is required in case of young children, females 18 years of age and under, mentally incompetent persons or persons known to have been operating a motor vehicle. All File 6 messages must include the time or approximate time the subject left home and must indicate that either the sending authorities or the family or parents will promptly assume the duty of returning children, youths and mentally incompetent persons when located. If the missing person was known to be using a motor vehicle, the license plate number should be included in the message.

File 7: Use specifically for burglary violations. Do not include any larceny without burglary. File 7 original messages must state the type of building burglarized, methods of entry, and complete description of property taken and persons wanted.

File 8: Use for all robbery violations. Messages must adequately describe property taken and persons wanted.

File 9: Use for all messages relating to property which has been lost or is missing, except motor vehicle license plates (which are classified in File 16). Stolen property cannot be the subject of a File 9 message, nor any property which has been the subject of a crime. Original messages must adequately describe the property involved.

File 10: Use for all messages dealing with stolen property or property which has been the subject of any larceny. This includes aircraft and boats (but not motor vehicles, trailers, motorcycles or vehicle license plates, as these are File 1 and File 16 respectively). Property involved must be adequately described. Long lists of unidentifiable property have little value and should not be sent.

File 11: Use only for assault cases. (Motor vehicle hit-and-run cases are not included in File 11 but are classified in File 4.)

File 12: All messages concerning homicides must be classified in File 12, including all criminal negligence homicides, whether vehicle or other.

File 13: Messages are to be classified in File 13 when they do not relate to a specific crime or arrest request in other file classifications and are of interest to police generally or in a special area. They may be sent direct to one or more stations or as all points bulletin as the facts indicate. File 13 messages would include reports of confidence games, notice that specific persons have been apprehended who may be wanted by other departments and their modus operandi (specifying distinctive or unusual features thereof). File 13's would also include notice that specific property has been recovered (including adequate description) and general police warnings. In all instances where a person is arrested for a serious crime his name, aliases, description and fingerprint analysis or classification should be sent as an all points bulletin under File 13 for the information of all departments on the basic system.

File 14: This classification is only used by the New York State Police.

File 15: Use on messages requesting information from special files, arrest or criminal records, firearms records, dog licenses, ear tags, birth, marriage and death records, aircraft license data, lost, missing or overdue aircraft and other types of information.

File 16: Use only for messages dealing with motor vehicle or motorcycle license plates, whether lost or stolen. List plate numbers at beginning of 5th message line. The plate number must always be the first item on the fifth line of any File 16 message.

File 20: This classification is only used by the New York State Police.

File 24: Use on all messages concerning notice of new laws, legal opinions, legal bulletins and inquiries concerning laws or legal opinions. It is largely used by the New York State Police but may be used by any agency.

File 25: Use for all messages not dealing with crime and which do not fall within any file classification previously set out. It would include messages concerning notification of relatives of persons who have been killed. No messages may be sent under a File 25 classification in criminal cases.

File 26: Any report of trouble on the basic system or with a teletypewriter installation should be File Classification 26.

File 27: This classification is used solely for official fallout data.

File 28: This is used for road condition and weather reports.

File 44: Used for test messages.

SAMPLE MESSAGES: The following are some examples of proper messages, in order of File Classification.

EXAMPLE (FILE 1):

a. **STOLEN VEHICLE ALARM**

EBRESPPDQLIS
235 FILE 1 SP BATH NY MAY 1-67
TO APB
.4A7530.NY.68..
11101012072104.
66.MERZ.230.4D.LBL.
050167
NY15001.
EB235
STOLEN GHENT 9-11 PM OWNER J F DOE.
AUTH SGT E. J. ROE SMITH 1130PM

b. **NOTICE OF RECOVERY OF MOTOR VEHICLE**

FBRYEB
636 FILE 1 SP LEEDS NY MAY 16-67 REPLY TO SP BATH NY.
MESA 235 FILE MAY 1-67 APB RE MERZ
.4A7530.NY.68..11101012072104.
051667.NY14901FB636.HELD—NOT DRIVEABLE.
STORED JONES GARAGE SENECA FALLS—JOHN COE IN CUSTODY—DOB 12/23/35—RESIDES 217 MARKET ST AMSTERDAM NY—NO CHARGES PENDING AT THIS STATION—WILL BE RELEASED TO YOUR PATROL—NOTIFY OWNER TO CALL AT THIS STATION TO SIGN RELEASE.
AUTH SGT MILLER SULLIVAN 12-00 N

c. **CANCELLATION OF A FILE 1 MESSAGE**

EBRXSPPQLIS
250 FILE 1 SP BATH NY MAY 16-67 CANCEL TO APB
VOID 235 FILE MAY 1-67 APB
.4A7530.NY.68..
11101012072104.
66.MERZ.230.4D.LBL.
051667.
NY15001.
EB235.
RECOVERED LEEDS NY.—JOHN COE IN CUSTODY.
AUTH SGT SMITH SMITH 10-00 AM

EXAMPLE (FILE 4):

a. **HIT AND RUN DRIVERS**

DCSPPD
578 FILE 4 SP HERKIMER NY APR 5-67
TO APB NYS ONLY

WANTED FOR LEAVING THE SCENE OF AN ACCIDENT —OPERATOR OF BLACK 1958 SED—PROPERTY DAMAGE/OR PERSONAL INJURY/—ABOUT 9-15 PM—TWO MILES EAST OF HERKIMER—RTE 5—CAR TRAVELING WEST—WARRANT WILL BE OBTAINED.
AUTH SGT RILEY BOCK 9-30 PM

EXAMPLE (FILE 5):

a. **PERSONS WANTED OR ESCAPED**
NYSPPDQCIS
116 FILE 5 PD NYC APR 15-67
TO APB ATTN PD SUFFOLK CO NY
MARY BAKER
WANTED FOR GRAND LARCENY—WAREX—DISHONEST DOMESTIC—STOLEN BLK PERSIAN LAMB COAT—BEARING LABEL WITH NAME GLADYS—ALSO TOOK $345 IN CASH—W-F-21-5-7-140—DK BRN HAIR—BLUE EYES—FAIR COMP—MED BLD—LIGHT BLUE COAT—FLOWERED DRESS—BLK PUMPS—MOTHER MRS MARGARET BAKER—1406 VISE AVE APT 10—BRONX NYC
AUTH AND SENT SGT GRANT 12-40 PM

EXAMPLE (FILE 16):

a. **LOST OR STOLEN LICENSE PLATE**
DRRGSPPDQLIS
13236 FILE 16 PD ROME NY APR 15-67
TO APB
.2Y6245.NY.66..2.
041567.
NY03201.
DR13236.
STOLEN
AUTH PTL WILL NORTH 356 PM

b. **CANCELLATION OF A FILE 16 MESSAGE**
DRRLSPPDQLIS
13299 FILE 16 PD ROME NY APR 18-67 CANCEL
TO APB
VOID 13236 FILE APRIL 16-67 APB
.2Y6245.NY.66..2.
041867.
NY03201.
DR13236.
RECOVERED.
AUTH PTL WILL NORTH 423 PM

SPECIAL FILES. At Division Headquarters, Albany, the computer contains lost and stolen license plates, and stolen or wanted motor vehicles and motorcycles filed by license plate and/or vehicle identification number, including vehicles used in the commission of a crime. The computer will shortly also contain lost or stolen guns, lost or stolen property, vehicle parts (by identification or serial number), and persons wanted or missing. Until all such information becomes available in the computer, it is available in files maintained at State Police Headquarters, Albany and all messages reporting recovered property, arrested persons, and requests for criminal information will be checked against these files.

1. The file on plates contains New York, New Jersey and New England states plates, which were reported in File 1 or File 16 messages, and will be automatically entered, by use of Code "RE" or

"RG" with the Call Directing Code (CDC) in the first line of the message.

2. All other license plates must be entered by Troop or Division Headquarters by use of a "dedicated" machine, using Code "RF". A license plate can be checked in the computer only from "dedicated" machines which are located in New York State Police State and Troop Headquarters Communications Sections, and in certain large police departments. Any police agency not equipped with a "dedicated" machine can check a license plate against the license plate file by contacting the nearest State Police station or Troop Headquarters, by any means of communication. Within five seconds after the inquiry is made by the Troop Headquarters it will receive an answer for relay to the inquirer. If the inquiry concerns a plate from other than New York State or one of the New England States, it will be automatically forwarded by the computer to the Nationwide Crime Information Center (NCIC) in Washington, D. C., and checked against the files in their computer, which includes information from all other states. A reply will be sent from NCIC within approximately two minutes.

NATIONAL CRIME INFORMATION CENTER. (NCIC.) In January, 1967, a computerized National Crime Information Center began operation in the offices of the Federal Bureau of Investigation in Washington, D. C. This center will maintain in its computer information on stolen vehicles and plates, stolen or missing guns, individual serially numbered property items valued at $1,000 or more, multiple serially numbered property items totaling $5,000 or more in one theft, and persons wanted for felonies, all of which will be contributed to it from various terminals located in certain states and large metropolitan areas. It is anticipated that eventually there will be at least one terminal in every state.

1. The New York State Police, through its computer, will supply the NCIC with information from New York State, New Jersey and all of the New England States, when the information is received in the proper format.

a. Inquiries directly into the New York State Police Computer can be made by New York State Police State and Troop Headquarters, and by certain other police agencies over "dedicated" teletype machines. All other agencies can make inquiries through any State Police installation.

b. Inquiries made via the "dedicated" teletype machines, concerning license plates of states not kept in the New York State Police computer, or by vehicle identification number, will be automatically transmitted to the NCIC when in the proper format.

c. Inquiries into NCIC regarding guns, property, and persons wanted for felonies, can be made only through Division Headquarters.

d. A negative response to any inquiry should not preclude any additional logical checks of other sources.

CANCELLATIONS AND CORRECTIONS. A cancellation is advice that a prior message is no longer valid and that no further action is to be taken in respect to the prior message. A correction amends a previous message. Stations are responsible for sending promptly all necessary full or part cancellations and all corrections. Failure to cancel or correct a message or part of a message may result in serious harm when police action is taken on the basis of a message which should have previously

been cancelled or corrected and was not. The responsibility for any such occurrence will be placed squarely on the offending department and its responsible personnel.

MESSAGE RECORD SHEET. Each teletypewriter control point must list and periodically check status of all teletype messages originating in its area which are subject to cancellation. A form similar to the one shown should be used by other stations. Messages should not be entered on the form until they are ready for filing on the fourth day after their receipt.

1. Each teletype installation is expected to use the form to list in numerical order all messages originating at the installation. Several entries have been made on the form for the purpose of demonstrating its application. Messages which are subject to future cancellation should be checked at least once each month to keep all files clear of inactive messages.

2. In Column 2, "origin", designated for each message, the agency originating the message.

HASKINS POLICE DEPARTMENT
TELETYPE MESSAGE NUMBER AND CANCELLATION RECORD

Msg. #	*Origin*	*File*	*Date*	*Summary*	*Cancel Msg. #*
1	Haskins	4	4-15-66	Hit-RunA/A	
2	"	5	4-15-66	John Jones, Petit Larc.	36
3	"	11	4-16-66	Assault Case	
4	Lake Como	6	4-16-66	Leo Moran, Missing	

41. COMPOUNDING A CRIME; COMPROMISE OF CRIME

It is the crime of Compounding a Crime to refrain, for some benefit, from initiating prosecution of a crime. Under certain circumstances, however, the law permits "compromising" most misdemeanors. This consists of acknowledging in open court that a victim has received satisfaction. The court may then order prosecution stayed, and discharge the defendant. No felony can be compromised.

COMPOUNDING A CRIME: A person is guilty of Compounding a Crime who:

1. Solicits, accepts or agrees to accept,
2. Any benefit,
3. Upon an agreement or understanding,
4. That he will refrain from initiating a prosecution for a crime (P.L. Sec 215.45, subd. 1-a).

A person is also guilty of Compounding a Crime who:

1. Confers, or offers, or agrees to confer,
2. Any benefit,
3. Upon another person,

4. With an agreement or understanding,

5. That such other person will refrain from initiating a prosecution for a crime (P.L. Sec. 215.45, subd. 1-b).

Compounding a Crime is a Class A misdemeanor.

DEFENSE TO COMPOUNDING A CRIME: It is an affirmative defense to any prosecution for Compounding a Crime that the benefit involved did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the crime (P.L. Sec. 215.45, subd. 2).

COMPROMISE: When a defendant is brought before a magistrate or has been held to answer on a misdemeanor charge, the crime may be compromised if:

1. The person injured by the crime has a remedy by civil action, *and*

2. The crime was *not* committed:

a. By or upon an officer of justice while in execution of the duties of his office, or

b. Riotously, or

c. With intent to commit a felony (CCP Sec. 663).

Compromise is accomplished by the person injured appearing before the magistrate (or the court to which the magistrate, under Section 221 of of the Code of Criminal Procedure, must forward depositions and statements in the case) and acknowledging in writing that he has received satisfaction for the injury. The magistrate or court may then, on payment of court costs and expenses, order all proceedings stayed, and discharge the defendant. Such an order is a complete bar to prosecution (CCP Sec. 664, 665). Whether the order should be issued is within the discretion of the magistrate or court. It is not a matter of right on the part of either the victim or the defendant.

INVESTIGATIONS

Officers will note that although "Compounding" is a crime, the law permits a procedure a little like "compounding," under the permission of the "compromise" sections of the Code of Criminal Procedure. One can compound either felonies or misdemeanors when the benefit paid to refrain from initiating prosecution is not more than what the one compounding reasonably thought was due as repayment for the harm done by the crime (under Section 215.45, subdivision 2, Penal Law).

Compounding a Crime violations, may be reported from any source, including an aggrieved party to a compounding who feels he has been cheated of the benefits of his illegal agreement. In the initial interview with a complainant care must be taken to develop the facts of the crime which was compounded. In many instances this will not have previously come to police attention. As in many other types of cases, where there is any emotional or vengeful quality to the complaint, the officer must take advantage of this by developing the facts as fully as possible before the complainant (or other source) begins to "cool off" and "dry up."

There is no requirement in the law that there be a specific kind of payment or benefit involved in a "compounding" violation. The benefit could be payment of cash, an agreement to furnish business, consent to furnish sex relations or any other profit, advantage or privilege.

42. CONSERVATION LAW

The parts of the Conservation Law most pertinent to the Police officer are Sections 150 through 394, known as "The Fish and Game Law" (Conserv. L. Sec. 150).

By law, the State of New York owns all fish, game, wildlife, shellfish, crustacea and protected insects in the state except those legally acquired and held in private ownership. Any person who kills, takes or possesses any of them thereby consents that title thereto shall remain in the state for regulation and control (Conserv. L. Sec. 151). Any hunting, fishing or other taking of such things or possession of them can only be as permitted by The Fish and Game Law (Conserv. L. Sec. 152).

The Fish and Game Law controls hunting, fishing, and trapping of fish and game and the taking of shellfish, lobsters, clams and oysters and protected insects. There are limitations on size which may be taken, on quantity which may be taken and when and how such things may be taken. The law defines "taking" as meaning pursuing, shooting, hunting, killing, capturing, trapping, snaring and netting fish, game, shellfish, crustacea and protected insects and all lesser acts such as disturbing, harrying, worrying or placing, setting drawing or using any net or other device commonly used to take any such animal (Conserv. L. Sec. 154, subd. 13).

AUTHORITY OF OFFICERS: Peace officers have all the authority of a conservation officer under The Fish and Game Law except authority to search without a warrant (Conserv. L. Sec. 380, subd. 3).

CONSERVATION OFFICERS: Conservation Officers, Special Game Protectors, forest rangers and State Police may, without a warrant, search any boat, vehicle or anything else, including creels, game bags and other containers and the contents of any building except a dwelling whenever they have cause to believe any law for the protection of fish, shellfish, crustacea, wildlife, game or protected insects has been or is being violated (Conserv. L. Sec. 380, subd. 4-b).

VIOLATIONS: Section 387 of the Conservation Law specifies which violations are misdemeanors under the law. All other violations are infractions (Conserv. L. Sec. 386, subd. 1-b).

ARRESTS: Arrests for conservation misdemeanors may be made under the same rules as for any other kind of misdemeanor.

The Conservation Law provides that in case of infractions, summonses may be issued (Conserv. L. Sec. 388, subd. 2-b).

PRESUMPTIONS: Possession of any fish, shellfish, crustacea or game or parts thereof, at a time when there is no open season anywhere in the state for the species possessed, is presumptive evidence that they were taken unlawfully. Also, possession is presumptive evidence that the taking was by the one in possession (Conserv. L. Sec. 385).

SEIZURES: Officers may seize without warrant any fish, shellfish, crustacea, wildlife, game or parts thereof whenever they have cause to believe it is illegally possessed or transported or bears signs of illegal taking. The same rule applies to any illicit snare, net or trap or any device (including birds or dogs) possessed or used in violation of The Fish and Game Law (except boats, vehicles or aircraft). A firearm may be so seized only if cause exists to believe it was used in a misdemeanor violation re wild deer (Conserv. L. Sec. 380, subd. 4-e, f).

SEARCH WARRANTS: A search warrant for things taken or possesed in violation of The Fish and Game Law may be obtained, on grounds that it "appears probable" that such things are concealed, from any justice of the peace, police justice, county judge, judge of a city court or any

magistrate having criminal jurisdiction (Conserv. L. Sec. 382). All warrants are returnable to the magistrate who issued them (Conserv. L. Sec. 386, subd. 5).

COURTS: Courts of Special Sessions and Police Courts have exclusive jurisdiction over all misdemeanors and infractions under The Fish and Game Law, except second offenses taking deer out of season, illegal taking of doe deer or taking deer by aid of artificial light, and violations as to shellfish from uncertified areas. These violations must be handled in a court of record (Conserv. L. Sec. 386, subd. 3-a, b).

An action in county court must be in the county where the violation occurred. An action before a justice of the peace must be before a justice of the town where the violation occurred or of any adjoining town. An action before a police justice who is not a justice of the peace must be before one having actual territorial jurisdiction of the place where the violation occurred. An exception to these jurisdictional rules is that actions concerning failure to fill out and forward to the Department of Conservation a duplicate deer tag from a big game license or archery license (under Sec. 234 of the Conserv. L.) or failure to fill in and forward a special muskalonge license (under Sec. 270 of the Conserv. L.) may be brought in any town or city in the state (Conserv. L. Sec. 386, subd. 4).

Specific violations may be determined from the Conservation Law itself. The Conservation Department issues annually copies of the current Fish and Game Law, with detailed index, or McKinney's Consolidated Laws may be consulted.

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43. CONSPIRACY

CONSPIRACY DEFINED: A person is guilty of conspiracy who:

1. With intent that conduct constituting a crime be performed.
2. Agrees with one or more persons
3. To engage in, or
4. To cause
5. The performance of such conduct (P.L. Sec. 105.00-105.15).

DEGREES OF CONSPIRACY: If the intent and agreement are for conduct constituting a crime, it is conspiracy in the fourth degree (P.L. Sec. 105.00). If for conduct constituting a felony, it is third degree (P.L. Sec. 105.05); for a Class B or Class C felony, second degree (P.L. Sec. 105.10) and for murder or kidnapping in the first degree, first degree conspiracy (P.L. Sec. 105.15).

The classes of crime constituted by the degrees of conspiracy are:

Fourth Degree—Class B Misdemeanor

Third Degree—Class A Misdemeanor

Second Degree—Class E Felony

First Degree—Class C Felony

OVERT ACT: The old law was that a mere agreement does not complete the crime of conspiracy. Some act must be done to effect the object of the conspiracy. Any such act is an "overt act" (Peo. vs. Hines, 284 NY 93). The new Penal Law confirms this established rule by specifically providing (P.L. Sec. 105.20) that a person cannot be convicted of conspiracy unless an overt act is alleged and proved to have been committed (1) by one of the conspirators and (2) in furtherance of the conspiracy:

1. Experienced officers will recall that under the old Penal Law no overt act was required in conspiracy to commit a felony upon the

person or to commit arson or burglary. This is no longer the law and conspiracy requires an overt act in all instances.

2. An overt act need not be something criminal in itself. Thus, if A and B conspire to commit arson by burning B's house and B then purchases five gallons of gasoline in a container to use in the burning, the act of buying gasoline is an overt act but is not in itself a criminal act.

SPECIAL CONSPIRACIES: Certain special conspiracies under the old Penal Law (P.L. Sec. 1173, subd. 7, to engage in fraudulent petition or other fraud concerning an insolvent debtor; P.L. Sec. 1423, subd. 6, to commit crimes re telephone and telegraph lines; P.L. 1436, to commit depredations against military or naval equipment supplies, or stores; P.L. 2052, to steal, destroy, mutilate or conceal a will) have been omitted from the new law. Under the new law such crimes would be ordinary conspiracies (P.L. Sec. 105.00-105.15).

(1) Conspiracy to promote or prevent election to public office by unlawful means is now Section 446, Election Law and conspiracy to manipulate the price of stocks, bonds and securities is Section 339-b, General Business Law.

WHAT IS NO DEFENSE: It is no defense to a prosecution for conspiracy that one or more of the defendant's co-conspirators could not be guilty of either conspiracy or the object crime because of:

1. Criminal irresponsibility, or
2. Other legal incapacity or exemption, or
3. Unawareness of the criminal nature of the agreement, or
4. Unawareness of the criminal nature of the conduct agreed upon, or
5. Unawareness of the defendant's criminal purpose, or
6. Any other factors precluding the mental state required for the commission of either the conspiracy or the crime which was its object (P.L. Sec. 105.30).

JURISDICTION AND VENUE: A person may be prosecuted for conspiracy in the county in which he entered into the conspiracy or in any county in which an overt act in furtherance of the conspiracy was committed (P.L. Sec. 105.25, subd. 1).

1. If a conspiracy agreement is made in New York to engage in or cause the performance of conduct in some other jurisdiction, the crime of conspiracy can be prosecuted in New York only if the conduct would be a crime under both the laws of New York and the laws of the other jurisdiction (P.L. Sec. 105.25, subd. 2).

2. If a conspiracy agreement is made in another jurisdiction to engage in or cause the performance of conduct which would be a crime in New York, the crime of conspiracy can be prosecuted in New York if an overt act in furtherance of the conspiracy is committed in New York.

a. In such cases, it is no defense to the prosecution in New York that the conduct which was the object of the conspiracy would not constitute a crime under the laws of the other jurisdiction if performed therein (e.g., if a conspiracy to commit gambling crimes in New York is entered into by A and B in Nevada, it is no defense to a prosecution of A or B for an overt act in New York that gambling is legal in Nevada).

FORMER EXEMPTIONS: Section 582 of the old Penal Law specifically exempted from the conspiracy statutes union or collective bargain-

ing activities re wages or compensation, and marketing agreements and practices of farmers, livestock farmers, gardeners, fruit growers and dairymen. This provision was omitted from the new Penal Law.

INVESTIGATIONS

Conspiracy is a useful charge in many types of cases and may be found especially helpful in gambling cases.

Where the conspiracy or overt acts are to be proved through eavesdropping evidence, care must be taken to obtain clear proof of identity of those whose conversations were listened to.

It is rarely advisable to make summary arrests for conspiracy. Before securing warrants of arrest, it is well to review the case with the District Attorney to determine that sufficient evidence of a prima facie case is available for successful prosecution.

Proof of a conspiracy may be by direct evidence of the agreement or by circumstantial evidence in the form of proof of acts showing a common design on the part of the conspirators to accomplish the unlawful object. Officers must be certain that proof is obtained not only of the agreement but of an overt act which can be proved to be in furtherance of the agreement.

Where all elements of conspiracy are lacking, officers should consider whether criminal solicitation may be charged (see Section 51, "Criminal Solicitation," this Manual).

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44. CORPORATE OFFICIAL MISCONDUCT

MISCONDUCT BY CORPORATE OFFICIAL: A person is guilty of Misconduct by Corporate Official when, being a director of a stock corporation, he knowingly concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended:

1. To make a dividend except in the manner provided by law; or
2. To divide, withdraw or in any manner pay to any stockholder any part of the capital stock of the corporation except in the manner provided by law; or
3. To discount or receive any note or other evidence of debt in payment of an installment of capital stock actually called in and required to be paid, or with intent to provide the means of making such payment; or
4. To receive or discount any note or other evidence of debt with intent to enable any stockholder to withdraw any part of the money paid in by him on his stock; or
5. To apply any portion of the funds of such corporation, directly or indirectly, to the purchase of shares of its own stock, except in the manner provided by law (P.L. Sec. 190.35, subd. 1).

A person is also guilty of Misconduct by Corporate Official when, being a director or officer of a stock corporation:

1. He issues, participates in issuing, or concurs in a vote to issue any increase of its capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of law; or
2. He sells, or agrees to sell, or is directly or indirectly interested in the sale of any share of stock of such corporation, or any agreement to sell the same, unless at the time of such sale or agreement he is an actual owner of such share. This does not apply to a sale by or on behalf of an underwriter or dealer in connection

with a bona fide public offering of shares of stock of the corporation (P.L. Sec. 190.35, subd. 2).

Misconduct by Corporate Official is a Class B misdemeanor.

INVESTIGATIONS

Cases under this classification will not be common for the usual police agency. In most such cases it will be advisable to carefully cover, at the beginning of the investigation, with the District Attorney or his designated assistant, the technical details of the corporation and its organization, etc., so that proper plans can be made for obtaining useful proof.

Much documentary evidence may be anticipated in cases of this type and care must be taken from the beginning to properly obtain and identify each such item for later use as evidence.

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45. CREATING A HAZARD

CREATING A HAZARD: A person is guilty of Creating a Hazard who:

1. Having discarded,
2. In any place where it might attract children,
3. A container which has:
   a. A compartment of more than 1½ cubic feet capacity, and
   b. A door or lid which locks or fastens automatically when closed, and
   c. Which cannot easily be opened from the inside,
4. Fails to remove:
   a. The door, or
   b. The lid, or
   c. The locking or fastening device (P.L. Sec. 270.10, subd. 1).

A person is also guilty of Creating a Hazard who:

1. Being the owner of, or
2. Otherwise having possession of
3. Property,
4. Upon which an abandoned well or cesspool is located,
5. Fails to cover the same with a suitable protective construction P.L. Sec. 270.10, subd. 2).

Creating a Hazard is a Class B misdemeanor.

INVESTIGATIONS

Creating a Hazard is derived from sections of the old Penal Law entitled "Abandonment of Containers Attractable to Children at Play" and "Abandoned Wells or Cesspools," (Secs. 1920, 1923). They have been changed somewhat in their elements and officers should carefully study the new laws to become familiar with their requirements. It is not necessary, under this law, that any child be endangered or injured or that any other person be endangered or injured.

In the container type of case, a major difficulty will often be found in proving or establishing that the defendant actually discarded the container, i.e., in proving ownership or connection. In addition, proof must be brought forward that the place where abandoned is one where children might be attracted to the container. In such cases, it is well to hold the

container itself as evidence and if this is impracticable for any reason, to take adequate photographs of it to establish its capacity, automatic locking, lack of easy inside lock openings, etc. In all instances, photographs should be supplemented by testimony of the officer, based on careful observation and measurements. The officer should make and preserve notes of his measurements and observations.

In the well or cesspool type of case, the officer should take care at the outset to pinpoint responsibility as to either owner or occupant, as facts warrant. In the absence of testimony to the contrary, the owner, as shown by county or other real estate records, may initially be considered the responsible person.

The statute, by its terms, does not permit a mere cover on a well or cesspool. It requires a "protective construction."

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46. CRIMINAL ANARCHY

CRIMINAL ANARCHY: A person is guilty of Criminal Anarchy who:

1. Advocates the overthrow of the existing form of government of this state by violence, or

2. Publishes, sells or distributes any document which advocates the overthrow of the existing form of government of this state by violence,

   a. With knowledge of the contents of such document, or

3. Becomes a member of any organization which advocates the overthrow of the existing form of government of this state by violence,

   a. With knowledge of such organization's purpose (P.L. Sec. 240.15).

Criminal Anarchy is a Class E felony.

INVESTIGATIONS

Officers must take a common sense viewpoint in considering possible Criminal Anarchy offenses. They should carefully analyze complaints of such crimes to determine that the basic element is present: not only a view to overthrow of the government of New York but also the view of doing this by violence. There must also exist the element of advocating, or of knowing publishing, selling or distributing, or of knowing membership, as required by Section 240.15.

It should be borne in mind that this statute relates only to overthrow of the government of New York and has nothing to do with advocacy of violence toward the government of any other state or nation or of the United States.

In all cases arising under the Criminal Anarchy law officers must carefully analyze the view advocated or the thing published or the society joined by the subject, to determine that they are more than merely distasteful or obnoxious and that they do in fact fit the statutory requirements. Merely unpopular views will not fit the law.

In these cases it is well for the law enforcement agency to make certain that it is closely and well acquainted with the planning and views of controversial figures who might become subject to arrest and prosecution for criminal anarchy in their community. By so doing each department will be in a position to sensibly discuss each subject with the District Attorney and to obtain a warrant of arrest from a magistrate in proper cases, rather than having to take hurried summary action under stress of emotion.

The Criminal Anarchy law of the new Penal Law is constitutional. It is neither new nor novel (Peo. vs. Gitlow, 234 NY 132).

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47. CRIMINAL CONTEMPT

There are two kinds of criminal contempt. One kind is specified by the Penal Law as the crime of "Criminal Contempt." The other kind is specified as punishable by a court not as a crime but as a "contempt of court." Under provisions of the Penal Law, a person can be punished by a court for Criminal Contempt and also can be convicted of a crime of criminal contempt for the same acts.

CRIMINAL CONTEMPT (PENAL LAW CRIME): A person is guilty of Criminal Contempt when he engages in any of the following conduct:

1. Disorderly, contemptuous, or insolent behavior, committed during the sitting of a court, in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority (P.L. Sec. 215.50, subd. 1); or

2. Breach of the peace, noise, or other disturbance, directly tending to interrupt a court's proceedings (P.L. Sec. 215.50, subd. 2); or

3. Intentional disobedience or resistance to the lawful process or other mandate of a court (except contempts out of the presence of the court involving or growing out of labor disputes) (P.L. Sec. 215.50, subd. 3); or

4. Contumacious and unlawful refusal to be sworn as a witness in any court proceeding or, after being sworn, to answer any legal and proper interrogatory (P.L. 215.50, subd. 4); or

5. Knowingly publishing a false or grossly inaccurate report of a court's proceedings (P.L. Sec. 215.50, subd. 5); or

6. Intentional failure to obey any mandate, process or notice issued pursuant to articles sixteen, seventeen, eighteen, or eighteen-a of the Judiciary Law (re jurors) or to rules adopted pursuant to any such statute or pursuant to any special statute establishing commissioners of jurors and prescribing their duties or who refuses to be sworn as provided therein (P.L. Sec. 215.50, subd. 6); or

7. On or along a public street or sidewalk within a radius of two hundred feet of any building established as a courthouse, he calls aloud, shouts, holds or displays placards or signs containing written or printed matter, concerning the conduct of a trial being held in such courthouse or the character of the court or jury engaged in such trial or calling for or demanding any specified action or determination by such court or jury in connection with such trial (P.L. Sec. 215.50, subd. 7).

Criminal Contempt is a Class A misdemeanor.

CRIMINAL CONTEMPT (JUDICIARY LAW): A court of record has power to punish for criminal contempt any person guilty of the acts specified in Section 750, subd. A, of the Judiciary Law. These acts are specified in that section in language similar to the language of Penal Law Section 215.50, subd. 1 through 6. The acts specified in Subdivision 7 of Section 215.50 of the Penal Law are not included in Judiciary Law Section 750, subd. A.

A justice in Special Sessions or other lower criminal courts has the same power to punish for contempt under Judiciary Law Section 750,

subd. A as a court of record, except that a justice of such lower court has no power to punish any other judge or justice for contempt (UJCA Sec. 210).

SUMMARY PUNISHMENT BY COURT: Where a criminal contempt is committed in the immediate view and presence of the court it may be punished summarily, without trial or hearing (Judic. L. Sec. 755). Any criminal contempt prosecuted as a crime, however, under Section 215.50 of the Penal Law, must be prosecuted like any other misdemeanor.

PUNISHMENT BY COURT AND PROSECUTION FOR SAME ACTS: An adjudication by a court for criminal contempt under Section 750, subdivision A of the Judiciary Law does not bar a prosecution for the crime of Criminal Contempt under the Penal Law for the same conduct. However, upon conviction of the Penal Law crime under Section 215.50, the court, in sentencing the defendant, must take the previous punishment into consideration (P.L. Sec. 215.55).

CRIMINAL CONTEMPT OF THE LEGISLATURE: A person is guilty of Criminal Contempt of the Legislature when, having been duly subpoenaed to attend as a witness before either house of the legislature or before any committee thereof, he:

1. Fails or refuses to attend without lawful excuse; or
2. Refuse to be sworn; or
3. Refuses to answer any material and proper question; or
4. Refuses, after reasonable notice, to produce books, papers, or documents in his possession or under his control which constitute material and proper evidence (P.L. Sec. 215.60).

Criminal Contempt of the Legislature is a Class A misdemeanor.

CRIMINAL CONTEMPT OF A TEMPORARY STATE COMMISSION: A person is guilty of Criminal Contempt of a Temporary State Commission when, having been duly subpoenaed to attend as a witness at an investigation or hearing before a temporary state commission, he fails or refuses to attend without lawful excuse (P.L. Sec. 215.65).

Criminal Contempt of a Temporary State Commission is a Class B misdemeanor.

INVESTIGATIONS

In investigating misdemeanor contempts, it is essential at the beginning to pin down exactly what was done, what was said, and by whom. Where the contempt was in court and a court stenographer was acting, check pertinent minutes, as the initial step. Be certain that possible eye and earwitnesses are all identified and interviewed, when pertinent. Take signed statements from actual witnesses who can relate facts from personal observation of the incident. Be certain that the intentional nature of the action done by the subject is established. It is most desirable to procure testimony that the intent related specifically to the court. Admissions by the subject after the event should be looked for as logical sources of such evidence.

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48. CRIMINAL FACILITATION

Under the old Penal Law, one who aided and abetted was a principal. One who united with another in the commission of a crime and who participated in the criminality of the act was an accomplice and punishable as

a principal. Under the new Penal Law, a person is criminally liable for the conduct of another when, acting with the mental culpability required for the commission of an offense, he solicits, requests, commands, importunes or intentionally aids another in conduct constituting an offense (P.L. Sec. 20.00).

Officers will note that the new Penal Law rule under Section 20.00, concerns the place in the law which was formerly covered by the rules on principals and accomplices.

Criminal Facilitation is a brand new crime. It concerns situations involving actions which fall short of what would have constituted a person an accomplice and principal under the old law (or which would include the offender under the rule of criminal liability for the conduct of another in new Penal Law Section 20.00).

CRIMINAL FACILITATION DEFINED: A person is guilty of Criminal Facilitation when:

1. Believing it probable,
2. That he is rendering aid,
3. To a person who intends to commit a crime,
4. He engages in conduct:
   a. Which provides such person with (1) means, or (2) opportunity for the commission of such crime, and
   b. Which in fact aids such person to commit a felony (P.L. Secs. 115.00, 115.05).

There can be no criminal facilitation of a misdemeanor or violation, only of a felony. Criminal Facilitation does not demand the mental culpability needed to make a person guilty of the felony committed—it requires only a belief in the probability that one is rendering aid to one intending a crime.

AID REQUIRED: To be criminally liable for the conduct of another, under Penal Law Section 20.00, one must actually aid in the conduct constituting the offense. To be criminally liable of Criminal Facilitation, it is only necessary to engage in conduct which provides the actual criminal with means or opportunity to perform the conduct constituting the felony offense.

DEGREES OF CRIMINAL FACILITATION: It is Criminal Facilitation in the Second Degree if the offender believes he is aiding one intending any crime and his conduct in fact aids commission of a felony. It is First Degree if the offender believes he is aiding one intending murder or kidnapping in the first degree and his conduct in fact aids in commission of such crimes (P.L. Secs. 115.00, 115.05).

Criminal Facilitation Second is a Class A misdemeanor. Criminal Facilitation First in a Class C felony.

CORROBORATION: A person cannot be convicted of Criminal Facilitation on the testimony of a person who committed the crime charged to have been facilitated, unless such person's testimony is corroborated by such other evidence as tends to connect the defendant with such facilitation (P.L. Sec. 115.15).

WHAT IS NOT A DEFENSE: It is no defense to a prosecution for Criminal Facilitation that:

1. The person facilitated was not guilty of the felony because of:
   a. Criminal irresponsibility, or
   b. Other legal incapacity or exemption, or

c. Unawareness of the criminal nature of the conduct in question, or

d. Other factors precluding the mental state required for the commission of such felony (P.L. Sec. 115.10, subd. 1), or

2. The person facilitated has not been prosecuted for or convicted of the felony, or has been previously acquitted of it (P.L. Sec. 115.10, subd. 2), or

3. The defendant is not guilty of the felony which he facilitated because he did not act with the intent or other culpable mental state required for the commission of it (P.L. Sec. 115.10, subd. 3).

INVESTIGATIONS

A relatively low degree of culpability is required to make a person guilty of Criminal Facilitation—under the law, intent or other culpable mental state necessary for the commission of a felony itself is not required —only a general knowledge that a crime would probably be aided.

A charge of Criminal Facilitation will be found of value in situations where minor participants in felonies or those assisting in the commission of a felony cannot be proved to have the necessary intent to make them guilty of the felony itself but can be proved to have had sufficient knowledge of the participants and/or the circumstances to think that the person aided probably intended to commit a crime.

In supporting a charge of criminal facilitation, care must be taken to secure admissible evidence of the conduct engaged in and of the fact that it either furnished the offender with actual means to commit the offense or an opportunity to do so. The conduct of the one charged with Criminal Facilitation must be established as having in fact been of assistance to the one or ones who committed the felony.

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49. CRIMINAL MISCHIEF AND RECKLESS ENDANGERMENT OF PROPERTY

Criminal Mischief and Reckless Endangerment of Property take the place of various sections of the old Penal Law formerly contained in Article 134, "Malicious Mischief." They also cover violations under other sections of the old law, such as burning personal property (old P.L. Sec. 223), Wilful Injuries to the Canals, (old P.L. Sec. 1911) and others.

Officers will find the new Criminal Mischief laws of far more general application than any of the various old laws. They will be more useful in day-to-day police work.

In considering whether these new laws apply to a particular case, it should be kept in mind that they do not specify by what means the damage must be caused or the risk created (except that one kind of Malicious Mischief first degree is damage with explosives).

The damage or risk of damage can be by burning, exploding, dropping, bulldozing, flooding, breaking, shovelling, drying-out, burying or damage in any other way imaginable. It must be reckless or intentional but can be done by any means or in any way. Also, the property which is damaged or endangered may be any conceivable kind of property, either real or personal.

The property may be such usual objects of mischief as coin-box telephones, parking meters, automobile radio aerials, grave stones, or could be woods, glass windows, standing crops, a house, a porcelain vase, grapes

on a vine, a ball park, an automobile, library books, sand banks, private papers, a lawn, or anything at all which is property of another person.

The word "person" in the law means not only individuals but also partnerships, associations, corporations and municipal or other governments (P.L. Sec. 10.00, subd. 7).

CRIMINAL TAMPERING: Where there is no damage, only inconvenience caused, or where a public utility is involved, the crime may be Criminal Tampering (see Section 52, "Criminal Tampering," this Manual).

RECKLESS ENDANGERMENT OF PROPERTY: Reckless Endangerment of Property is an entirely new crime. It involves cases where no damage actually occurred, but where the offender did cause a risk of damage over $250.

A person is guilty of Reckless Endangerment of Property when he:

1. Recklessly,
2. Engages in conduct,
3. Which creates a substantial risk of damage,
4. To the property of another person,
5. In an amount exceeding $250 (P.L. Sec. 145.25).

Reckless Endangerment of Property is a Class B misdemeanor.

The word "recklessly" means being aware of and consciously disregarding a substantial and unjustifiable risk that damage will occur. The risk must be such that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the same situation (P.L. Sec. 15.05, subd. 3).

A person who creates such a risk but is unaware of it solely because of his voluntary intoxication also acts "recklessly." (P.L. Sec. 15.05, subd. 3).

The word "conduct" includes an act *or an omission* (P.L. Sec. 15.00, subd. 4). An omission is a failure to perform an act as to which a duty of performance is imposed by law (P.L. Sec. 15.00, subd. 3). "Imposed by law" means imposed by statute. (Brinckerhoff vs. Bostwick, 99 NY 185). The statute need not be a penal law.

CRIMINAL MISCHIEF IN THE THIRD DEGREE: A person is guilty of Criminal Mischief Third when he:

1. Intentionally damages property of another person, or
2. Recklessly damages property of another person in an amount exceeding $250.00,
3. Having no right to do so, nor
4. Any reasonable ground to believe that he has a right to do so (P.L. Sec. 145.00).

Criminal Mischief Third is a Class A misdemeanor.

CRIMINAL MISCHIEF IN THE SECOND DEGREE: A person is guilty of Criminal Mischief Second when he:

1. With intent to damage property of another person,
2. Damages,
3. Property of another person,
4. In an amount exceeding $250,
5. Having no right to do so, nor
6. Any reasonable ground to believe that he has a right to do so (P.L. Sec. 145.05).

Criminal Mischief Second is a Class E felony.

CRIMINAL MISCHIEF IN THE FIRST DEGREE: A person is guilty of Criminal Mischief First when he:

1. With intent to damage property of another person,
2. Damages,
3. Property of another person,
4. In an amount exceeding $1,500, or
5. By means of an explosive,
6. Having no right to do so, nor
7. Any reasonable ground to believe that he has a right to do so (P.L. Sec. 145.10).

Criminal Mischief First is a Class D felony.

FALSE ALARMS OF FIRE: The provisions of former Penal Law Section 1424, relating to false alarms, have been included in the new law as one kind of Falsely Reporting an Incident (P.L. Sec. 240.50, subd. 2—see page 227). Sending a false alarm could also be Reckless Endangerment of Property, Criminal Mischief Third, or Reckless Endangerment, depending on the facts.

FEDERAL STATUTES

Violations of the following Federal criminal laws are also violations of New York Criminal Mischief statutes. The Federal violations are handled by the FBI.

GENERAL LAW: It is a Federal crime to wilfully injure or commit any depredation against any property of or property being manufactured or constructed for the United States or any agency of the United States. The crime is a misdemeanor if the damage is $100 or less and a felony if the damage is over $100 (Title 18 U.S. Code, Sec. 1361).

COMMUNICATIONS: It is a Federal felony to wilfully or maliciously interfere with, injure or destroy any facility or part of any means of communication operated or controlled by the United States, or for use in military or civil defense functions (Title 18 U.S. Code, Sec. 1362).

LETTER BOXES OR MAIL: The U. S. Postal Inspectors handle Federal violations of the following laws: It is a Federal felony to wilfully or maliciously injure, tear down, destroy, or break open any letter box or other receptacle intended or used for the receipt or delivery of mail on any mail route.

It is a similar crime to wilfully or maliciously injure, deface or destroy any mail deposited in such box or receptacle (Title 18 U.S. Code, Sec 1705).

INVESTIGATIONS

Criminal Mischief third can be committed either intentionally or recklessly. An intoxicated person, if voluntarily intoxicated, who creates a risk but is unaware of it because he is intoxicated, acts recklessly under the law (P.L. Sec. 15.05, subd. 3). Thus, if a drunk sets a fire he has acted recklessly even though, because he was drunk, he did not realize the substantial and unjustifiable risk of damage he had created. The same rule would hold true in Reckless Endangerment of Property.

Criminal Mischief second or first degree cannot be committed recklessly —there must be intentional damage.

The law does not specify what "damage" consists of. Damage may thus be taken to mean harm or injury of any kind or degree.

Criminal Mischief third requires no particular amount of damage (if intentional) Reckless Endangerment of Property, and Criminal Mischief second and first degree do (unless the damage is by explosive).

Officers should be wary of depending on property owners' estimates of damage, where a dollar amount of damage must be proved. Estimates should ordinarily be obtained from third parties of skill and experience who are familiar with and deal in the kind of property damaged.

LACK OF RIGHT TO DAMAGE: In a major number of cases of Criminal Mischief there will be no evidence at all to establish that the offender had any right to damage the property involved nor any reasonable ground which would permit him to think he had such a right.

The officer will, however, receive complaints of situations where such a right or ground to believe in such a right may exist. The officer should fully investigate any such instance before taking arrest action. Thus, a contractor who orders a bulldozer onto property and knocks down trees, scrapes lawn and top soil into one pile and does other damage might do so under a reasonable belief that he owned the property or had bought a right to remove the top soil, and so on. In cases involving damage by apparently responsible persons, officers be aware that the element of no right to damage and no reasonable belief in a right to damage may be lacking.

Where investigation in such cases fails to clearly establish either the right to damage or reasonable ground to believe in a right (or the lack thereof) the advice of the District Attorney should be sought before an arrest is made. In such cases, even if no criminal action is available, the party aggrieved has a remedy in the civil courts.

INVESTIGATIVE ACTS: An adequate Criminal Mischief investigation consists of (1) taking complaint, (2) examination of damage, (3) crime scene search and collection of evidence, (4) neighborhood inquiries, (5) contacts with informants and sources, and (6) contact with other police as to similar incidents and suspects.

Complainants should be interviewed in detail and attention should be devoted by the officer to developing all possible facts as to suspects from the complainant. Complainants are more likely to volunteer such information while they are incensed at the damage than they are likely to volunteer it after they have had a chance to cool off and think further.

A careful search of the crime scene is always required. This should be the first thing done at the scene, to avoid any possibility of inadvertently damaging foot prints, tire marks or other such traces. The search should primarily seek items connected with the unknown offenders, tools or implements used in the crime, foot prints and tire tread marks. Any possible physical evidence found should be considered for scientific processing, including latent fingerprint work and laboratory examination, and for leads to determine ownership. Footprints and tire tread marks should be photographed and have plaster casts made, where sufficiently detailed to possibly be identifiable.

The exact details of the damage and the means of accomplishing it should be determined. In many cases laboratory examinations will assist in determining the means in such instances as damage to gasoline powered equipment, where abrasives, sugar or similar substances may be readily introduced into such mechanisms to injure or destroy them.

In instances where any substantial value may be attached to the damaged property, the officer should obtain information as to the insurance status of the damaged property and this should be verified by contact with the insurance company and/or its investigators.

In planning neighborhood inquiries, attention should be given to identifying and interviewing not only neighbors whose presence is immediately apparent on a view of the scene, but also such persons as route men (like milkmen and mailmen), local residents who work a late shift, shopkeepers, bus or truckdrivers on regular routes and others who may regularly be in or pass through the neighborhood. In addition, it is often well to return to the scene on the same day of the week and at the same time of day that the crime occurred, in successive days or weeks, in efforts to locate suspects or possible witnesses who would not be there at other times.

Officers must develop and maintain contact with sources of information and informants among members of or those familiar with the various groups of persons in their jurisdictions who may be expected to become involved in mischief cases, including such groups as juveniles who may commit vandalism, teen-age idlers out of school, hunters, fishermen, etc. A desirable way to solve this kind of case is by information from a known reliable source identifying the individual or group responsible or in the area at the time.

FALSE ALARMS OR REPEATED OFFENSES: Surveillance and invisible dye markings should always be considered in respect to cases where the offiense tends to be repeated (see in Larceny section, this Manual "Repeated Thefts").

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50. CRIMINAL NUISANCE

Criminal Nuisance is a crime—a Class B misdemeanor.

CRIMINAL NUISANCE: A person is guilty of Criminal Nuisance who:

1. Knowingly or recklessly,
2. By conduct which is either:
   a. Unlawful in itself, or
   b. Unreasonable under all the circumstances,
3. Creates, or
4. Maintains,
5. A condition, which endangers the safety or health of,
6. A considerable number of persons (P.L. Sec. 240.45, subd. 1).

A person is also guilty of Criminal Nuisance who:

1. Knowingly,
2. Conducts, or
3. Maintains,
4. Any premises, place or resort,
5. Where persons gather for purposes of engaging in unlawful conduct (P.L. Sec. 240.45, subd. 2)

To be "considerable," the number of persons affected need not be "very great," but only enough so that the nuisance may not unreasonably be classified as a wrong to the community (Peo. vs. Rubenfeld, 254 NY 245).

It is not necessary to prove acts of negligence or criminal intent to prove a nuisance (Peo. vs. McOmber, 206 Misc. 465). Even where a person has a lawful right to do something, he also has a duty to do it in such a manner as not to endanger, in violation of the nuisance law (Peo. vs. McOmber, 206 Misc. 465). In other words, activity lawful in itself can become a nuisance when it endangers a considerable number of persons and meets the other requirements of section 240.45.

NUISANCES SPECIFICALLY DESCRIBED BY LAW: In addition to the general definition of Criminal Nuisances in Section 240.45 of the Penal Law, various statutes specify that certain things are "nuisances" or "public nuisances:"

1. Buildings: Buildings or places may be public nuisances under certain conditions:

a. Dangerous and unsafe buildings of any kind may be declared public nuisances by the Supreme Court and must then be repaired and secured or taken down and removed (Vill. L. Sec. 89, subd. 7-a,d; Town L. Sec. 130, subd. 16-d; Mult. Dw. L. Sec. 306).

b. Any person who shall erect, establish, continue, maintain, use, own or lease any building, erection or place used for the purpose of lewdness, assignation or prostitution is guilty of maintaining a nuisance (Publ. H. L. Sec. 2320, subd. 1). Article 23 of the Public Health Law sets up certain specific court procedures for abating a house of prostitution nuisance. These procedures affect only the premises and do not relate to criminal charges for maintaining a nuisance.

2. Firearms and Weapons: Any weapon, instrument, appliance or substance specified in Section 265.05 of the Penal Law, when unlawfully possessed, manufactured, transported or disposed of, is a nuisance (See Section "Firearms and Weapons," this Manual, for prohibited weapons) (P.L. Sec. 400.05, subd. 1).

3. Fireworks: Fireworks possessed unlawfully may be seized by any peace officer, who must deliver them to the magistrate before whom the person arrested is required to be taken. (P.L. Sec. 405.05). Fireworks are not specifically declared to be nuisances by law, but they are subject to summary seizure and handling.

4. Narcotics: Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft or any place whatever, which is resorted to by narcotic addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of same is a public nuisance. (Publ. H. L. Sec. 3342).

5. Signs: The following signs are made public nuisances by Section 1114 of the Vehicle and Traffic Law:

a. Any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles or is likely to be construed as either an official traffic control device or a railroad sign or signal.

b. Any unauthorized sign, signal, marking or device which attempts to direct or regulate the movement of traffic.

c. Any unauthorized sign, signal, marking or device which hides the view or interferes with the effectiveness of any official traffic control device or any railroad sign or signal.

d. Any traffic sign or signal bearing thereon any commercial advertising.

e. Any police officer or public officer may remove any sign which is a public nuisance, without giving any notice to the owner or any other person (V & T Sec. 1114, subd. c).

ABATING NUISANCE: When a person is convicted of maintaining a public nuisance, the court may, in addition to or in place of other punishment, direct the Sheriff to execute a judgment to abate (put an end to) the nuisance (CCP Sec. 953).

INVESTIGATIONS

In handling any nuisance case, it is of prime importance that at the beginning the officer clearly and distinctly determines exactly what the nuisance consists of.

In many "nuisance" cases, the factual situation may be merely a misunderstanding between the complainant and the alleged violator as to their respective rights and/or duties. Many alleged "nuisances" fail to fit the statutory definition of a criminal nuisance. "Nuisance" cases may often be solved without criminal prosecution.

In all instances of possible criminal prosecution, the officer must take immediate steps to preserve an exact record of the nuisance. Photographs (and tape recordings, where noise is involved) should usually be taken. Since the crime requires that a "considerable number" of persons be affected (in cases other than those dealing with maintaining premises or resorts), officers should promptly interview persons in a position to be affected, to determine whether in fact they are endangered, in respect to safety or health, as required by the statute. What practicable, written statements should be obtained.

Officers must take care, in conducting interviews, to pinpoint the specific harm which each person affected has suffered or feels he or she has suffered and the specific means of harm, with details as to frequency, duration, time of day, etc.

In many instances, nuisances which "endanger" may not be known to the persons in a position to be affected, such as dangerous condition of a building or a health hazard. In such cases the officer must seek expert advice from construction engineers, highway engineers, physicians and persons with technical competence in municipal offices.

Where a case is not clear-cut as to the public character of the nuisance, the District Attorney should be promptly consulted, to determine whether criminal action is possible or warranted.

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51. CRIMINAL SOLICITATION

Criminal Solicitation is a crime which has not previously been in the Penal Law.

CRIMINAL SOLICITATION DEFINED: A person is guilty of criminal solicitation who:

1. With intent that another person engage in conduct constituting a crime:
   a. Solicits, or
   b. Requests, or
   c. Commands, or
   d. Importunes, or
   e. Otherwise attempts to cause,
2. Such other person to engage in conduct constituting a crime.

The word "importune" can be taken to mean "to urge with persistence," or "to press requests for," the criminal conduct.

DEGREES OF CRIMINAL SOLICITATION: Criminal Solicitation is third degree if the intent and the solicitation are for another to engage in any crime (P.L. Sec. 100.00). It is second degree if the intent and solicitation are for any felony (P.L. Sec. 100.05). It is first degree if the intent and solicitation are for murder or kidnapping (P.L. Sec. 100.10).

Third degree criminal solicitation is a violation, second degree a Class A misdemeanor and first degree a Class D felony.

It is not a violation of this law to solicit the commission of a traffic infraction or a violation. The intent and solicitation must be for a *crime.*

WHAT IS NO DEFENSE: It is no defense to a prosecution for criminal solicitation that the person solicited could not be guilty of the crime solicited because of:

1. Criminal irresponsibility (e.g. the person solicited was mentally incompetent, a child, etc.), or
2. Any other legal incapacity or exemption, or
3. Unawareness of the criminal nature of the conduct solicited, or
4. Unawareness of the defendant's criminal purpose, or
5. Other factors precluding the mental state required for "committing" the crime solicited (P.L. Sec. 100.15).

WHAT IS NOT CRIMINAL SOLICITATION: A person is not guilty of criminal solicitation if his solicitation constitutes conduct of a kind that is necessarily incidental to the commission of the crime solicited. If a solicitation constitutes an offense (other than "criminal solicitation") which is related to but separate from the crime solicited, the solicitor is guilty of the separate offense only, not of criminal solicitation (P.L. Sec. 100.20).

1. Example: A person solicits a juror to accept a bribe. Offering a bribe is the crime of bribing a juror (P.L. Sec. 215.15). The person soliciting is guilty of bribing a jurior and not of the lesser crime of criminal solicitation.

INVESTIGATIONS

It is not necessary, to constitute "criminal solicitation," that the one solicited shall agree to the solicitation or commit any crime or attempt any crime. Officers should clearly distinguish criminal solicitation from offenses based on criminal liability for the conduct of another under Penal Law Section 20.00 (see Section 8, "Culpability and Parties to Crime," this Manual).

Proof of intent will be found to be the key element in establishing the offense of criminal solicitation.

When receiving complaints of a criminal solicitation it is of prime importance to obtain all available information bearing on intent. For example, a person saying to a friend in a bar (about a third person in the bar with whom he has been arguing) "let's beat his head in," has clearly included all the elements of a criminal solicitation except that the intent to actually commit the assault is not clearly established by such words alone. More facts are required to establish that the speaker said the words with a real intent that he and his friend should assault the third person. Shouting "kill the umpire" at a baseball game includes the elements of a criminal solicitation, except the requirement of intent that the ones solicited by the shout should actually engage in a killing.

Proof of intent must ordinarily be established by some facts in addition to the proof of specific words of solicitation.

Thus, if John Doe solicits Henry Roe to burn down John Doe's residence he solicits the crime of arson. Proof of intent would be established by such things as proof that Doe the day before had doubled his insurance coverage on the house, had removed valuable furniture from the house, had stored five gallons of gasoline and a quantity of rags in the house, etc.

In solicitation to commit sex offenses, such as sodomy, the circumstances and place of the solicitation and the character of the offender and the one solicited will in themselves frequently offer sufficient proof of intent.

Solicitation may, of course, be either oral, in writing or by sign language. The form of the solicitation is immaterial.

CORROBORATION: The law does not specifically require corrorboration of a complaining witness's testimony to a criminal solicitation and the circumstances when corroboration will be necessary, will vary with cases. It is obvious that in every case effort should be made to secure corroboration in the form of an actual witness to the solicitation or detailed circumstances which would assist in establishing proof of the solicitation. For this reason, complaints should always be taken in full detail, including identities of all possible witnesses.

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52. CRIMINAL TAMPERING

Criminal Tampering is a new crime. It stems from various sections of the old Penal Law, including some which were formerly in the old law's article "Malicious Mischief." It includes many kinds of circumstances relating to public utilities, and communications facilities, and common carriers.

Where gas, electric, steam or water facilities are actually connected up and/or are used by means of an unauthorized connection, or by by-passing a meter, a larceny and theft of services has occurred, since such commodities involve both property and rendition of a service. However, a charge of Criminal Tampering may often be considered in such cases, because of difficulty of establishing either the quantity of commodity stolen or the intent specified in "Theft of Services."

"Tampering" must be with property of another person. The word person includes individuals, partnerships, associations, corporations and municipal or other governments (P.L. Sec. 10.00, subd. 7).

The word "tampering" is not specifically defined in the law and may be taken to mean: to meddle, so as to alter a thing or make a change.

CRIMINAL TAMPERING IN THE SECOND DEGREE: A person is guilty of Criminal Tampering Second who:

1. Tampers with,
2. Property of another person,
3. With intent to cause substantial inconvenience,
4. To such person or a third person,
5. Having no right to do so, nor
6. Any reasonable ground to believe he has a right to do so (P.L. Sec. 145.15, subd. 1).

Officers should note that this violation does not require any damage but merely tampering or meddling, with the specified intent. Thus, youths going into a library after hours and strewing books around, pulling index cards out of cabinets and tossing them on the floor, etc., would commit the violation, even if all could be restored without harm or damage.

The violation does require proof of the intent to cause substantial inconvenience. Such proof will ordinarily be found in the acts themselves or by admissions of the offenders.

Criminal Tampering Second is also committed by any person who:

1. Tampers with, or
2. Makes connection with,
3. Property of any:
   a. Gas corporation, or
   b. Electric corporation, or

c. Steam corporation, or
d. Water-works corporation, or
e. Telephone or telegraph corporation, or
f. Common carrier, or
g. Public utility operated by a municipality,

4. Having no right to do so, nor

5. Any reasonable ground to believe he has a right to do so (P.L. Sec. 145.15, subd. 2).

It is an affirmative defense to this second subdivision of Criminal Tampering Second that the defendant did not engage in the conduct for a larcenous or otherwise unlawful or wrongful purpose (P.L. Sec. 145.15, subd. 2). An affirmative defense is one which must be established by the defendant by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

This violation does not require that there be any damage, only a tampering or meddling, or making a connection.

It should be noted that no proof of a specific intent is required for the violation under Subdivision 2. It is only necessary to prove that the defendant intended to do what he did, that it was not inadvertent, or accidental.

Criminal Tampering Second is a Class B misdemeanor.

CRIMINAL TAMPERING IN THE FIRST DEGREE: Criminal Tampering first is committed by any person who:

1. With intent to cause:
   a. A substantial interruption of, or
   b. A substantial impairment of,
2. A service rendered to the public,
3. Damages, or
4. Tampers with,
5. The property of any:
   a. Gas corporation, or
   b. Electric corporation, or
   c. Steam corporation, or
   d. Water-works corporation, or
   e. Telephone or telegraph corporation, or
   f. Common carrier, or
   g. Public utility operated by a municipality
6. And thereby causes such substantial interruption of or impairment of service,
7. Having no right to do so, nor
8. Any reasonable ground to believe that he has a right to do so (P.L. Sec. 145.20).

Criminal Tampering First is a Class D felony.

Criminal Tampering First requires proof of not only the intent specified in the statute but also that the tampering (or the damage) actually caused a substantial interruption or impairment of service. This does not mean, for example, that the whole electric system of the ABC Lighting Company has to be knocked out. It does mean that there must be more than a trivial interruption or impairment of service to some segment of the public.

The word "impairment" is not specifically defined in the statute. It may be taken to mean anything making the service less good, or lessening the service in quantity, or value or strength or utility.

CRIMINAL MISCHIEF: In those instances where the specific intent required by the Criminal Tampering statutes cannot be well established,

consideration should be given to charging the offender under the Reckless Endangerment of Property or Criminal Mischief laws, where damage or a risk of substantial damage was caused. These laws require only an intentional or reckless causing of a risk or intentional doing of the conduct, without need to prove any specific kind of intent (see Section 49, Criminal Mischief and Reckless Endangerment of Property, this Manual).

INVESTIGATIONS

In cases involving connections and other acts against public service facilities, it is desirable to photograph the installation found, in detail, to preserve pictorial evidence of the connection, etc., as a supplement to oral testimony. The officer should take care to maintain the chain of evidence in respect to the photographic negatives and prints.

Surveillance and invisible dye markings should be considered in cases where the offense tends to be repeated such as opening fire hydrants or giving false alarms (see in Larceny section, this Manual, "Repeated Thefts").

FALSE ALARMS: The false alarm statute in the new Penal Law is subd. 2 of P.L. Sec. 240.50, Falsely Reporting an Incident (see page 227). Sending in a false alarm could also be Reckless Endangerment of Property, or Criminal Mischief Third. If there is personal injury involved, prosecution could be under a violation set out in the section "Assaults, Menacing, Reckless Endangerment." Prosecutions may also be had for Criminal Tampering in such cases.

EVIDENCE RE SERVICE: In cases of Criminal Tampering first, officers should take care, early in the investigation, to obtain evidence of the interruption or impairment of service. Proof may be established by neighbors or other subscribers to the service who suffered the interruption or impairment. Utility company personnel will also be of aid in providing this necessary element of the offense.

COMPLAINANTS: Complainants should be interviewed in detail, and all possible facts relating to the identity and objective of the offenders should be obtained at this time. When complainants have "cooled off" they may be less likely to volunteer information, particularly in cases where only limited harm was caused.

SEARCHES: A careful search of the scene of the tampering or damage should always be made. Care must be taken to avoid damaging foot prints, tire marks or other traces of value in identifying the offender.

The search should be aimed at locating things of possible value in identifying the offenders, including latent fingerprints.

OTHER INVESTIGATION: A detailed inquiry in the neighborhood is generally of value. Interviews with routemen, like mail carriers, milkmen, etc., who are regularly in the area should be considered. It is also of value to consider returning to the area at the same time of day on successive days, in efforts to identify offenders from other places who may return to or pass through the area at the same time.

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53. CRIMINAL TRESPASS

Experienced officers will recall that New York did not, prior to the new Penal Law, have an over-all trespass law. Individual statutes did make certain trespassing criminal, but without general application

to all premises and all places. These former laws included Trespassing on Canal Lands (old P.L. Sec. 466), Entry into Agricultural Fair Grounds (old P.L. Sec. 927), Entry of Orchard, etc., with intent to take, injure or destroy (old P.L. Sec. 1425, subd. 5), Walking on Railroad Tracks or Right of Way (old P.L. Sec. 1990, subd. 4), Unlawful Intrusion on Real Property (old P.L., Secs. 2036 and Sec. 1425, subd. 9, restricted to cities and incorporated villages), and others.

Officers will also note that under Section 367 of the Conservation Law it is an infraction to trespass on posted lands. Under Section 368 of the same law it is a misdemeanor not to leave such lands on request.

The new Criminal Trespass laws apply to any lands or any buildings, anywhere in the state. They are in three degrees, distinguished by whether the trespass is in a dwelling (first degree), in a building or on enclosed premises (second degree) or on any premises (third degree).

The Criminal Trespass laws are distinguished from Burglary statutes in that the criminal trespass laws do not require that the person trespassing intend to commit a crime. Burglary statutes do require, as one element of burglary, an intent to commit a crime in or on the premises. Also, burglary laws apply only to buildings (see Section 35, "Burglary", this Manual).

CRIMINAL TRESPASS IN THE THIRD DEGREE: A person is guilty of Criminal Trespass Third when he:

1. Knowingly enters, or
2. Remains unlawfully in or on,
3. Any premises (P.L. Sec. 140.05).

Criminal Trespass Third is a Violation.

CRIMINAL TRESPASS IN THE SECOND DEGREE: A person is guilty of Criminal Trespass Second when he:

1. Knowingly enters, or
2. Remains unlawfully in or on,
3. A building, or
4. Real Property which is:
   a. Fenced, or
   b. Otherwise enclosed in a manner designed to exclude intruders

(P.L. Sec. 140.10).

Criminal Trespass Second is a Class B misdemeanor.

CRIMINAL TRESPASS IN THE FIRST DEGREE: A person is guilty of Criminal Trespass First when he:

1. Knowingly enters, or
2. Unlawfully remains in,
3. A dwelling (P.L. Sec. 140.15).

Criminal Trespass First is a Class A misdemeanor.

ENTER OR REMAIN UNLAWFULLY: A person enters or remains unlawfully in or on premises when he is not licensed or privileged to do so (P.L. 140.00, subd. 5).

1. A person who enters or remains in or on premises which are at the time open to the public, does so with license and privilege. This is true whether he intends to commit a crime therein or whether he enters without any criminal intent at all (P.L. Sec. 140.00, subd. 5).

2. A person who defies a lawful order not to enter or remain in or on premises which are at the time open to the public has neither license

nor privilege to enter or remain therein, if the lawful order is personally communicated to him by:

a. The owner of the premises, or

b. Any other authorized person (P.L. Sec. 140.00, subd. 5).

3. A license or privilege to enter or remain in or on premises which are only partly open to the public is not a license or privilege to enter or remain in the part not open to the public (P.L. Sec. 140.00, subd. 5).

a. Example: A person is licensed or privileged to enter a department store during business hours but is not licensed or privileged to go into a stock room of the store, since this is not open to the public.

PREMISES: Premises means any real property and includes buildings (P.L. Sec. 140.00, subd. 1).

BUILDING: The word "building" has its ordinary meaning and in addition includes:

1. Any structure, vehicle or watercraft,

2. Used for overnight lodging of persons, or

3. Used by persons for carrying on business therein (P.L. Sec. 140.00, subd. 2).

Where a building consists of two or more units separately secured or occupied, each unit is both a separate "building" in itself and a part of the main building (P.L. Sec. 140.00, subd. 2).

1. Example: John Doe rents an apartment in a building which includes six apartments opening onto a center hall, all separately secured by their own locked door. The center hall opens to the street. If John Doe enters any other apartment without specific license and privilege, he criminally trespasses. He automatically has license and privilege to enter the center hall, by reason of his tenancy of his apartment.

DWELLING: A dwelling is a building which is usually occupied by a person lodging therein at night (P.L. Sec. 140.00, subd. 3).

UNIMPROVED AND APPARENTLY UNUSED LAND: A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege, unless notice against trespassing is communicated to him:

1. By the owner or other authorized person, or

2. By posting in a conspicuous manner (P.L. Sec. 140.00, subd. 5).

As a practical matter the Criminal Trespass law requires that unimproved and apparently unused land be posted against trespassing (unless it is fenced or enclosed). This is somewhat similar to the Conservation Law. The Criminal Trespass Law requires a "posting in a conspicuous manner." The Conservation Law does not require fencing or enclosure but does require posting of a "conspicuous statement which shall cover a space of not less than eighty square inches..."posted"... or (a warning,... against ....hunting, fishing, trapping,....or trespassing for any purposes whatsoever" (Conserv. L. Sec. 366).

Under the terms of the Penal Law, unimproved and apparently unused land cannot be the subject of trespass, when it is neither fenced, enclosed nor posted, unless the owner or an authorized person gives actual notice against trespassing to the trespasser or would-be trespasser.

INVESTIGATIONS

The Criminal Trespass laws fill a police need. They permit arrests for offenses in many situations which formerly posed a problem of what to charge or whether any proper charge could be laid.

Under the new Criminal Trespass laws, an alleged "peeping tom" in a back yard, a stranger lounging on someone's lawn, youths playing in dangerous premises, motorists intruding on fenced fields (or intruding on open fields after being requested to leave), and numerous other types of violators may be handled as criminal trespassers. Persons who sneak into theaters without tickets, or into other affairs or places charging admission, without paying the required admission, are also in violation of these laws.

A basic element of these offenses is an unlawful remaining or entering "knowingly". Under the law, a person acts "knowingly" when he is aware that his conduct is of the nature described in the statute (P.L. Sec. 15.05, subd. 2).

1. Example: A man visiting a farmer friend in the country walks into a neighbor's fenced pasture, thinking it is his friend's. He has not "knowingly" entered. If the neighbor asks him to leave and he remains, he is then remaining "unlawfully." A passing motorist entering the same pasture, even if only to picnic, or pick flowers, or to admire the sunset, enters with full knowledge that he has no license or privilege to be there and so enters "knowingly."

It is not necessary that any intent be proved in criminal trespass cases, only that the entry was "knowingly," or that the remaining was "unlawfully." An offense is thus a Criminal Trespass whether the intent of the one entering or remaining is to watch a sunset or to commit a crime. Of course, where the intent is to commit a crime and the place entered or remained in is a building, the offense becomes a burglary.

Proof that the offender did not have license or a privilege offers little problem, in cases where the premises are private and not open to the public. In most such cases the complaint will be received from the owner or an agent of the owner, who can clearly establish the lack of privilege.

In the case of private premises which are open to the public, (the sales areas of stores, parking lots, etc.) or of public places (City Hall, a city park, a public playground, etc.), the question of whether or not the offender had a license or privilege to be there turns on whether or not a lawful order either not to enter or not to remain had been communicated to the defendant by the owner of the premises or some other authorized person. Under the terms of the law anyone who enters or remains on premises open to the public does so with license or privilege unless he defies a lawful order not to do so communicated by the owner or other authorized person (P.L. Sec. 140.00, subd. 5).

In the case of premises (whether private like a theater, or public like a city music stadium) where admission fees are charged, they are not "open to the public" and there is thus no license or privilege unless the admission is paid. The rule in the preceding paragraph only applies to instances where the premises are "open to the public." When admission is charged, premises are not "open." A licensed or privileged entry then requires a ticket of admission, payment of an admission fee, or other means of lawful admission.

Where the trespass involves "unimproved and apparently unused land which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders" there can be no violation without either prior personal notice to the defendant, or conspicuous posting. Thus, in the city or the country there would be no violation in going on unfenced and unenclosed vacant lots which had no signs posted forbidding such entry.

As a practical matter where there are dangers on unimproved and unused land (such as deep holes, sand or earth banks which might collapse, and similar hazards) owners should be requested to conspicuously post them so that police will be in a position, where necessary, to arrest intruders on Criminal Trespass charges, and so keep them out as a matter of protection.

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54. DISORDERLY CONDUCT, HARASSMENT AND LOITERING

Under the old Penal Law, Disorderly Conduct could be either a crime or an offense, and under former Section 899 of the Code of Criminal Procedure there were additional provisions relating to disorderly persons which closely paralleled some Penal Law provisions on disorderly conduct. All this was changed by the new law and Section 899 has been repealed. Matters formerly considered misdemeanors of Disorderly Conduct, or offenses of Disorderly Conduct or as falling under some parts of Section 899, Disorderly Persons, are all now coordinated by the new Penal Law as either Disorderly Conduct, Harassment or Loitering.

This simplifies the officer's arrest problem. Under the old laws, no summary arrest could be made for Disorderly Conduct "offenses" unless a breach of the peace was involved. And Disorderly Persons were formerly not (except fortune tellers) subject to summary arrest at all. Under the new law, the usual rules of arrest set out in Section 177 of the Code of Criminal Procedure apply to all cases of Disorderly Conduct, Harassment or Loitering.

DISORDERLY CONDUCT: A person is guilty of Disorderly Conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. **FIGHTING:** He engages in fighting or in violent, tumultuous or threatening behavior (P.L. Sec. 240.20, subd. 1); or

2. **NOISE:** He makes unreasonable noise (P.L. Sec. 240.20, subd. 2); or

3. **OBSCENE:** In a public place, he uses abusive or obscene language. or makes an obscene gesture (P.L. Sec. 240.20, subd. 3); or

4. **MEETINGS:** Without lawful authority, he disturbs any lawful assembly or meeting of persons (P.L. Sec. 240.20, subd. 4); or

5. **TRAFFIC:** He obstructs vehicular or pedestrian traffic (P.L. Sec. 240.20, subd. 5); or

6. **CONGREGATING:** He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse (P.L. Sec. 240.20, subd. 6); or

7. **HAZARD OR OFFENSIVE CONDITION:** He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose (P.L. Sec. 240.20, subd. 7).

Disorderly Conduct is a violation.

INTENT-DISORDERLY CONDUCT. In making arrests for Disorderly Conduct, officers must be able to prove either the intent specified in the law (to cause *public* inconvenience, annoyance or alarm) or the reckless creating (by the subject) of a risk of public inconvenience, or annoyance or alarm. Proof of creating the risk can ordinarily be established by the facts observed by the officer.

The need to prove either intent or risk must be constantly borne in mind in these cases. Where occasion arises, the officer should take steps to preserve additional evidence, including the testimony of bystanders.

HARASSMENT: A person is guilty of Harassment when *with intent to* harass, annoy or alarm another person:

1. **PHYSICAL CONTACT:** He strikes, shoves, kicks or otherwise subjects "him" (any person) to physical contact, or attempts or threatens to do the same (P.L. Sec. 240.25, subd. 1); or

2. **OBSCENITY:** In a public place, he uses abusive or obscene language, or makes an obscene gesture (P.L. Sec. 240.25, subd. 2); or

3. **ANNOY BY FOLLOWING:** He follows a person in or about a public place or places (P.L. Sec. 240.25 subd. 3); or

4. **HAZING:** As a student in school, college or other institution of learning, he engages in conduct commonly called hazing (P.L. Sec. 240.25, subd. 4); or

5. **ANNOYING CONDUCT GENERALLY:** He engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose (P.L. Sec. 240.25, subd. 5).

Harassment is a violation.

AGGRAVATED HARASSMENT: A person is guilty of Aggravated Harassment when, *with intent to* harass, annoy or alarm another person, he:

1. **MAIL, TELEPHONE, ETC.:** Communicates with a person anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm (P.L. Sec. 240.30, subd. 1); or

2. **PHONE CALLS:** Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication (P.L. Sec. 240.30, subd. 2).

Aggravated Harrassment is a Class A misdemeanor.

INTENT FOR HARASSMENT: The proof of intent needed to establish either Harassment or Aggravated Harassment is different from that required in Disorderly Conduct cases.

In Harassment or Aggravated Harassment cases the officer must be able to establish intent by the subject to harass, or to annoy, or to alarm another person. Harass may be understood to mean repeatedly annoy. Proof of intent will ordinarily be established by proof of the actions engaged in and the relationship of the subject and victim. However, officers should be alert to possibilities of obtaining other evidence, including admissions of the subject, exclamations volunteered by the subject prior to custody, and information volunteered without police questioning of the subject.

STINK BOMBS, TEAR GAS, OTHER NOXIOUS THINGS: Under the old Penal Law, Section 726, "Possession of Stink Bombs", made it a misdemeanor to possess, under circumstances evincing intent to use, any stink bomb. Stink bombs included valerian, butyric acid, asafoetida, hydrogen sulphide or any drug or substance capable of generating offensive, noxious or suffocating fumes, gases or vapors, such as tear gas. These violations are now all included under the new Penal Law crime of Unlawfully Possessing Noxious Material.

UNLAWFULLY POSSESSING NOXIOUS MATERIAL: A person is guilty of Unlawfully Possessing Noxious Material when he possesses

such material under circumstances evincing an intent to use it or to cause it to be used to:

1. Inflict physical injury upon a person, or
2. Cause annoyance to a person, or
3. Damage property of another, or
4. Disturb the public peace (P.L. Sec. 270.05, subd. 2).

Possession of noxious material is presumptive evidence of intent to use it or intent to cause it to be used in violation of this law (P.L. Sec. 270.05, subd. 3).

The new law defines a "noxious material" as any *container* which contains any drug or other substance capable of generating offensive, noxious or suffocating fumes, gases or vapors (P.L. Sec. 270.05, subd. 1).

Unlawfully Possessing Noxious Material is a Class B misdemeanor.

LOITERING: A person is guilty of loitering when he:

1. **BEGGING:** Loiters, remains or wanders about in a public place for the purpose of begging (P.L. Sec. 240.35, subd. 1); or

2. **GAMBLING:** Loiters or remains in a public place for the purpose of gambling with cards, dice or other gambling paraphernalia (P.L. Sec. 240.35, subd. 2); or

3. **SEX DEVIATE:** Loiters or remains in a public place for the purpose of engaging, or soliciting another person to engage, in deviate sexual intercourse or other sexual behavior of a deviate nature.

   a. Deviate sexual intercourse means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and penis or the mouth and the vulva (P.L. Sec. 130.00, subd. 2). The law does not specifically define what may be included in the phrase "other sexual behavior of a deviate nature" and the officer may take this to include sexual conduct of any abnormal kind, in addition to deviate sexual intercourse. In considering violations, "deviate" is the key word. A prostitute soliciting for normal illicit sex activity would thus not violate this law (P.L. Sec. 240.35, subd. 3); or

4. **MASKS OR DISGUISE:** Being masked or in any manner disguised by unusual or unnatural attire or facial alteration, loiters, remains or congregates in a public place with other persons so masked or disguised or knowingly permits or aids persons so masked or disguised to congregate in a public place: EXCEPT THAT such conduct is not unlawful when it occurs in connection with a masquerade party or like entertainment if, when such entertainment is held in a city which has promulgated regulations in connection with such affairs, permission is first obtained from the police or other appropriate authorities (P.L. Sec. 240.35, subd. 4); or

5. **SCHOOLS AND SCHOOL GROUNDS:** Loiters or remains in or about a school, college or university building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil, or student, or any other specific, legitimate reason for being there, and not having written permission from anyone authorized to grant the same (P.L. Sec. 240.35, subd. 5); or

6. **SUSPICIOUS, FAILS TO GIVE CREDIBLE ACCOUNT:** Loiters, remains or wanders in or about a place without apparent reason and under circumstances which justify suspicion that he may be engaged or about to engage in crime, and, upon inquiry by a peace officer, refuses to identify himself or fails to give a reasonably credible account of his conduct and purposes.

a. Officers should note that the authority granted by Subdivision 6 of the "Loitering" statute is similar to the provisions of the "Stop-and-Frisk Law," (Section 180-a Code of Criminal Procedure). That law permits an officer to stop any person in a public place whom the officer reasonably suspects is committing, has committed or is about to commit a felony or any of the crimes specified in Section 552 of the Code of Criminal Procedure (the non-bailable misdemeanors—see "Arrest and Bail," this Manual).

b. The authority granted by Subdivision 6 is limited. In order for an officer to lawfully stop and inquire of a person, it is necessary that the person be observed by the officer (before he stops him) to:

(1) Loiter, or
(2) Remain in, or
(3) Wander about in,
(4) Any place,
(5) Without apparent reason, and
(6) Under circumstances which justify suspicion that he may be engaged in or about to engage in a crime.

c. The officer will note that subdivision 6 does not restrict itself to a public place (as do subdivision 1 or 2, for example). It also does not permit the officer to stop the person and inquire on *any* suspicion. The suspicion must be that the person stopped is engaged in, or is about to engage in, a crime.

(1) No general rule or what is sufficient suspicion can be given. Adequate suspicion hinges on many factors—a man running after a train, on a train platform, with a train pulling out, arouses no suspicion. A man running in the night from the direction of a woman's screams gives rise to ample suspicion. The officer must be guided by common sense (i.e., will the magistrate feel it was reasonable to have suspected and stopped the defendant?).

d. In addition to making a sensible judgment as to whether there was sufficient suspicion, the officer must (after stopping and inquiring) decide whether the person has both identified himself and given a reasonably credible account of his conduct and his purposes. If he has not done both but only the one or the other (or neither), the officer may arrest him for loitering.

(1) The "credible account" of conduct and purposes required by the law may be taken by the officer to mean believable answers to the questions: What are you doing? Why are you here? Who are you?

7. **TRANSPORTATION FACILITIES (BUSINESS):** Loiters or remains in any transportation facility, unless specifically authorized to do so, for the purpose of soliciting or engaging in any business, trade or commerical transactions involving the sale of merchandise or services, or for the purpose of entertaining persons by singing, dancing or playing any musical instrument (P.L. Sec. 240.35, subd. 7); or

8. **TRANSPORTATION FACILITIES, NO SATISFACTORY EXPLANATION:** Loiters or remains in any transportation facility, or is found sleeping therein, and is unable to give a satisfactory explanation of his presence (P.L. Sec. 240.35, subd. 8); or

9. **DRUGS:** Loiters or remains in any place with one or more persons for the purpose of unlawfully using or possessing a dangerous

drug as defined in Section 220.00 of the Penal Law (P.L. Sec. 240.35, subd. 9). Loitering is a violation.

DEFINITIONS OF TERMS:

1. **PUBLIC PLACE**—a place to which the public or a substantial group of persons has access, and includes, but is not limited to, highways, transportation facilities, schools, places of amusement, parks, playgrounds and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence (P.L. Sec. 240.00, subd. 1).

2. **TRANSPORTATION FACILITY**—any conveyance premises or place used for or in connection with public passenger transportation whether by air, railroad, motor vehicle or any other method. It includes aircraft, watercraft, railroad cars, buses, and air, boat, railroad and bus terminals and stations and all appurtenances thereto (P.L. Sec. 240.00, Subd. 2).

FALSELY REPORTING AN INCIDENT: A person is guilty of Falsely Reporting an Incident when, knowing the information reported, conveyed or circulated to be false or baseless, he:

1. Initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe or emergency under circumstances in which it is not unlikely that public alarm or inconvenience will result (P.L. Sec. 240.50, subd. 1); or

2. Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion or other casastrophe or emergency which did not in fact occur or does not in fact exist (P.L. Sec. 240.50, subd. 2); or

3. Gratuitously reports to a law enforcement officer or agency

a. the alleged occurrence of an offense or incident which did not not in fact occur; or

b. an allegedly impending occurrence of an offense or incident which in fact is not about to occur; or

c. false information relating to an actual offense or incident or to the alleged implication of some person therein (P.L. Sec. 240.50, subd. 3).

Falsely Reporting an Incident is a Class B misdemeanor. Subdivision 2 covers false alarms.

ORDINANCES: Villages may designate violations of village ordinances as disorderly conduct and violators as disorderly persons. Such offenders are subject to summary arrest for violations in the presence of the officer and may be fined or imprisoned. If violation of a village ordinance is not made disorderly conduct and only a money penalty or fine is set for its violation, it can only be enforced by court action (or injunction) and no summary arrest may be made (Vill. L. Secs. 93, 338, 339; Peo. vs. Ward, 146 Misc. 606).

In addition to the authority of the village law, officers should know that the Municipal Home Rule Law, Section 10, effective July 1, 1965, gave all villages, towns and cities full authority to pass ordinances creating crimes and all officers must inform themselves of the particular criminal ordinances in their own municipalities.

INVESTIGATIONS

In all instances of arrests for Disorderly Conduct, Harassment, Aggravated Harassment or Loitering, officers may make arrests without warrant where the offense is committed in their presence. Where the officer did not witness the offense, any citizen who did witness it may make the arrest. The officer can assist in such arrest and then take custody of the prisoner.

Officers should be alert to obtain, where practicable, the names and addresses of actual witnesses, so that these witnesses may be summoned for later testimony, in the event the subject decides to stand trial and not plead guilty.

DISTURBING LAWFUL MEETING: Disturbing a meeting was a specific violation under old Penal Law Section 1470. It is now a violation of Subdivision 4 of the Disorderly Conduct law. The acts which violated the old law will, in most cases, continue to be violations of the new, including such things as discharging gas into a meeting room or refusing to yield the floor after questioning a speaker.

DISTINGUISHING HARASSMENT AND ASSAULT: Officers will note that Harassment under Subdivision 1 of Section 240.25 of the Penal Law looks very much like minor "assaults" under the old law. Harassment and Assault are distinguished, however, by the fact that Assaults now require an actual "physical injury" or worse. A "physical injury" means either impairment of physical condition or substantial pain (P.L. Sec. 10.00, subd. 9). Thus, without physical injury, the crime cannot be Assault, but could be Harassment.

OBSCENE OR MALICIOUS TELEPHONE CALLS — AGGRAVATED HARASSMENT: Interview complainant and if possible take a written statement from complainant, setting forth:

1. Time and date call or calls received,
2. Telephone number and location at which call received,
3. Exact threat made (and to whom and against whom) or obscene language used.

Officers should determine whether complainant knows identity of the person who made the call. If so, the complainant should be assisted in giving information under oath to a magistrate, charging the crime, to have a warrant issued for arrest of the accused.

If the complainant does not know the identity of the caller, interviewing persons who might logically have committed the crime should be considered. If the calls are recurring, it may be desirable to secure permission from the complainant and monitor his or her telephone calls. A change of telephone number by the complainant may be suggested in logical instances.

When the officer is reasonably satisfied of the identity of the caller but does not have sufficient grounds to substantiate an arrest, he may, if the calls are recurring, consider placing the person under technical surveillance. In addition telephone company officials may be contacted in appropriate cases for technical assistance in tracing and otherwise identifying calls.

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55. DANGEROUS DRUGS

NARCOTIC DRUGS: The New York State Department of Health is charged by statute with the duty of licensing, supervising and regulating the manufacture, distribution and use of narcotic drugs (Publ. H. L. Sec. 201, subd. 1-j).

It is the statutory duty of all peace officers to enforce the narcotic drug control laws and to cooperate with Federal and other state's narcotics enforcement agencies (Publ. H. L. Sec. 3350, subd. 1).

PHYSICIANS: No communication by a patient to a physician can be deemed confidential when the case concerns the narcotic drug control laws (Publ. H. L. Sec. 3304, subd. 2).

STATUTORY CONTROL OF NARCOTICS: It is unlawful for anyone to manufacture, possess, control, sell, prescribe, administer, dispense or compound any narcotic drug except as authorized by the Narcotic Drug Control Act (which consists of Sections 3300 through 3396 of the Public Health Law) (Publ. H. L. Sec. 3305).

LEGITIMATE TRADE OR USE: No individual, wholesaler or manufacturer may possess, manufacture, compound, mix, cultivate, grow, produce or prepare narcotic drugs without a license from the Department of Health (Publ. H. L. Sec. 3310, subd. 1-a). Licensees may sell narcotic drugs and exempt narcotic preparations only to persons qualified by law to possess them in connection with a business or profession (Publ. H. L. Sec. 3310, subd. 2).

All hospitals, laboratories, maternity homes, maternity hospitals, dispensaries, nursing homes, convalescent homes or homes for the aged must be certified and approved by the Department of Health before they can possess and use narcotic drugs (Publ. H. L. Sec. 3311, subd. 1).

Records must be kept by all manufacturers, wholesalers, pharmacists, institutions and individual physicians, or other legitimate dispensers of narcotics as to amounts received and amounts disposed of or used professionally otherwise than by prescription (Publ. H. L. Sec. 3333). Such records are confidential, but must be open to inspection by State or Federal officers enforcing the narcotic drug laws (Publ. H. L. Sec. 3334, subd. 1).

Common carriers or warehousemen engaged in lawful transporting or storing of narcotic drugs, or public officers or employees in the performance of official duties requiring possession or control of narcotic drugs are exempted from the law's restrictions as to possession and control of narcotic drugs (Publ. H. L. Sec. 3332).

RETAIL DISPENSING OF NARCOTIC DRUGS: A pharmacist, in good faith, may sell and dispense narcotic drugs to anyone, on a written prescription of a physician, dentist or veterinarian (Publ. H. L. Sec. 3322, subd. 1-a; 3301, subd. 32). A prescription for narcotic drugs may not be refilled (unless for one of the preparations listed hereafter in this section under "Narcotic Preparations Which Are Not Prohibited") (Publ. H. L. Sec. 3322, subd. 1-d).

The person to whom a narcotic drug is sold under prescription may lawfully possess it only in the container in which it was sold to him (Publ. H. L. Sec. 3331).

WHAT ARE NARCOTIC DRUGS: Narcotic drugs are defined by Public Health Law Sec. 3301, subd 38 as:

1. Opium.
2. Coca leaves.
3. Marihuana (cannabis, sativa).
4. Pethidine (isonipecaine, meperidine).
5. Opiates.
6. Compound, manufacture, salt alkaloid or derivate of opiates.

7. Every substance neither chemically nor physically distinguishable from items 1 through 6.

8. Preparations containing such drugs or their derivatives.

The Commissioner of Health may specify the items falling within the provisions of items 6, 7 and 8. In case of doubt the Commissioner's Rules and Regulations should be consulted.

Common narcotic drugs coming within the definitions of the law are opiates such as laudanum (tincture of opium), paregoric (camphorated tincture of opium), morphine (an alkaloid of opium), heroin (a white powder derived from morphine), codeine (an alkaloid from opium or morphine), dilaudid (a white powder derived from morphine), metopon (a methyl derivative of dilaudid), pantopon (trade name of a purified opium preparation), and numorphan (a morphine-like drug).

Demerol is a well known brand of meperidine, produced by synthetic chemistry. It comes as tablets or in solutions. Similar drugs are methadone hydrochloride, levo-dromoran and leritine.

Cocaine is the main illicit drug from coca leaves. It is often referred to as "snow" and is a white, crystalline substance. It is less frequently found than the opiates.

Marihuana is the crushed leaves and flowering tops of the marihuana or hemp plant, the proper name of which is cannabis sativa (or cannabis indica, cannabis mexicana). In some foreign lands the sticky resin produced as the seeds are set in the flowering tops is gathered from these plants, in the same way as opium is gathered from opium poppies, and in this form the narcotic is referred to as hashish, bhang, kif, and by other names.

In the United States marihuana is ordinarily smoked. It is harvested by stripping the leaves and flowering tops of the plant, allowing them to dry, then crushing them, often in a kitchen blender, and taking out the twigs and seeds. The result looks somewhat like green tea or tobacco. It is usually smoked straight in hand-rolled "cigarettes." It has a characteristic, recognizable odor when smoked.

NARCOTIC PREPARATIONS WHICH ARE NOT PROHIBITED: The following preparations may be sold at retail by pharmacists and dispensed by hospitals, etc., without prescription (Publ. H. L. Sec. 3324, subd. 1):

1. Stokes expectorant.
2. Brown mixture.
3. Any medicinal preparation that contains, in one fluid ounce (or avoirdupois ounce if solid preparation):
   a. not more than one grain of codeine, or any of its salts, or
   b. not more than one-quarter of a grain of ethylmorphine or any of its salts, or
   c. not more than two grains of noscapine (narcotine) or any of of its salts, or
   d. not more than two grains of papaverine or any of its salts.

The law prohibits (1) purchasing more than four ounces of these preparations at any one time, (2) purchasing for purposes other than medicine and (3) giving a false name or address when purchasing (Publ. H. L. Sec. 3324, subd. 2-d).

It is unlawful to sell any of the mentioned preparations unless they contain, in addition to the narcotic drug, some drug or drugs conferring medicinal qualities on the preparation other than those possessed by the narcotic. They must be sold in good faith as medicines and not to avoid the narcotic control laws (Publ. H. L. Sec. 3324, subd. 2-a, b).

None of these preparations may be sold to any person actually or apparently under 21, without a prescription (Publ. H. L. Sec. 3324, subd. 2-c).

FRAUD AND DECEIT RE NARCOTICS: The following are prohibited by the Public Health Law:

1. Obtaining or attempting to obtain a narcotic prescription, a narcotic drug, or the administration of a narcotic drug by:
   a. fraud, deceit, misrepresentation or subterfuge;
   b. use of a forged or altered prescription or written order ("written orders" are used by pharmacies, physicians, etc., to obtain narcotic drugs);
   c. concealment of material fact;
   d. use of a false name or false address (Publ. H. L. Sec. 3351, subd. 1-a);
2. Willfully making a false statement in any prescription, order, report or record required by the Public Health Law in respect to narcotic drugs (Publ. H. L. Sec. 3351, subd. 1b);
3. Falsely assuming title of or representing oneself to be, for the purpose of obtaining a narcotic drug, a manufacturer, wholesaler, pharmacy, pharmacist, interne, nurse, physician, dentist, veterinarian or other authorized person (Publ. H. L. Sec. 3351, subd. 1-c);
4. Making or uttering any false or forged prescription or written order (Publ. H. L. Sec. 3351, subd. 1-d);
5. Affixing any false or forged label to a package or receptacle containing narcotic drugs (Publ. H. L. Sec. 3351, subd. 1-e).

Possession of a false or forged narcotic prescription is presumptive evidence of intent to use it for the purpose of illegally obtaining a narcotic drug (Publ. H. L. Sec. 3351, subd. 2).

A person who, during a course of treatment, is supplied with narcotic drugs or a prescription by one physician and who, without disclosing the fact, is supplied during the treatment with narcotic drugs or a prescription by another physician, is guilty of a violation (Publ. H. L. Sec. 3351, subd. 3).

OPIUM VIOLATIONS: The Public Health Law prohibits any of the following (Publ. H. L. Sec. 3343, subd. 1):

1. Smoking or inhaling opium.
2. Possessing an opium pipe or opium lamp.
3. Possessing any other device or apparatus designed or generally used for the purpose of preparing opium for smoking, or for the purpose of smoking or inhaling opium.
4. Possessing any article capable of being used as or part of any item described under "3" above.

The law does not apply to an opium pipe, lamp or other device or apparatus when possessed for exhibition purposes (Publ. H. L. Sec. 3343, subd. 2).

DEPRESSANT AND STIMULANT DRUGS: Depressant or stimulant drugs means any drug containing any barbituric acid or any salts of barbituric acid, or any derivative of barbituric acid which the Commissioner of Health has designated as habit forming.

Depressant and stimulant drugs also means any drug which contains amphetamine or any of its optical isomers, any salt of it or any salt of its optical isomers, or any substance the Commissioner of Health has by regulation designated as habit forming because of its stimulant effect on the central nervous system (except a narcotic drug).

By regulation the Commissioner may designate as a depressant or stimulant drug any other drug (except a narcotic drug) which has been found

to have a potential for abuse because of its depressant or stimulant effect on the central nervous system, or its hallucinatory effect (Publ. H. L. Sec. 3371, subd. 1-a, b, c).

Common barbiturates include Phenobarbital, Luminal, Seconal, Nembutal, Amytal, etc. They appear generally as powders put in gelatin capsules. The capsules may be yellow, red or other colors. Barbiturates also come in tablet form.

The amphetamines commonly found include Dexedrine, Benzedrine, Dexamyl, etc. They are usually prepared as capsules or tablets.

A Department of Health license is required to in any way produce, manufacture or wholesale depressant or stimulant drugs and institutions using such drugs must be certified by the Department of Health (Publ. H. L. Sec. 3370–3378).

All sales or distribution must be on written orders, except that pharmacists in good faith may sell depressant or stimulant drugs to anyone on a written prescription of a physician, dentist or veterinarian (Publ. H. L. Sec. 3380; 3381). All containers must be labeled and the label must include the quantity kind and form of drug (Publ. H. L. Sec. 3383).

A person who has obtained depressant or stimulant drugs under prescription may lawfully possess them only in the original container in which sold to him (Publ. H. L. Sec. 3386).

The law contains provisions similar to the narcotic laws permitting public officers, professional people, technicans and others to possess, dispense or administer such drugs and requiring the keeping of records thereof (Publ. H. L. Sec. 3385–3389).

HALLUCINOGENIC DRUGS: A hallucinogenic drug means and includes stramonium, mescaline (Peyote) lysergic acid diethylamide (LSD) and psilocybin, or any salts or derivatives or compounds or compounds of preparations or mixtures thereof (P.L. 220.00, subd. 3, Ment. Hyg. L. Sec. 229 (429).

No person, except specially registered manufacturers may receive, sell or dispense a hallucinogenic drug without a license from the Commissioner of Health (Ment. Hyg. L. Sec. 229 (429)). Registered manufacturers may supply hallucinogenic drugs to certain licensed physicians holding licenses from the Commissioner of Mental Hygiene who in turn may prescribe them under regulations of the Commissioner (Educ. L. Sec. 6804, subd. 3-r). Any person who sells or dispenses a hallucinogenic drug otherwise is guilty of a Class A misdemeanor under the Education Law (Educ. L. Sec. 6804, subd. 3).

DANGEROUS DRUGS: The Penal Law's drug prohibitions are against "dangerous drugs," or "narcotic drugs". A dangerous drug is any narcotic drug, any depressant or stimulant drug, or any hallucinogenic drug (P.L. Sec. 220.00, subd. 4).

UNLAWFUL POSSESSION OR SALE: The Penal Law crimes in respect to drugs involve "unlawfully" possessing or selling a dangerous drug.

"Unlawfully" means in violation of Article 33 of the Public Health Law (Sections 3300–3366), Article 33A of the same law (Sections 3370–3393) or Section 229 (429) of the Mental Hygiene Law (P.L. Sec. 220.00, subd. 6).

The word sell, when used in the drug sections of the Penal Law, means to sell, exchange, give or dispose of, to another, or to offer or to agree to do the same (P.L. Sec. 220.00, subd. 5).

CRIMINAL POSSESSION OF A DANGEROUS DRUG IN THE FOURTH DEGREE: A person is guilty of Criminal Possession of a

Dangerous Drug in the Fourth Degree when he knowingly and unlawfully possesses a dangerous drug (P.L. Sec. 220.05)..

Criminal Possession of a Dangerous Drug in the Fourth Degree is a Class A misdemeanor.

CRIMINAL POSSESSION OF A DANGEROUS DRUG IN THE THIRD DEGREE: A person is guilty of Criminal Possession of a Dangerous Drug in the Third Degree when he knowingly and unlawfully possesses a dangerous drug with intent to sell the same (P.L. Sec. 220.10).

Criminal Possession of a Dangerous Drug in the Third Degree is a Class E felony.

CRIMINAL POSSESSION OF A DANGEROUS DRUG IN THE SECOND DEGREE: A person is guilty of Criminal Possession of a Dangerous Drug in the Second Degree when he knowingly and unlawfully possesses a narcotic drug:

1. With intent to sell the same; or
2. Consisting of:
   a. 25 or more cigarettes containing cannabis (marihuana); or
   b. One or more preparations, compounds, mixtures, or substances of an aggregate weight of:
      (1) ⅛ oz. or more containing any of the alkaloids or salts of heroin, morphine or cocaine, or
      (2) ¼ oz. or more containing any cannabis (marihuana), or
      (3) ½ oz. or more containing raw or prepared opium, or
      (4) ½ oz. or more containing one or more than one of any other narcotic drug (P.L. Sec. 220.15).

Criminal Possession of a Dangerous Drug in the Second Degree is a Class D felony.

CRIMINAL POSSESSION OF A DANGEROUS DRUG IN THE FIRST DEGREE: A person is guilty of Criminal Possession of a Dangerous Drug in the First Degree when he knowingly and unlawfully possesses:

1. A narcotic drug,
2. Consisting of:
   a. 100 or more cigarettes containing cannabis (marihuana); or
   b. one or more preparations, compounds, mixtures or substances of an aggregate weight of:
      (1) 1 oz. or more containing any of the alkaloids or salts of heroin, morphine or cocaine, or
      (2) 1 oz. or more containing any cannabis (marihuana), or
      (3) 2 oz. or more containing raw or prepared opium, or
      (4) 2 oz. or more containing one or more than one of any narcotic drug (P.L. Sec. 220.20).

Criminal Possession of a Dangerous Drug in the First Degree is a Class C felony.

PRESUMPTION, DANGEROUS DRUGS IN AUTOMOBILES: The presence of a dangerous drug in an automobile (other than a public omnibus) is presumptive evidence of knowing possession of it by each and every person in the automobile at the time the drug was found, except that this presumption does not apply to:

1. A duly licensed operator of an automobile who is at the time operating it for hire in the lawful and proper pursuit of his trade, or
2. Any person in the automobile if one of them, having obtained the drug and not being under duress, is authorized to possess it and such drug is in the same container as when he received possession thereof, or

3. When the drug is concealed upon the person of one of the occupants (P.L. Sec. 220.25).

CRIMINALLY SELLING A DANGEROUS DRUG IN THE THIRD DEGREE: A person is guilty of Criminally Selling a Dangerous Drug in the Third Degree when he knowingly and unlawfully sells a dangerous drug (P.L. Sec. 220.30).

Criminally Selling a Dangerous Drug in the Third Degree is a Class D felony.

CRIMINALLY SELLING A DANGEROUS DRUG IN THE SECOND DEGREE: A person is guilty of Criminally Selling a Dangerous Drug in the Second Degree when he knowingly and unlawfully sells a narcotic drug (P.L. Sec. 220.35).

Criminally Selling a Dangerous Drug in the Second Degree is a Class C felony.

CRIMINALLY SELLING A DANGEROUS DRUG IN THE FIRST DEGREE: A person is guilty of Criminally Selling a Dangerous Drug in the First Degree when he knowingly and unlawfully sells a narcotic drug to a person less than twenty-one years old (P.L. Sec. 220.40).

Criminally Selling a Dangerous Drug in the First Degree is a Class B felony.

CRIMINALLY POSSESSING A HYPODERMIC INSTRUMENT: A person is guilty of Criminally Possessing a Hypodermic Instrument when he knowingly and unlawfully possesses or sells a hypodermic syringe or hypodermic needle (P.L. Sec. 220.45).

Criminally Possessing a Hypodermic Instrument is a Class A misdemeanor.

DISPOSING OF HYPODERMIC INSTRUMENTS: It is also a Class A misdemeanor to sell or furnish a hypodermic syringe or needle to anyone except pursuant to a written prescription of a licensed physician or veterinarian, or to control or posses the same unless obtained under a valid written prescription.

The law excepts physicians, dentists, veterinarians, undertakers, nurses, podiatrists, pharmacies, drug stores, hospitals, sanatoria, clinical laboratories and medical institutions, dealers and internes (Publ. H. L. Sec. 3395, subd. 1). Hypodermic syringes may also be purchased by school personnel for educational use (Educ. L. Sec. 811). Prescriptions are good for one year only.

GROWING MARIHUANA (CANNABIS): It is a Class A misdemeanor to grow marihuana or to knowingly allow it to grow on one's land without destroying it, unless licensed under the Public Health Law (Publ. H. L. Sec. 3315).

Marihuana is a green annual plant which may grow as high as fifteen feet in favorable locations. It is quite likely to be found trimmed enough to be hidden by a fence, bush or other protective covering, and may be planted with crops like corn, for concealment. It is most easily distinguished by its leaf, which has an odd number of long, slender leaflets, usually five or seven. They are saw-toothed on the edge. The plant is somewhat sticky to the touch and is covered with fine hair, which is barely visible.

DISPENSING NARCOTIC TO PERSON UNDER 21: It is a Class A misdemeanor for any pharmacist to dispense a prescription for any narcotic to a person actually or apparently under the age of 21 years, without ascertaining by reasonable inquiry that such prescription was actually

issued and signed by a duly licensed medical practitioner (Educ. L. Sec. 6804, subd. 3-r).

AIRCRAFT PILOT, CREW, PASSENGER: It is a misdemeanor, punishable by a fine of not over $100, imprisonment not more than 90 days, or both, to pilot an aircraft or serve as a member of its crew while under the influence of drugs, or to permit any person to be carried in an aircraft who is obviously under the influence of drugs (except a medical patient under proper care or in case of emergency) (Genl. Bus. L. Sec. 245, subd. 11, 246). It is not necessary that the drugs be narcotic drugs—any drug which would inhibit mental or physical ability would undoubtedly be cause for violation.

CARELESS DISTRIBUTION OF MEDICINES, DRUGS AND CHEMICALS: Any person, firm, or corporation, who distributes, or causes to be distributed, any free or trial samples of any medicine, drug or chemical compound, by leaving the same exposed upon the ground, sidewalk, porch, doorway, letter-boxes, or in any other manner, that children may become possessed of the same, is guilty of a violation, punishable by a fine not exceeding twenty-five dollars for each offense. This section does not apply to the direct delivery of any such article to an adult (Educ. L. Sec. 6804-a).

SEIZURE OF DRUGS: Any narcotic drugs, the lawful possession of which is not established, or which have been received or obtained from an unlawful source or by unlawful means, or the title to which cannot be ascertained, are public nuisances and may be seized by any peace officer. The Commissioner of Health or the court or magistrate having jurisdiction must order all such narcotics either forfeited or destroyed. Any nonprofit hospital may apply to the Commissioner to obtain forfeited narcotics in his possession (Publ. H. L. Sec. 3352).

Any depressant or stimulant drug the lawful possession of which is not established or which has been received or obtained from an unauthorized source or by unauthorized means or the title to which cannot be ascertained, may be seized by any peace officer. They are subject to forfeiture in the same way as narcotic drugs (Publ. H. L. Sec. 3392).

SEIZURE OF VEHICLES, VESSELS, AIRCRAFT: Any vehicle, vessel of aircraft (except a common carrier) used to carry or to facilitate the transportation, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange or giving away of any unlawful narcotic drug, or in or upon which any narcotic drug is concealed or possessed, shall be seized by any peace officer, and delivered to the custody of the district attorney (in New York City and Buflalo, to the police department). It is the duty of the district attorney (in New York City and Buffalo, the corporation counsel) to initiate forfeiture proceedings in the Supreme Court in proper cases or to return the vehicle, vessel or aircraft to the owner (Publ. H. L. 3353).

Forfeiture cannot be adjudged where the owner established by a preponderance of evidence (1) that the use was not intentional on the part of any owner (2) that the use was by one other than an owner, and such other was in unlawful possession of the vehicle, vessel or aircraft (Publ. H. L. Sec. 3353, subd. 6).

NARCOTIC ADDICTS: Under the Mental Hygiene law a narcotic addict is a person who is dependent upon opium, heroin, morphine or any derivative or synthetic drug of that group.

Article 9 of the Mental Hygiene Law relates to Drug Addiction and establishes a Narcotic Addiction Control Commission in the Department of Mental Hygiene. The law gives the Commission general powers to

conduct a narcotics addiction rehabilitation program. It also provides for addicts to be certified to the rehabilitation program after conviction of certain crimes, or after arrest but before trial, or civilly.

The new law provides for a comprehensive program of compulsory treatment of narcotic addicts, as essential to the protection and promotion of the health and welfare of the state. Periods of treatment will be extended and controlled; the new law aims at rehabilitation of the addict.

Portions of the new law became effective April 1, 1966. Other portions, including some portions relating to certification and treatment of addicts and addicts in custody for crime became effective April 1, 1967. Repeal of certain parts of the existing Arrested Narcotic Addict Commitment Act was effective October 1, 1967.

The procedures in respect to narcotic addicts who are convicted for narcotic or non-narcotic crimes are set out in the Arrested Narcotic Addict Commitment Act, Sections 208–215, Mental Hygiene Law. Under this law, "narcotic addict" means a person who is dependent upon opium, heroin, morphine or a synthetic opiate or who by reason of the repeated use of any such drug is in imminent danger of becoming dependent (Ment. Hyg. L. Sec. 201, subd. 2).

1. Users of marihuana, hallucinogens, amphetamines, barbiturates, or any of their derivatives do not come within the definition of a "narcotic addict."

A justice of the supreme court or a judge of a county court in the county where an addict resides may certify an addict to a state approved facility for treatment. Such certification requires statements in writing from two physicians that the person is in need of treatment. Application to the court may be made by any person with whom the the addict may reside or at whose house he may be, or the nearest available relative, or the addict himself may apply (Ment. Hyg. L. Sec. 206).

All physicians are required by law to report to the Department of Health the name and address of any person under treatment if it appears that such person is an habitual user of any narcotic drug. Such reports are open to inspection by peace officers (Publ. H. L. Sec. 3344).

A court or the Board of Parole may require, as a condition of probation or parole, that the defendant, if addicted to use of narcotic drugs, take treatment therefor (CCP Sec. 932; Corr. L. Sec. 215, P.L. Sec. 65.00-65.15).

ADOLESCENT DRUG USERS: Any person between the ages of 16 and 21 years habitually addicted to the use of drugs may be deemed a Wayward Minor (CCP Sec. 913-a).

An "adolescent drug user" is any person under age 21 who uses or has used any narcotic drug to such extent that for his own welfare or the welfare of others, or of the community, he requires care, treatment or rehabilitation (Pub. H. L. Sec. 3360, subd. 1).

Any supreme court justice, county judge, special county judge or family court judge, on a petition by any peace officer, licensed physician, or a parent, guardian, relative or friend of the adolescent, may order the adolescent brought before him for hearing to determine whether he is an adolescent drug user and upon determination that he is, may order him committed for treatment (Publ. H. L. Sec. 3362). The determination is not a conviction (Publ. H. L. Sec. 3364).

GLUE SNIFFING: It is a Class A misdemeanor to sell, or offer to sell, to another, a tube or container of glue containing a solvent having the property of releasing toxic vapors or fumes, if the seller has knowledge that the product will be used for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction or the dulling of brain

or nervous system, by smelling or inhaling the fumes (Publ. H. L. Sec. 3396, subd. 4).

A "glue containing a solvent having the property of releasing toxic vapors or fumes" means any glue, cement or adhesive containing any one or more of the chemical compounds acetone, acetate, benzene, butyl alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ketone, pentachlorophenol, petroleum ether or toluene (Publ. H. L. Sec. 3396, subd. 1).

It is an offense (violation) punishable by fine not over $50, imprisonment not more than 5 days, or both, to intentionally smell or inhale the described vapors or fumes for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of brain or nervous system (Publ. H. L. Sec. 3396, subd. 2, 5).

It is a similar violation, similarly punishable, to use or possess for using, any glue containing a solvent having the property of releasing toxic vapors, as previously defined, when the use or possession is in order to smell or inhale the fumes, etc., as described in the preceding paragraph (Publ. H. L. Sec. 3396, subd. 3, 5).

FEDERAL LAW

Federal law defines narcotic drugs as opium, isonipecaine, coca leaves and opiates (whether from natural substances or chemical synthesis) or any compound, derivative, salt or preparation of them, or anything which is chemically identical to such things (Title 26 U.S. Code Sec. 4731, subd. a; 7852, subd. b).

It is a Federal felony to fraudulently or knowingly import or bring any narcotic drug into the United States (Title 21 U.S. Code, Sec. 174).

It is also a criminal offense (Title 18 U.S. Code 545) to knowingly and wilfully smuggle any merchandise (including drugs) into the United States. Merchandise so smuggled must be seized, and the smugglers are subject to arrest.

Smuggling of marihuana is also a Federal felony (Title 21 U.S. Code Sec. 176a).

Proof of mere possession is sufficient for conviction under either Federal statute, unless the defendant explains his possession to the satisfaction of the jury.

The Federal Commisioner of Narcotics may, by regulation, permit legitimate importation of crude opium and coca leaves for manufacture of drugs (Title 21 U.S. Code, Sec. 173).

It is a Federal felony to sell, barter, exchange, or give away narcotic drugs except on a lawful written order (Title 26 U.S. Code, Sec. 4705, subd. a; 4742; 7237).

It is a Federal felony for a person eighteen years of age or over to knowingly sell or give to a person under eighteen any heroin brought into the United States. Penalties include death if the jury so directs (Title 21 U.S. Code, Sec. 176b).

One-half of any fine collected from an offender and one-half of any bail forfeited in respect to the mentioned narcotics violations may be paid to the person who furnished the information which led to the conviction or institution of proceedings (Title 21 U.S. Code, Sec. 183).

Narcotic drugs (whether imported into or produced in the United States) are uniformly subject to tax at the rate of one per cent an ounce or fraction of an ounce. The required tax stamps must be so affixed as to securely seal the stopper, covering or wrapper of the drug container. Drugs issued on order or prescription for legitimate medical use require only a proper label, similar to the state-required label (Title 26, U.S. Code, Sec. 4701; 4703; 4704).

Failure to comply with the Federal narcotic tax laws is also a felony (Title 26 U.S. Code, Sec. 7237).

A narcotic conviction under Federal laws bars state prosecution, under the laws of New York (Publ. H. L. Sec. 3354, subd. 3).

The Bureau of Customs, U.S. Treasury Department, enforces the Federal Narcotics Control Act of 1956, Title 18 U.S. Code, Sections 1401–1407. Section 1407 provides that any citizen of the United States who is addicted to or uses narcotic drugs (except users where administered in good faith by physician for accident or sickness) or who was convicted of a violation of any narcotic or marihuana law of the United States or a state for which the penalty was imprisonment over a year, cannot enter or leave the United States unless he or she registers with a customs official, agent or employee at a point of entry or a border customs station. Certificates may be issued to any such person departing and they must be surrendered at the port of entry or border customs station on return.

INVESTIGATIONS

FEDERAL BUREAU OF NARCOTICS: The Federal Bureau of Narcotics of the U.S. Treasury Department handles Federal narcotics violations. A primary field of interest of this Bureau is the smuggling of narcotics into the United States and the illicit networks of distribution of narcotic drugs. The major illicit drug is heroin.

The Federal Bureau of Narcotics has its main New York Office (District Office, District 2) in New York City at 90 Church Street. It has a District Branch Office at 68 Court St., Buffalo.

The Bureau operates a free two-week training course in narcotics violations at Washington D.C. open to local officers. Information about attendance may be obtained from the Director, Federal Bureau of Narcotics Training School, 633 Indiana Ave., N.W., Washington, D.C. 20226.

Officers should promptly bring to the attention of the nearest Federal Bureau of Narcotics office any information developed concerning illicit sources of heroin or other Federally prohibited narcotic drugs.

BUREAU OF CUSTOMS: Jurisdiction of the Bureau of Customs includes narcotic drugs and marihuana involved in smuggling cases. A customs officer's area of jurisdiction is the port, border or international airport and territory adjacent thereto. Customs enforcement units in New York State are at 201 Varick St., New York, N.Y.; Post Office Building, Room 240, Buffalo, N.Y.; U.S. Customs House, Room 205, 127 No. Water Street, Ogdensburg, N.Y.; U.S. Border Station, Rouses Point, N.Y.

NEW YORK STATE NARCOTICS CONTROL BUREAU, DEPARTMENT OF HEALTH: The Narcotics Bureau of the Department of Health has its headquarters in Albany and field offices in Albany, Buffalo, New York City, Rochester and Syracuse, all listed under State of New York, Department of Health, Narcotics Control, in the local telephone directories. As previously mentioned, the Department of Health has the statutory responsibility for control of drugs in New York. The Bureau's facilities and personnel are available for advice and assistance of local officers on request.

NEW YORK STATE POLICE: Each troop of the New York State Police has assigned to the Bureau of Criminal Investigation (BCI) personnel specially trained and experienced in dangerous drug cases who are available to handle cases on request. When such assistance is desired, it should be requested at the beginning of the investigation.

IDENTIFICATION OF NARCOTIC DRUGS: A major portion of the illicit drug traffic involves heroin or marihuana. Heroin cannot be legally manufactured and is smuggled into the United States. Other dangerous drugs may be manufactured and their commercial appearances include pills, tablets, capsules, solution, infusions or tinctures of varying color and appearance.

It is not practical for the officer in the field, by physical examination, sniffing, tasting, etc., to attempt to determine whether a suspected substance is a dangerous drug. In addition, such attempts may be physically dangerous for the officer. They should be avoided.

In all cases, the only proper final determination of whether a suspected substances is a prohibited drug is analysis in the scientific laboratory.

The police officer will frequently arrest a subject in connection with a crime not involving drugs. Upon searching the subject or his car, etc., the officer will find substances which are possibly dangerous drugs, or "the works." "The works" is a slang term for a hypodermic syringe and needle, or improvised means of injecting drugs such as eyedropper and hypodermic needle or even a razor blade or pin to open a vein and an eyedropper to inject the drug. A spoon or bottle cap is is generally used to heat water in which heroin is dissolved for injection and they may also be found in "the works."

PRELIMINARY DETERMINATION: The officer may make a preliminary determination that a suspected substance is or is not an illegal drug, on the basis of the following considerations:

(1) Known character of the possessor.

(2) Admissions by the possessor.

(3) Refusal by the possessor to explain or identify the substance.

(4) Circumstances under which found.

(5) Concealed or hidden prior to finding (white tablets secreted in a trouser waistband or in a hollowed loaf of bread or a shoe heel are more likely to be a narcotic than to be aspirin).

(6) Information from an informant.

(7) Physical appearance (a white powder in a fold of paper or "bindle" could be heroin or a hand-rolled brown-paper cigarette, whose contents do not look like the usual tobacco, could be a marihauna "reefer").

(8) Examination by trade experts (experienced pharamacists or expert personnel of drug supply and chemical firms may be able to recognize that sustances are dangerous drugs, in case of commercial preparations and tablets, by shape, appearance and markings).

(9) Pharamacists can make on-the-spot chemical tests for identification of some narcotics. Such examination should always be supplemented by formal scientific laboratory analysis.

(10) Packaging-dangerous drugs may occasionally be found in an original commercial bottle or package, showing identification of the substances contained, such as "Demerol," "Morphine Sulfate ¼ Grain," "Codeine," etc.).

(11) Field testing, in case of some narcotics, with a prepared kit. (The Federal Bureau of Narcotics utilizes such field kits. In some instances such kits may be made available to local officers on request to this Bureau).

SEARCHES: The main problem in a search for dangerous drugs is usually the small size of the object sought—it may be concealed in pants cuffs, hat bands, clothing seams, in body openings, cigarette packages, a

pen, a letter, a book, paper, etc. Searches must be very detailed. Consideration should be given to having a physician search body openings when available information is that the subject is in fact in possession of narcotics, and other searching fails to discover them. Subjects must be isolated during search, to prevent their concealing the narcotics in the upholstery of a chair, etc.

In searching automobiles, the search must be extremely detailed, including putting the car on a lift and carefully examining its underside. Hub caps and spare tires should always be suspect, as well as the upholstery. Officers should be alert for special hiding places welded on the underside of fenders, frame, etc.

In buildings, places primary suspect as hiding places for dangerous drugs would be electric outlets and light fixtures, behind trim, in crevices and breaks of walls, and of course all usual hiding places such as cabinets, chests, closets, joists, water tanks of toilets and containers of food, cosmetics, etc. In New York City one favored device has been to suspend narcotics by a cord from a windowsill, the pressure of the lower window sash holding the cord. When the window is opened for search, the narcotic falls to the ground and may well be overlooked by the searcher.

USERS AND ADDICTS: A heroin or opiate user who has had a normal "shot" or "fix" appears calm and relaxed, but it will be found that his eye pupils have contracted considerably and do not react normally to light—he may have a fixed stare. The user who is in need of a "shot" will be restless, nervous, anxious. He will probably yawn frequently, have runny eyes and nose, and sweat more than usual. His eye pupils may be enlarged, his muscles will twich and the skin may show "gooseflesh." Other symptoms are severe aches, vomiting, diarrhea, sleeplessness, a rise in temperature and blood pressure and an increased breathing rate.

The heroin user will have needle puncture marks, scabs and possibly sores or even ulcers from old punctures. The marks are more usually on the forearm but may be on any other part of the body, including the hands.

Barbiturates are likely to produce symptoms similar to drunkenness, such as slurring of speech, lack of balance and a quick temper. Serious misuse of barbiturates can result in very dangerous withdrawal problems, including convulsions and possibly death.

When a suspected addict or drug user is taken into custody officers should be alert to summon medical assistance and to have the subject examined by a physician. In addition, certain illnesses may counterfeit the appearance of drug addiction and lack of medical attention could result in death or severe damage to an innocent subject's physical well-being.

PATROL: The officer on patrol should be continually alert for signs of possible dangerous drug sales or use. Low class candy stores, luncheonettes, billiard parlors and similar establishments where there appears to be constant activity, corner hangouts of male and female adolescents, rooming houses where there is an unusual number of people going in and out, people on the street who seem to be frequently in businesslike conversation with a number of other people, schools where older boys and men hang around, well dressed or "sharp" individuals who loiter around and seem to have no employment are some of the things to be given special attention.

Attention should be given to roofs, cellars, stairways, hallways and vacant premises where persons have been known to congregate and use marihauna or other narcotics. Such spots may sometimes be identified by finding empty gelatin capsules or small papers in which narcotics may have been folded, medicine droppers, bent safety pins, numerous burnt matches,

bent spoons or bottle caps showing signs of having been used to "cook" or heat water for dissolving heroin for a "shot," and pieces of cotton used to strain the cooked "shot."

When any observation is made indicating possible dangerous drug activity, arrangements should be made for continued observation. The uniformed officer is at a considerable disadvantage in this regard and plainclothes officers must ordinarily be used. Discreet surveillance will generally be required to develop enough information to warrant arrest.

SELLERS OR PEDDLERS: It is common practice for those who sell narcotics to the ultimate user to: (1) carry small amounts, (to avoid prosecution as a seller instead of as a mere possessor if arrested), (2) make contact with the buyer without carrying narcotics (to avoid evidence if contact is observed and arrest made), (3) make delivery to buyer by previously hiding the narcotic and informing the buyer of the hiding place.

Some sellers will carry the narcotic with them in a crumpled cigarette package and drop it on the street near the customer after transacting the sale. Some may have a girl friend accompanying them who will carry the narcotic on or in her body and when the sale is transacted, will go to a woman's toilet, remove the amount needed and deliver it to the user. Various other devices of a similar nature will be used.

PERSONAL DANGER: Officers must bear in mind that dangerous drug and particularly narcotics users are frequently in an abnormal condition. Due caution must be used in narcotics cases at all times, even in respect to arrests which appear to be completely routine. In addition, the dangerous drug traffic involves large sums of money and enormous profits and the professionals engaged in smuggling, distributing and supplying do not hesitate to commit murder to silence witnesses, avoid loss of expensive merchandise or evade capture. Officers must use care and discretion not only for their personal safety but for the safety of witnesses, informants and others involved in a case.

INFORMANTS: A basic ingredient of a successful dangerous drug enforcement program is informants. Every effort should be made to develop informants or sources of information not only among addicts and others connected with the narcotics trade, but among non-users in a position to make pertinent observations or otherwise learn of information pertinent to the trade, particularly as to individual sales to users.

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56. ELECTION LAWS

This Manual section includes the election laws with which the law enforcement officer is most likely to deal. They are primarily part of Article 16 of the Election Law, "Violations of the Elective Franchise," Section 420-462. Any misdemeanor conviction under Article 16 is an Unclassified misdemeanor, punishable by fine from $100 to $500, imprisonment up to one year, or both. Any second or later conviction is a Class E felony (Elec. L. Sec. 458, P.L. Sec. 55.10, subd. 2). Any wilful and knowing violation of an election law outside Article 16 is a Class A misdemeanor (Elec L. Sec. 459).

PROHIBITED ACTIVITIES: It is a misdemeanor for any police commissioner or any officer or member of any police force in New York to do any of the following:

1. Use or threaten or attempt to use his official power or authority, in any manner, directly or indirectly, in aid of or against any political

party, organization, association or society, or to control, affect, influence, reward or punish, the political adherence, affiliation, action, expression or opinion of any citizen; or

2. Appoint, promote, transfer, retire or punish an officer or member of a police force, or ask for or aid in the promotion, transfer, retirement or punishment of an officer or member of a police force, because of the party adherence or affiliation of such officer or member, or for or on the request, direct or indirect, of any political party, organization, association or society, or of any officer, member of committee or representative official or otherwise of any political party, organization, association or society; or

3. Contribute any money, directly or indirectly, to, or solicit, collect or receive any money for, any political fund, or join or become a member of any political club, association, society or committee (Elec. L. Sec. 426).

VIOLATION OF ELECTION LAW BY PUBLIC OFFICER OR EMPLOYEE: Public officers who omit, refuse, neglect to perform or wilfully hinder or delay the performance of any act required by the election law are guilty of a Class E felony (Elec. L. Sec. 434).

QUALIFICATIONS OF VOTERS: A citizen qualified to vote on the day of elections must be:

1. Over twenty-one;

2. An inhabitant of the state for one year, a resident of the county for four months and a resident of an election district for thirty days preceding the election;

3. A naturalized citizen at least ninety days prior to the day of election;

4. Able to read and write if eligible to vote after January 1, 1922 (Elec. L. Sec. 150).

PERSONS NOT ALLOWED TO VOTE: The following people are excluded from voting:

1. People who receive or offer any money or compensation for the giving or withholding of a vote at an election or for registering or not registering;

2. Persons convicted of a felony pursuant to the laws of this state, another state or in a federal court, unless such persons have received executive pardons;

3. Persons adjudged incompetent or insane by order of a court unless thereafter they are adjudged competent and released and/or discharged therefrom;

4. Persons who bet or wager upon the results of an election or make any promise to influence voting or registration (Elec. L. Sec. 152).

DATES OF PRIMARY AND GENERAL ELECTIONS; HOURS OF POLLS: Primary elections are held annually on the third Tuesday in June before the general elections. The Presidential primary is held on the first Tuesday in April.

1. Polls are open from twelve o'clock until nine o'clock in the evening for a primary election (in New York City 3:00 p.m. to 10:00 p.m.).

General elections are held annually on the Tuesday next succeeding the first Monday in November.

1. Poll hours are from six o'clock in the morning until nine o'clock in the evening (Elec. L. Sec. 191).

OPENING THE POLLS; PREPARATIONS THEREFOR: The inspectors of election, and clerks, if any, must meet at the polling place at least one-half hour before the time set for opening the polls of the election. These people, not law enforcement officers, are responsible for setting up the polling place (Elec. L. Sec. 192).

ASSISTANCE TO VOTERS: An illiterate or physically disabled person may receive assistance in voting from two election officers of opposite parties, or an official and a voter, or from his or her father, mother, brother, sister, husband, wife or child. He or she must be plainly disabled to use a relative (Elec. L. Sec. 199, subd. 1 & 2).

MAINTAINING ORDER: Members of the Board of Inspectors for registration and elections must preserve good order within and around the place of registration or the polling place. The board or any member, by order in writing, may direct the arrest of any person refusing to obey lawful commands of the Inspectors, or guilty of disorderly conduct disturbing the proceedings.

Any peace officer or any person designated by the board must execute such a written order. A person taken into custody on such an order cannot be prohibited from voting (Elec. L. Secs. 161, 193).

Electioneering in a polling place or within 100 feet of a polling place, in a public street or in a public manner, is an offense when the polls are open (Elec. L. Sec. 161).

ILLEGAL VOTING AT PRIMARY ELECTIONS: Any person who wilfully votes or attempts to vote at a primary without being entitled to do so, is guilty of an Unclassified misdemeanor (Elec. L. Sec. 421).

ILLEGAL VOTING AT ELECTIONS: Persons who knowingly vote or attempt to vote when not qualified are guilty of a Class E felony.

1. Persons who vote or offer or attempt to vote at an election more than once commit a Class E felony.

2. Procuring, aiding or assisting a person to vote at an election more than once is a Class E felony (Elec. L. Sec. 436).

VOTE BUYING AND SELLING: Any person who pays, lends, contributes or receives any money, gift or other valuable consideration to induce a voter to vote or agree to vote for any particular person or persons, is guilty of a Class E felony (Elec. L. Sec. 440, 441).

FALSE REGISTRATION: Any person who registers or attempts to register as an elector in more than one district or registers under a false name or address, or knowingly aids, assists or advises another to do so is guilty of a Class E. felony (Elec. L. Sec. 422).

DURESS AND INTIMIDATION OF VOTERS: The use of force, violence or restraint in order to induce another to vote or refrain from voting for or against any particular person is an Unclassified misdemeanor (Elec. L. Sec. 444).

1. It is also an unclassified misdemeanor for a person or corporation to refuse to an employee entitled to vote at an election or town meeting the privilege of attending there as provided by the election law, or to subject such employee to a penalty or reduction of wages because of the exercise of such privilege (Elec. L. Sec. 429).

TIME OFF TO VOTE: Registered voters not having sufficient time outside of their working hours to vote may, without loss of pay for up to

two hours, take off so much working time as will, when added to his voting time outside his working hours, enable him to vote (Elec. L. Sec. 226).

CONSPIRACY TO PROMOTE OR PREVENT ELECTION: Any two or more persons, conspiring to promote or prevent the election of any person to a public office by the use of any means which are prohibited by law, are guilty of an Unclassified misdeameanor if one of them commits an overt act (Elec. L. Sec. 446).

CORRUPT USE OF POSITION OR AUTHORITY: It is a Class E felony for any person, in seeking or holding public office, to corruptly use or promise to use any official authority to appoint or promote, in return for a vote or political influence (Elec. L. Sec. 448, subd. 1, 2).

GIFTS AND PROMISES: It is a Class E felony for anyone to offer or make any nomination or appointment for public office or to request or accept the same, upon payment of valuable consideration or any understanding or promise of such consideration. It is equally a Class E felony to make any gift, promise or contribution on condition of receiving an appointment or election to public office *or public employment, or any promotion, privilege, increase of salary or exemption from removal or discharge* (Elec. L. Sec. 448, subd. 3, 4).

MUTILATION, DESTRUCTION OR LOSS OF REGISTRY LIST OR AFFIDAVITS: Any person who wilfully loses, alters, destroys or mutilates the list or registers of voters is guilty of an Unclassified misdemeanor.

The wilful suppressing, mutilation or altering of any signed challenge or other affidavit connected with registration or voting, except as authorized by law, is a Class E felony (Elec. L. Sec. 424).

REMOVAL, MUTILATION OR DESTRUCTION OF ELECTION BOOTHS, SUPPLIES, POLL-LISTS OR CARDS OF INSTRUCTION: Any person who wilfully defaces or injures a voting booth, any supplies in the booth, any list of candidates posted or instruction cards for voters is guilty of an Unclassified misdemeanor (Elec. L. Sec. 428).

ALCOHOLIC BEVERAGE CONTROL LAWS IN REGARDS TO ELECTIONS: No premises licensed to sell liquor and/or wine for off-premises consumption (liquor stores) are permitted to remain open and no premises licensed to sell alcoholic beverages at retail for on-premises consumption (bars, restaurants, etc.) are allowed to sell these beverages on any day of a general or primary election, during the hours when the polls are open (ABC Law Sec. 105, subd. 14 and 106, subd. 5).

1. In towns or villages, Local ABC Boards may provide more restricted hours and may provide no-sale hours during town or village elections. All officers should be aware of any special restrictions by Local Boards in their municipalities (ABC Law Sec. 106, subd. 5).

CIVIL SERVICE LAW: The Civil Service of the State of New York or any of its civil divisions includes all offices and positions in the service of the state or of such civil divisions, except offices and positions in the miltia and military departments. The term "civil division" includes a city (Civil Service Law Sec. 2, subd. 5, 8).

No person in the civil service of the state or of any civil division of the state is under any obligation to contribute to any political fund or to render any political service. No person can lawfully be removed or otherwise prejudiced for refusing to do so. No person in the civil service can lawfully discharge, promote or reduce in grade, or in any manner change

the official rank or compensation of another person in the civil service, or promise or threaten to do so for giving or withholding any contribution of money, service or other valuable thing, for any political purpose (Civil Service Law Sec. 107, subd. 1).

CONTRIBUTIONS TO POLITICAL PARTIES: The following offenses in respect to political assessments are Unclassified misdemeanors:

1. Any person who, being an officer or employee of the state or of a political subdivision thereof, directly or indirectly uses his authority or official influence to compel or induce any other officer or employee of the state or a political subdivision thereof, to pay or promise to pay any political assessments; or,

2. Being an officer or employee of the state, or of a political subdivision thereof, directly or indirectly, gives, pays or hands over to any other such officer or employee any money or other valuable thing on account of or to be applied to the promotion of his election, appointment or retention in office, or makes any promise, or gives any subscription to such officer or employee to pay or contribute any money or other valuable thing for any such purpose or object; or,

3. Being such an officer or employee and having charge or control of any building, office or room occupied for any purpose of the state or of a political subdivision thereof, consents that any person enter the same for the purpose of making, collecting, receiving or giving notice of any political assessment; or,

4. Enters or remains in any such office, building or room, or sends or directs any letter or other writing thereto, for the purpose of giving notice of demanding or collecting, or being therein, gives notice of, demands, collects or receives, any political assessment; or,

5. Prepares or makes out, or takes any part in preparing or making out, any political assessment, subscription or contribution, with the intent that the same shall be sent or presented to or collected of any such officer or employee; or,

6. Sends or presents any political assessment, subscription, or contribution to, or requests its payment of any such officer or employee, is guilty of a misdemeanor (Elec. L. Sec. 447).

OFFENDER A COMPETENT WITNESS; WITNESSES' IMMUNITY: Persons violating any section of the Election Law are competent witnesses against other persons so offending and may be compelled to attend and testify at any trial, hearing or proceeding.

1. In any criminal proceeding before a court, magistrate or grand jury, for a violation of any of the provisions of the Election Law, the court, magistrate or grand jury may confer immunity (Elec. L. Sec. 442).

INVESTIGATIONS

Inspectors at the election (polling) places are primarily responsible for opening the polls, preparing the booths for use, seeing that an American flag is displayed, instruction cards posted, sample ballots mounted, etc. (Elec. L. Sec. 192, 193).

Officers stationed at polling places are primarily there to assist the Inspectors in maintaining order while a registration or an election is in progress. Arrests may be made as on any other occasion or assignment. "On the spot" arrests for purely election law violations, without warrant, would be rare. Such arrests are best made on warrant, after a magistrate

has considered the facts. Inspectors may give written orders of arrest, however, and officers may execute them on the spot (Elec. L. Sec. 161, 193).

Defacing or injuring a voting booth or any supplies is an Unclassified misdemeanor. A person may be arrested summarily by an officer for such an offense, if done in his presence.

Officers should note that under the Alcoholic Beverage Control Law, "off-premises" licenses are not permitted to remain open on any day of a general or primary election, when the polls are open. "On-premises" licensees are *not* required to close during polling hours. They may stay open to serve food, but they are not allowed to sell alcoholic beverages.

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57. ENDANGERING INCOMPETENT

ENDANGERING THE WELFARE OF AN INCOMPETENT PERSON: A person is guilty of Endangering the Welfare of An Incompetent Person when:

1. He knowingly,
2. Acts in a manner likely to be injurious to:
   a. The physical welfare, or
   b. The mental welfare, or
   c. The moral welfare,
3. Of a person who is unable to care for himself (or herself),
4. Because of mental disease or defect (P.L. Sec. 260.25).

Endangering the Welfare of An Incompetent Person is a Class A misdemeanor.

INVESTIGATIONS

This crime may be committed by a stranger to the incompetent victim, or one not responsible for the victim's welfare, such as a person committing illicit sex acts on or with an incompetent, or abusing an incompetent for amusement or other reasons.

The crime may also be committed by persons responsible for the welfare of the incompetent and it is likely this type of complaint will be a major source of this kind of case.

In all instances, officers must take care to establish legally admissible evidence that the victim is not only unable to care for himself or herself but is unable to do so because of mental disease or defect. Prior medical and/or institutional records will be of value in this and in their absence, a current medical examination by physicians expert in the field of mental disease or defect will be suitable proof.

The testimony of the victim in such cases can be considered of little or no value, although the victim should, in all reasonable instances, be thoroughly interviewed for leads. It will thus be required that officers make every effort to identify and interview persons who would have eye witness or other pertinent connection with the case and who can provide the proof required for conviction in addition to the proof of imcompetence previously mentioned.

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58. ESCAPE AND DETENTION FACILITIES

PRISONERS: The old Penal Law defined a "prisoner" as any person held in custody under process of law or under lawful arrest (old P.L.

Sec. 1690). The new Penal Law does not define a "prisoner" and changes most of the old "prisoner" crimes of the Penal Law into the new crime of "Escape."

CRIMINAL LIABILITY FOR ESCAPES: Under the old Penal Law it was a crime to rescue a prisoner from custody or for a prisoner to escape (old P. L. Sec. 1692, 1695). It was also a crime to suffer or permit an escape either by carelessness or deliberately (old P.L. Sec. 1697).

Under the new Penal Law, persons who rescue a prisoner, aid an escape or suffer or permit an escape are all guilty of a crime of "Escape," because of the new provisions of Section 20.00 of the Penal Law, "Criminal Liability for Conduct of Another."

Section 20.00 provides that when one person engages in conduct which is an offense, any other person can also be criminally liable for such conduct if, acting with the mental culpability required for the commission of the crime, he intentionally aids such person to engage in such conduct.

See also Section 72, "Hindering Prosecution," this Manual, for other crimes relating to escaped prisoners and wanted persons.

DEFINITIONS: "Custody" means restraint by a public servant pursuant to an authorized arrest or an order of a court (P.L. Sec. 205.00 subd. 2).

"Detention facility" means any place used for confinement, pursuant to an order of a court, of a person (a) charged with or convicted of an offense, or (b) charged with being or adjudicated a youthful offender, wayward minor or juvenile delinquent, or (c) held for extradition or as a material witness, or (d) otherwise confined pursuant to an order of a court (P.L. Sec. 205.00, subd. 1). "Detention facilities" thus include not only county jails and state prisons, but also any place used to confine persons under court order.

"Escape" may be taken to mean getting out of custody by any unlawful means.

ESCAPE IN THE THIRD DEGREE: A person is guilty of Escape in the Third Degree when he escapes from custody (P.L. Sec. 205.05).

Escape in the Third Degree is a Class A misdemeanor.

ESCAPE IN THE SECOND DEGREE: A person is guilty of Escape in the Second Degree who:

1. Escapes from a detention facility (P.L. Sec. 205.10, subd. 1); or
2. Having been arrested for, charged with or convicted of a felony, escapes from custody (P.L. Sec. 205.10, subd. 2).

Escape in the Second Degree is a Class E felony.

ESCAPE IN THE FIRST DEGREE: A person is guilty of Escape in the First Degree when, having been charged with or convicted of a felony, he escapes from a detention facility (P.L. Sec. 205.15).

Escape in the First Degree is a Class D felony.

CONTRABAND: "Contraband" is any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, rule, regulation or order (P.L. Sec. 205.00, subd. 3).

"Dangerous contraband" is contraband which is capable of such use as may endanger the safety or security of a detention facility or any person therein (P.L. Sec. 205.00, subd. 4).

PROMOTING PRISON CONTRABAND IN THE SECOND DEGREE: A person is guilty of Promoting Prison Contraband in the Second Degree who:

1. Knowingly and unlawfully introduces any contraband into a detention facility (P.L. Sec. 205.20, subd. 1), or

2. Being a person confined in a detention facility, knowingly and unlawfully makes, obtains or possesses any contraband (P.L. Sec. 205.20, subd. 2).

Promoting Prison Contraband in the Second Degree is a Class A misdemeanor.

PROMOTING PRISON CONTRABAND IN THE FIRST DEGREE: A person is guilty of Promoting Prison Contraband in the First Degree who:

1. Knowingly and unlawfully introduces any dangerous contraband into a detention facility (P.L. Sec. 205.25, subd. 1); or

2. Being a person confined in a detention facility, knowingly and unlawfully makes, obtains or possesses any dangerous contraband (P.L. Sec. 205.25, subd. 2).

Promoting Prison Contraband in the First Degree is a Class D felony.

INVESTIGATIONS

In Escape violations, immediate attention must be given to promptly securing and protecting as evidence any document or thing involved. Latent fingerprint examination and Scientific Laboratory examinations as appropriate should be requested as early in the investigation as possible.

Prison records for the pertinent period should be examined. Any prospective witness, including prisoners, should be interviewed privately. Statements of prisoner officers or others responsible for the prisoner should be in written form, where possible.

Officers handling cases of Promoting Prison Contraband will often be faced with the problem of whether to charge a First Degree or a Second Degree violation, depending on whether the article involved is "contraband" or is "dangerous contraband."

In view of the innumerable kinds of things which could be contraband, the officer's decision will be difficult until court decisions have made the differences plain. A bottle of beer would most probably be only "contraband," a loaded gun would be clearly "dangerous contraband." A full bottle of whiskey could perhaps be either, depending on the total circumstances. Almost anything involved in a "Promoting" case could offer a problem as to which classification its fits. The officer's recourse is to seek the advice of the District Attorney before making a charge.

In all "Promoting" cases, the investigation should include detailed inquiries to develop all facts as to the procuring and handling of the contraband, from the time it left the hands of an innocent vendor until it reached the detention facility or the one confined. A major purpose of such inquiry is to fix responsibility and sustain charges not only in respect to the prisoner's family or friends who were guilty of introducing the contraband, but also in respect to persons employed by or in otherwise connected with the detention facility who may also be involved.

HANDLING PRISONERS: Constant watchfulness and care are the keynotes to successfully maintaining custody of prisoners. It is essential that immediately upon taking a prisoner into custody or receiving a prisoner, the prisoner be given a full and complete search (not a "pat down") for weapons and means of escape.

Handcuffs and other physical restraints, such as leg irons, may be used whenever an officer reasonably feels they are necessary for the safe custody of the prisoner. Officers should not hesitate to handcuff any person arrested for a felony or in any other case where handcuffing appears reasonably necessary.

Officers must be alert to the fact that handcuffs and other restraints are no guarantees of security in themselves. Prisoners have often "slipped" or "picked" or otherwise opened handcuffs. The officer's main guarantee of security is constant alertness. He should grant no personal privileges to a prisoner unless and until all security aspects are secure.

The most secure handcuffing is to put on the cuffs so that the prisoner's palms face away from each other. This inhibits arm movement and grasping facility. A prisoner whose hands are cuffed in front of his body can make an effective weapon of cuffs and hands by merely clenching the hands and striking with clenched hands. Handcuffs do not prevent a prisoner from reaching out and grasping a holstered gun, a steering wheel, etc.

When a prisoner is to be held for a time or transported, consideration should be given to restraining the cuffed hands by passing a strong leather belt through the hands and across the handcuff chain, and fastening the belt tightly against the prisoner's waist with the fastening at the back. If the prisoner is handcuffed with hands behind, the precaution is less necessary.

In all the handcuffing procedures it is well to place the cuffs on with the keyholes away from the prisoner's body, both for ease of removal and to prevent easy picking.

59. EXPLOSIVES AND BOMBS

The usual commercial explosives are black powder and dynamite. Ammonium nitrate, a fertilizer, when mixed with oil, is an explosive material. Officers may also encounter military explosives, including plastic explosives. Detonating fuses, such as "Primacord," and blasting caps are also common explosives.

Black powder may be packed in cylinders, pellets, or loose in kegs or cans. Dynamite is ordinarily in short cylindrical sticks. The plastic explosives come in blocks resembling whitish putty. The original containers and wrappers of commercial and military explosives will be found to clearly state what the explosives are.

Detonating fuses ordinarily have a whitish core. Safety fuses are made from black powder and have a black core. Detonating fuses explode with extraordinary violence. Great care should be exercised if such material is found.

The first modern high explosive was nitro-glycerine. It is now rarely found, except as a constituent of dynamite. Nitro-glycerine is a somewhat oily, colorless liquid. If impure it may be tinged with brown or yellow. Safe burglars have been frequently known to use nitro-glycerine, which they extract from dynamite.

Nitro-glycerine is extremely dangerous and is sensitive to slight shock. It cannot be safely handled by persons who are not professional explosive men, no matter what the container may be.

Other commercial explosives, when in their original containers and not aged, are safe if handled sensibly and with care. No heat, flame or shock should be permitted while handling them.

BLASTING CAPS AND EXPLOSIVE RIVETS: The caps used to explode dynamite or other explosives may be operated by fire or electricity. These caps are small metal cylinders with two wires protruding from one end, or an open end for the insertion of an ignition fuse. Even a single cap can kill if it explodes. They should be handled with great care. Do not carry them in the trunk of the police car or near any radio equipment.

Explosive rivets may frequently be found and are also dangerous. They are generally somewhat long, for rivets, made of metal, and can cause severe injury if detonated. They should be handled with the same care as blasting caps.

PENAL LAW CRIMES CONCERNING EXPLOSIVES: Any person who has in his possession any bomb or bombshell is guilty of a Class D felony (P.L. Sec. 265.05, subd. 1). Any person under age 16 who has in his possession any bomb or bombshell is guilty of juvenile delinquency (P.L. Sec. 265.05, subd. 4).

Any person who has in his possession any explosive substance, with intent to use the same unlawfully against the person or property of another is guilty of a Class D felony (P.L. Sec. 265.05, subd. 7).

The two preceding paragraphs concern the crime of Possession of Dangerous Instruments and Appliances (P.L. Sec. 265.05). This law does not apply to the following classes of persons:

1. Persons in the military service of the state of New York when duly authorized by regulations issued by the Chief of Staff to the Governor to possess the same, members of the Division of State Police and peace officers as defined in Section 154, Code of Criminal Procedure (P.L. Sec. 265.20), subd. a-1 (a)).

2. Persons in the military or other service of the United States, in pursuit of official duty or when duly authorized by Federal law, regulation or order to possess the same (P. L. Sec. 265.20, subd. a-1 (b)).

3. Persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the same is necessary for manufacture, transport, installation and testing under the requirements of such contract (P.L. Sec. 265.20, subd. a-1 (c)).

4. During the month of June only each year, a person voluntarily surrendering such instrument, appliance or substance (P.L. Sec. 265.20, a-1 (d)).

A person is guilty of Criminal Mischief in the First Degree when, with intent to damage property of another person and having no right to do so nor any reasonable ground to believe that he has such right, he damages property of another person by means of an explosive (P.L. Sec. 145.10, subd. 2). Criminal Mischief First is a Class D felony.

A person is guilty of Arson in the Third Degree when he recklessly damages a building by intentionally causing an explosion (P.L. Sec. 150.05). Arson Third is a Class E felony.

A person is guilty of Arson in the Second Degree when he intentionally damages a building by causing an explosion (P.L. Sec. 150.10). Arson Second is a Class C felony.

A person is guilty of Arson in the First Degree when he intentionally damages a building by causing an explosion and when:

1. Another person not a participant in the crime is present in such a building at the time, and

2. The defendant knows that fact, or the circumstances are such as to render the presence of such a person therein a reasonable possibility (P.L. Sec. 150.15).

Arson First is a Class B felony.

Any person who shall unlawfully offer or expose for sale, possesses or sell, furnish, use, explode or cause to explode any fireworks is guilty of Unlawfully Dealing with Fireworks, a Class B misdemeanor (P.L. Sec. 270.00, subd. 2). (See Section 66 "Fireworks", this Manual).

A person is guilty of Burglary in the Second Degree when he knowingly enters, or remains unlawfully in, a building, with intent to commit a crime therein, and in effecting an entry or while in the building or in immediate flight therefrom, he or another participant in the crime is armed with explosives. This is a Class C felony (P.L. Sec. 140.25, subd. 2).

A person is guilty of Burglary in the First Degree when he knowingly enters, or unlawfully remains in, a dwelling at night, with intent to commit a crime therein, and when effecting entry or while in the dwelling or in immediate flight therefrom, he or another participant in the crime is armed with explosives. Burglary First is a Class B felony (P.L. Sec. 140.30, subd. 1).

FEDERAL LAW—AIRCRAFT OR MOTOR VEHICLE TRANSPORTATION FACILITIES: It is a felony under Federal Law to set fire to, damage, destroy, disable or wreck any civil aircraft or motor vehicle or any part thereof or any facility, shop, station, depot, etc. in interstate or foreign commerce (i.e. engaged in transportation of commerce over state lines or into or out of the United States) by explosion or otherwise. Violations are punishable by a fine of $10,000 or imprisonment up to 20 years, or both. If a human death results, the penalty may be death or life imprisonment (18 U.S. Code, Secs. 31, 32, 33, 34). Title 49 U.S. Code, Sec. 1472, subd. h-1 covers delivery of or causing transportation of explosives on aircraft, and makes it a crime to do so in violation of Federal regulations. The FBI handles violations of these laws.

FEDERAL LAW—EXPLOSIVES TRANSPORTED TO DAMAGE OR DESTROY: Federal Law makes it a crime to transport any explosives in interstate or foreign commerce, with knowledge or intent that they will be used to damage or destroy any building or real or personal property for the purpose of interfering with its use for educational, religious, charitable, residential, business or civil objective or of intimidating any person pursuing such an objective. Penalties are fine of $1,000 or imprisonment for 1 year, or both. If an injury to a person results, the penalties are increased to $10,000 or 10 years, or both (18 U.S. Code, Sec. 837). The FBI handles these Federal violations.

FALSE BOMB REPORTS (FALSELY REPORTING AN INCIDENT): A person is guilty of falsely reporting an incident when, knowing the information reported, conveyed or circulated to be false or baseless, he initiates or circulates a false report or warning of an alleged explosion under circumstances in which it is not unlikely that public alarm or inconvenience will result, or reports an alleged impending occurrence of an explosion which did not occur or exist (P.L. Sec. 240.50). Falsely Reporting an Incident is a Class B misdemeanor.

FALSE BOMB REPORTS—FEDERAL LAW. Under Federal Law it is a crime to impart or convey or cause to be imparted or conveyed any false information, knowing it to be false, concerning an attempt or alleged attempt to damage or destroy, by explosive or otherwise, any aircraft or motor vehicle transportation facilities, shipping facilities or railroad transportation facilities. The penalty is a fine of not over $1,000, imprisonment not more than 1 year, or both. If the crime is committed wilfully or with reckless disregard for the safety of human life, the penalty is up to $5,000 fine or imprisonment up to 5 years, or both (18 U.S. Code, Sec. 35). The FBI handles such offenses.

If the mails, a telephone, telegraph or other instrument of commerce are used to wilfully impart or convey any threat or false information concerning an attempt to destroy any building or property for the purpose of interfering with their use to intimidate any person, it is a crime punish-

able by up to $1,000 fine, or imprisonment up to 1 year, or both, under Federal Law (18 U.S. Code, Sec. 837, subd. d). Violations are handled by the FBI.

MANUFACTURE, SALE, TRANSPORTATION OR USE: The manufacture, sale, transportation and use of explosives are regulated in detail by the Labor Law and the Industrial Code. Violations of the sections of the Labor Law or Code on explosives are Unclassified misdemeanors, punishable by imprisonment not more than one year, fine not over $2,500, or both (Labor L. Sec. 464).

The Labor Law applies to persons engaged in the manufacture, ownership, possession, storage, use, transportation, purchase, sale or gift of explosives except explosives while being transported upon vessels, railroad cars or motor vehicles in conformity with regulations, explosives in cities having more than one million inhabitants or in possession of the armed forces of the United States, the national guard, the state guard and duly constituted police and fire fighting forces of the state and its civil and political subdivisions.

Explosives in the possession of an employee within the scope of his duties, are considered to be in the possession of the employer.

The Labor Law defines explosives as gunpowder, powders used for blasting, high explosives, blasting materials, detonating fuses, detonators and other detonating agents, smokeless powder and any chemical compound or any mechanical mixture containing any oxidizing and combustible units, or other ingredients in such proportions, quantities, or packing that ignition by fire, friction, concussion, percussion or detonation of any part thereof may and is intended to cause an explosion.

Explosives do not include gasoline, kerosene, naptha, turpentine, benzine, acetone, ethyl ether and benzol.

Fixed ammunitions and primers for small arms, firecrackers, safety fuses and matches are not deemed to be explosives when the individual units contain any of the above-mentioned articles or substances in such limited quantity, of such nature and so packed that it is impossible to produce an explosion of such units to the injury of life, limb or property (Labor L. Sec. 451).

No person can lawfully own, possess, store, deal in, sell, give, purchase or transport explosives unless the packing, or encasement and the marking and labeling of such explosives comply with the Industrial Code (Labor L. Sec. 452).

1. Explosives must be completely enclosed or encased in tight metal, wooden or fiber containers. The original package or container must clearly show the kind and grade of explosive, name and address of the manufacturer and the date of manufacture (Chap. 1, Part 39, par. 39.3 g, q, Industrial Code).

STORAGE AND MAGAZINES: No explosives may lawfully be stored except in a magazine constructed and located in accordance with the Labor Law and the Industrial Code, and unless a certificate (which must be attached to the magazine on the inside) has been issued for the magazine. This does not apply to explosives while being legally transported or blasted or while legally in the custody of a common carrier awaiting shipment or delivery to a consignee, nor to storage of limited amounts of sporting or smokeless powders as permitted by the Industrial Code (Labor (Labor L. Sec. 452).

No person may unlock or open the doors of magazines, except for the lawful storage or removal of explosives.

No person may have matches or fire of any kind in any magazine. No person may store or keep blasting caps, detonating or fulminating caps,

or detonators in a magazine in which any other type of explosive is stored or kept.

No person may open any package of explosives within fifty feet of any magazine, nor keep any explosives in a magazine except in the original container.

No person may lawfully discharge firearms within five hundred feet of a magazine or explosive factory, or at or against any such magazine or building.

Any theft or loss of explosives from a storage magazine (or otherwise) must be immediately reported to the Industrial Commissioner and the State or local police or County Sheriff (Labor L. Sec. 455).

LICENSES AND CERTIFICATES: PERSONS UNDER 18: No one may lawfully purchase, own, possess, transport or use explosives unless duly licensed. Application for an explosives license must be to the city, town or village clerk where the applicant resides or where the explosives are to be used or stored. A license is valid for one year from the date of issuance (Labor L. Sec. 458, subd. 1).

No one can lawfully manufacture, deal in, give or dispose of explosives unless a license therefor has been issued by Industrial Commissioner. A person licensed as a manufacturer or dealer may sell, give or dispose of explosives to a non-resident who is duly licensed in the state of his residence and who shall forthwith transport such explosives to the state of his residence. Possession and transportation in New York by such non-residents must conform to the laws and rules of New York (except license requirement) (Labor L. Sec. 458, subd. 2).

No one can lawfully keep or store explosives unless a certificate therefor has been issued by the Industrial Commissioner, except storage at any one time by farmers of two hundred pounds or less of blasting explosives for agricultural purposes (Labor L. Sec. 458, subd. 3).

No explosives can lawfully be sold, given or delivered to any person under 18, whether such person is acting for himself or for another person, nor is any person under 18 eligible to obtain an explosives license or certificate (Labor L. Sec. 458, subd. 5).

EXPLOSIVES IN VIOLATION, ABANDONED, LOST OR ENDANGERING: The Industrial Commissioner is authorized to seize and impound without application to any court, any explosives found (except in cities having a population of more than one million inhabitants) which are in apparent violation, or which have been abandoned or lost, or where the Commissioner has reason to believe that public safety is endangered (Labor L. Sec. 460).

Whenever, in the opinion of the Industrial Commissioner, the manufacture, condition, packing or location of explosives is such that their continued existence or transportation is a danger to public safety, he may, without hearing and without liability therefor to the owner thereof, seize and destroy or direct the seizure and destruction of such explosives (Labor L. Sec. 460).

RECORD AND NOTICE OF SALE, DELIVERIES OR GIFTS: Every person selling, delivering or giving away an explosive must keep a record of the transaction, including the name or type and quantity of the explosive, the date of each sale, delivery or gift, the name and business address of the purchaser, donee or person to whom delivered, the number of the license to own or possess explosives and the name and address of the person taking the explosives away. No person can lawfully have any explosive in his possession unless he has a bill of sale or other evidence of title (Labor L. Sec. 461).

TRANSPORTING EXPLOSIVES; VEHICLES AUTHORIZED: Transporting explosives without a license is forbidden by Labor Law Section 458. Transporting without complying with all provisions of the law and the Industrial Code is forbidden by Section 457.

Any vehicle transporting explosives must have on front, rear and both sides a marking or placard with the word "EXPLOSIVES" legibly printed in red or white letters at least six inches high. In any case of transportation at night, the markings or placards must be of reflecting materials adequate to be legible for at least 250 feet when opposed by a motor vehicle displaying undimmed headlights at night on an unlighted highway (Industrial Code, Chapter 1, Part 39, par. 39.6 a).

1. The marking or placarding requirement does not apply to the transportation of not more than five pounds of sporting or smokeless powder (Industrial Code, Chapter 1, Part 39, par. 39.6 a).

2. Trailers cannot be used to haul explosives and no trailer may be attached to a vehicle hauling explosives. Semi-trailers may haul explosives (Industrial Code, Chapter 1, Part 39, par. 39.6 f (5)).

3. Any vehicle carrying more than 200 pounds of explosives must be equipped with at least two approved carbon tetrachloride fire extinguishers of one quart capacity each, filled and in good working order (Industrial Code, Chapter 1, Part 39, par. 39.6 f (4)).

4. Vehicles transporting explosives may not carry passengers, but only the driver and his authorized helper or helpers (Industrial Code, Chapter 1, Part 39, par. 39.6 (d)).

5. Metal tools (except for repair of the vehicle kept in a separate compartment) cannot be carried on an explosives vehicle (Industrial Code, Chapter 1, Part 39, par. 39.6 (c-1)).

6. Consult the Industrial Code, Chapter 1, Part 39, par. 39.6, for other detailed rules and requirements concerning vehicles transporting explosives. It is an offense under this portion of the Code to leave a vehicle containing explosives unguarded, to permit it to enter a public garage or repair shop, to park it in close proximity to any dwelling or building or place where people work, congregate or assemble or to deliver the explosives to anyone except those authorized to receive them.

UNMARKED EXPLOSIVE VEHICLES: Officers should be particularly alert for unmarked explosive vehicle offenses, since such vehicles are a special danger to police, firemen and the public, particularly in case of accident or catching fire.

MOTOR VEHICLES AND CARRIERS IN INTERSTATE COMMERCE. The provisions of the Labor Law and the Industrial Code relating to explosives do not apply to common carriers or motor vehicles transporting explosives interstate in compliance with the regulations of the Interstate Commerce Commission (Labor L. Sec. 450, subd. 2).

VEHICLE AND TRAFFIC LAW: The Vehicle and Traffic Law requires that any motor vehicle carrying explosive substances shall stop within fifty feet of and not less than fifteen feet from the nearest rail of any railroad grade crossing and that the driver shall look and listen before proceeding and may proceed only when it is safe to do so (V&T Sec. 1171). Under this law, explosive means any chemical or mechanical compound used or intended to be used for producing an explosion with gaseous pressures capable of producing destructive effects (V&T Sec. 115).

Ordinances, laws or rules of local municipalities, parkway authorities, park commissions, etc., may provide regulation of explosives handling and

transportation and all officers should be familiar with such special restrictions in their own jurisdictions (V&T Sec. 1603).

CONSTRUCTION OR BLASTING NEAR PIPES CONVEYING COMBUSTIBLE GAS: It is unlawful to discharge explosives in the ground, unless notice in writing is given at least seventy-two hours in advance to the person, corporation or municipality engaged in the distribution of gas in the territory. In any emergency involving danger to life, health or property it is lawful to discharge explosives to protect a person or persons from immediate and substantial danger of death or serious personal injury if notice is given before any discharge is undertaken. Any such work must be performed so as to avoid damage to any pipe conveying combustible gas. Violations are Class A misdemeanors (Genl. Bus. L. Sec. 322-b, subd. 3 (if injury) Sec. 323 (other violations)).

OTHER MAKING, KEEPING AND USING VIOLATIONS: A person who makes or keeps gunpowder, nitro-glycerine, or any other explosive or combustible material, within a city or village, or carries such materials through the streets thereof, in a quantity or manner prohibited by law or by ordinance of the city or village, is guilty of a Class A misdemeanor (Genl. Bus. L. Sec. 322-b, subd. 1).

A person who manufactures gunpowder, dynamite, nitro-glycerine, liquid or compressed air or gases (except acetylene gas and other gases used for illuminating purposes) naptha, gasoline, benzine or any explosive articles or compounds, or manufactures ammunition, fireworks or other articles of which such substances are component parts in a cellar, room, or apartment of a tenant or dwelling house or any building occupied in whole or in part by persons or families for living purposes, is guilty of a Class A misdemeanor (Genl. Bus. L. Sec. 322-b, subd. 2).

And a person, who by the careless, negligent, or unauthorized use or management of gunpowder or other explosive substances, injures or occasions the injury of the person or property of another, is guilty of a Class A misdemeanor (Genl. Bus. L. Sec. 322-b, subd. 3).

FAILING TO DESIGNATE AS EXPLOSIVE WHEN SHIPPING: Any person who knowingly presents, attempts to present, or causes to be presented or offered for shipment by any railroad, steamboat, steamship, express or other company engaged as a common carrier of passengers or freight, any dynamite, nitro-gylcerine, powder or other explosives dangerous to life and limb, without revealing the true nature of said explosives or substance so offered or attempted to be offered to the company or carrier to which it shall be presented, is guilty of a Class A misdemeanor (Genl. Bus. L. Sec. 322-b, subd. 4).

INVESTIGATIONS

The following are guide lines for the officer in connection with explosives:

1. Explosives which have been brought to the attention of an officer should not be left unguarded or unprotected. If the explosive cannot safely be moved, prompt steps should be taken to arrange proper guarding and disposition.

2. Do not smoke, carry matches, lighters, other flame producing devices, or allow others to do so, near explosives.

3. Do not use open lights, fire or flame near an explosive. If artificial light is needed, use only electric flashlights.

4. Do not drop, throw or handle an explosive roughly.

5. Do not carry an explosive in pockets of clothing.

6. Do not leave blasting caps or electric blasting caps exposed to the direct rays of the sun.

7. Do not put blasting caps or electric blasting caps in the same box, container or magazine with any other explosives.

8. Do not pull the wires of an electric blasting cap.

9. Do not handle explosives during the approach or progress of an electrical storm.

10. Do not allow unauthorized persons in the vicinity of explosives.

11. Do not store sticks of dynamite in a magazine with detonator attached.

12. Explosives coming into the possession of an officer should not be stored in any police installation. Explosives can lawfully be stored in magazines located and constructed in accordance with State Laws. Officers should determine the nearest and most accessible magazine in their area. This would suffice as a temporary means of storage until other arrangements are made for disposal. Under no circumstances should an explosive be placed other than in a magazine, properly secured. It should be delivered to someone authorized to receive it at the magazine.

13. Determine type, grade and strength of explosives, (straight nitro-gylcerine dynamite, ammonia dynamite, gelatin dynamite, ammonia-gelatin dynamite, etc.,). Obtain from box, container, wraping or cartridge all identification as to manufacturer.

FIRE IN VEHICLE HAULING EXPLOSIVES: Should a fire develop in a vehicle hauling explosives, the following action should be immediately taken.

1. Stop traffic in both directions. Warn drivers and occupants of buildings to keep at least 2,000 feet from the vehicle. (Enlist assistance of anyone available).

2. If the vehicle hauling the explosive is a tractor-trailer, the tractor should be disconnected from the trailer and driven at least 2,000 feet away. If the fire is confined to the tractor (engine, chassis, tires), disconnect the tractor from the trailer. If the fire spreads to the trailer, members and spectators shall keep at least 2,000 feet from the vehicle.

3. Notify the fire department.

POLICE ACTION—EXPLOSIVES CASES GENERALLY: Upon receipt of information concerning explosives requiring police action, certain things are basic, after full information is obtained from the complainant:

1. Clear and cordon off the danger area.

2. Approach the explosive material with care—do not touch or handle it, merely make visual examination.

3. Secure assistance of explosive experts.

4. Carefully analyze and plan each move.

5. Don't be hurried.

If an officer encounters suspected explosives not in their original container or in apparently aged condition he should avoid any close approach or handling until an expert has determined whether they are explosives and how they may be safely handled. Explosives which have been aged may lose stability and become extremely dangerous when disturbed or handled in any way.

EXPLOSIVES EXPERTS: The Bureau of Construction of the New York State Department of Labor deals with explosives. The head of the

Department of Labor (The Industrial Commissioner) has authority to summarily seize and dispose of explosives. The district offices of this Bureau may be telephoned and are located in Albany, Buffalo, New York City, Syracuse and White Plains. Their assistance may be requested in explosives cases.

The representatives of the Bureau of Mines, U.S. Department of the Interior, Albany, will assist in explosives cases on request.

Powder and explosives manufacturing company representatives are usually explosives experts and may be called on for advice and assistance. They may be most readily located through licensed explosives dealers. The explosives dealers may also be expert in handling explosives.

The United States Army maintains Explosive Ordnance Disposal Units in New York, for the purpose of dealing with explosives of all kinds. Such units, on request, will render any assistance required in examining and disposing of explosives, whether military or other. They should not be requested to assist in mere search for explosives, however.

Explosive Ordnance Disposal Units (EOD Units) may be telephoned at Seneca Army Depot, Romulus, Explosive Ordnance Disposal Unit, Scotia, New York, Explosive Ordnance Disposal Unit, Bellemore, Long Island and at Camp Drum, near Watertown. The Explosive Ordnance Control Center for all units in New York and adjoining areas is at Fort George Meade near Baltimore, Maryland. The Center will handle the duty of locating and assigning the nearest available EOD Unit on request from police. The Center may be telephoned at Fort Meade, or a teletype message may be sent to it. The Center should be contacted in the event local units are unavailable.

No officer who is not qualified as an explosive expert should attempt to destroy explosives, and expert services to do so should be secured.

Decisions as to the disposition or destruction of the explosives should be left to representatives of the Bureau of Construction or to the EOD Unit.

DETERMINING VIOLATIONS; EVIDENCE: In all explosives cases officers should be alert for violations. In every case, careful notes should be made of all markings, shipping bills, etc., found on or near the explosives. The advice of the District Attorney should be sought as to the necessity for maintaining any explosive as evidence. If maintained, the explosive must be stored in an approved magazine. Under no circumstances should it be stored on police premises like other evidence.

Ordinarily, marking several containers as evidence, under supervision of an explosives expert or experts, who will be in a position to testify as to their contents, and maintaining the empty containers, should suffice. Photographs should always be secured before removing the explosives. Photographing should only be done under the supervision of an explosives expert. Avoid use of artificial flash in making photographs.

BASIC INQUIRIES: The officer should make immediate checks with licensed explosives dealers and the manufacturers to determine ownership of and responsibility for explosives. A detailed neighborhood investigation and inquiry through employees of indicated construction companies, etc., should be made to develop the history of the explosives, the responsibility therefore and all violations. Secure arrest warrants promptly.

HANDLING BOMB CASES

Actual bomb cases may occur at any time. A modern development in the field is the false bomb report case. Whenever a complaint concerning a bomb or suspected bomb is received the officer must assume that it is

a real bomb until facts establish otherwise. All action should be taken on this premise.

BOMBS: A bomb in reference to police work may be considered as any quantity of explosives in any packaging or container, so arranged with other materials that they will explode in a period of time if left undisturbed, or will explode if one or more things are done to them, such as moving, lifting, tilting, etc. Only an expert examination can determine whether a particular suspicious package or container is an active bomb.

Explosives for bombs are most usually blackpowder, dynamite or gunpowder extracted from fixed ammunition. Any other kind of explosive could, of course, be used in a bomb.

BOMBS USUALLY ENCOUNTERED ARE:

1. Pipe bombs, which have explosive enclosed in a short section of pipe with caps at both ends and a hole drilled in the metal for a fuse or detonator wire; or
2. Package bombs with explosive and detonating apparatus enclosed in a shoebox, suitcase or other innocent appearing container or wrapped as a package.

The containers and methods used in constructing bombs are limited only by human ingenuity. They may be in any size or shape or in any container or outer packaging or covering.

BOMB EXPLODERS OR TRIGGERS: Bombs may be arranged or constructed to explode immediately when a particular thing is done to them or after a period, such as by use of clockwork or acid eating through a container to close an electric contact or burn away a restraining cord, etc.

Bombs may be constructed so that almost any imaginable act done to them or in their vicinity will explode them.

The act could be a push, pull, lift, release of tension, application of pressure, change of position, etc., which would mechanically set off the trigger mechanism.

The trigger mechanism may be totally enclosed in the bomb or may have outside connection such as a trip line, electrical connection or radio receiver, any of which will set it off when a certain thing is done, such as lifting a door latch, turning on an automobile ignition or broadcasting a radio wave.

Officers should note that the lack of a "ticking" noise or any noise does not mean that a bomb will not explode. No officer should attempt to make a bomb "safe" prior to expert examination, by immersing it in water, oil, etc. Even the lifting or movement may explode it. And the water or oil may not affect it at all.

HANDLING BOMBS: It is evident that handling bombs or suspected bombs should only be attempted by experts, after careful examination and determination of the exact makeup and mechanism of the bomb.

POLICE ACTION IN PRESENCE OF BOMB: The police officer who is not an explosives expert should make no attempt to handle or move a bomb or suspected bomb. He should restrict his activity to clearing the danger area and keeping it clear and promptly summoning expert assistance.

Where the necessity of preserving human life makes it impossible to merely evacuate an area and wait on the arrival of explosives experts, some protection may be secured by ample sandbagging or piling of other protective material between the bomb and the point to be protected, thus forcing the bomb to dissipate its force in a safe direction.

Only the most extreme emergency should induce an officer who is not an explosives expert to attempt to remove a bomb. Doing it remotely by means of ropes or lines and wearing protective body armor, helmet, masks and gloves, may offer some protection in case of smaller bombs.

Construction firms and other firms which use explosives frequently have available large coverings woven of heavy wire rope, called "blasting mats," which may be used to surround or cover the bomb and to dissipate its force. The mats usually require some power equipment to put in place, due to their weight.

Some large police departments may have available woven wire rope bomb carriers or "bomb baskets" for small bombs. It may be possible to obtain one of these in case of extreme emergency.

All officers should bear in mind that no bomb-handling procedure is even reasonably safe in the hands of any officer who is not an explosives expert.

SECURING SERVICES OF EXPLOSIVES EXPERT: The officer faced with a bomb or suspected bomb should promptly request advice and assistance from explosives experts. The United States Army Explosives Ordnance Disposal Units are trained in "bomb" work. The Bureau of Construction (state) and Bureau of Mines (federal) are also available for assistance, as previously set out. The New York State Police Laboratory is able to supply an examiner with portable X-ray equipment on request, to examine the bomb or suspect bomb.

Explosives experts should not be expected to or requested to participate in searches for reported bombs and their presence should only be requested when a bomb or suspected bomb has in fact been found. They may, of course, always be telephoned for advice and consultation about searches, when the information available makes such contract apparently desirable.

ACTION ON BOMB COMPLAINTS: At any location where a bomb or suspect bomb is found, police should:

1. Evacuate the building or area
2. Set up and maintain police lines at least 300 feet from the danger area
3. Permit no access through police lines except essential personnel
4. Notify and request presence of fire department and utility company personnel, the latter to handle possible gas and electric line emergencies in event of explosion. In the meantime, assistance from explosives experts should hve been requested and action relating to the bomb itself should await their arrival.

THREATENED BOMBING: Threats that a bomb has been placed in a school, building, terminal, airplane, etc., may be telephoned or delivered by mail or otherwise. Police should promptly determine the type of building or facility in which the bomb is alleged to be and the number of persons affected. They should also determine whether evacuation of persons is intended or has been started. The advisability of evacuation of persons should always be stressed. The responsibility for decision to evacuate should be on the person or persons in charge of the building or facility.

If the building is a large industrial plant with a plant security force, the plant security force should have its own plan for such emergencies. Police may assist them on request from the Chief of Security or the plant manager.

In the event of evacuation, police should ensure that it is complete, and should set up and maintain police lines 300 feet away from the danger zone.

SEARCHES: Searches should be carefully planned. Floor plans of the building should be obtained where possible. Specific assignments should be made and a record maintained of assignments and searches completed. Thoroughness and speed are essential.

If an unknown and suspicious package is found, it should be considered and treated as a bomb.

INVESTIGATION OF THREATENED BOMBING: Thoroughly interview the person who received any threatening bomb call, obtaining exact language of caller, accent, tone of voice, apparent education and status of caller, background noises heard, etc. In cases of calls concerning schools, check absentees at the time threat was received.

Any leads should be promptly followed up. Consider previous threats, labor trouble, recently discharged employees, pupils disciplined.

Develop and use informants, including students.

Have school authorities adopt rule and announce that all time lost must be made up (time lost by evacuation, etc.)

In cases of possible repeat calls, telephone company advice and assistance may be sought with a view to locking and tracing calls.

INVESTIGATION OF ACTUAL BOMB CASES: Physical evidence from the bomb itself (or its fragments, if an explosion occurs) are of prime importance. Laboratory assistance should always be sought. If an explosion occurs, fragments should be painstakingly sought, including fine screen sifting of debris and soil. Detailed neighborhood inquiry at the scene must be made. Do not overlook routemen and others who are regularly but only briefly in any area as valuable sources. The mentally ill or disgruntled persons having any connection with the place or area, discharged employees, rival businesses, gang enemies and similar persons are logical suspects. (See also Section 26, "Arson and Fires", this Manual).

Be certain to exhaustively interview any eye-witnesses to any explosion, determining type of sound, force and direction of explosion, color of smoke or flame, odor of gasses.

Officers should make every effort to determine motive for a bombing, and thus possible suspects.

Check for thefts of explosives or unusual purchases of ammunition from which gunpowder may have been taken to construct the bomb.

Obtain photographs of suspects and display them to possible suppliers of materials used to construct the bomb.

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60. EXTORTION AND COERCION

Larceny by Extortion and Coercion are similar crimes. They are distinguished by the fact that Coercion is inducing a person, by fear, to engage in or refrain from "conduct"; Larceny by Extortion is inducing a person, by fear, to deliver up property.

There is no longer a separate crime of Blackmail (a limited kind of extortion, by letter or other writing). The old Blackmail statute is merged into Coercion and Larceny by Extortion.

Larceny by Extortion involving fear of physical injury, and Robbery, are also somewhat similar. They are distinguished by the fact that Larceny by Extortion requires fear of physical injury in the future while Robbery requires the use or threat of immediate force. (see section "Robbery", this Manual).

Officers reviewing the elements of Coercion and Larceny by Extortion will note that these two kinds of crimes involve a number of situations which could also include Bribery.

It used to be the rule that if a person was guilty of extortion he could not be guilty of receiving a bribe, or vice versa, as the crimes were mutually exclusive (Peo. vs. Dioguardi, 8 NY 2d 260). This rule no longer holds true.

It is no longer, under the Penal Law, a defense to either Coercion, Larceny by Extortion, or attempts to commit either, that the defendant's acts also constituted a violation of labor officials or public servant bribery laws (P.L. Secs. 135.70, 155.10). Nor is it a defense to a prosecution for bribe receiving (or attempts) that the acts also constituted a violation or attempted violation of the Coercion or Larceny by Extortion statutes (P.L. Secs. 180.30, 200.15).

It is, however, a defense to bribe giving violations in respect to labor official and public servant Bribery that the bribery was a result of Coercion or Larceny by Extortion (or attempts) (P.L. Secs. 180.20 200.05).

ELEMENTS OF FEAR: An instilling of fear by the offender is a basic element of both Coercion and Larceny by Extortion. Either kind of crime may be committed by instilling fear of the consequences of refusal, under any of nine specified circumstances. The fear must be instilled by the offender and must be that the offender or another will do any of the following:

1. Coercion: Cause physical injury to a person (P.L. Sec. 135.60, subd. 1).

1a. Larceny by Extortion: Cause physical injury to some person in the future (P.L. Sec. 155.05, subd. 2-e-i); or

2. Cause damage to property (P.L. Secs. 135.60, subd. 2; 155.05, subd. 2-e-ii); or

3. Engage in other conduct constituting a crime (P.L. Secs. 135.60, subd. 3; 155.05, subd. 2-e-iii); or

4. Accuse some person of a crime or cause criminal charges to be instituted against him (P.L. Secs. 135.60, subd. 4, 155.05, subd. 2-e-iv); or

5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule (P.L. Secs. 135.60, subd. 5; 155.05, subd. 2-e-v); or

6. Cause a strike, boycott or other collective labor group action injurious to some person's business (P.L. Secs. 135.60, subd. 6; 155.05, subd. 2-e-vi);

a. Such a threat is not deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act (P.L. Sec. 155.05, subd. 6);

b. Such a threat is not deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act (P. L. Sec. 155.05, subd. 2-e-vi); or

7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense (P.L. Secs. 135.60, subd. 7; 155.05, subd. 2-e-vii); or

8. Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely (P.L. Sec. 135.60, subd. 8; 155.50, subd. 2-e-viii); or

9. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his:
   a. Health, or
   b. Safety, or
   c. Business, or
   d. Calling, or
   e. Career, or
   f. Financial condition, or
   g. Reputation, or
   h. Personal relationships (P.L. Secs. 135.60, subd. 9; 155.05; subd. 2-e-ix).

FEAR OF CHARGE OF CRIME—DEFENSE: In any prosecution for Coercion or Larceny by Extortion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is an affirmative defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge. (P.L. Secs. 137.75, 155.15). An affirmative defense is one which must be established by the defendant at the trial, with a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

This new law changes the former rule that the law did not authorize the collection of just debts by threatening to accuse the debtor of a crime even though he was in fact guilty of the crime, such as threatening to prosecute a thief if he did not pay for merchandise he had stolen (Peo. vs. Fichtner. 281 App. Div. 159, affirmed 305 NY 864).

NO ACTUAL FEAR: Under the old Penal Law, it was held that if no actual fear was generated by the threats involved, the crime was only attempted extortion (Peo. vs. Gillette, 200 NY 275, Peo. vs. Bonsignore, 21 App. Div. 2d 309). A similar rule will undoubtedly be followed under the new law (see section "Attempts," this Manual).

COERCION IN THE SECOND DEGREE: A person is guilty of Coercion Second when he compels or induces a person:

1. To engage in conduct which the person has a legal right to abstain from engaging in; or

2. To abstain from engaging in conduct in which he has a legal right to engage;

3. By instilling fear of the consequences if the demand is not met (P.L. Sec. 135.60).

Coercion second is a Class A misdemeanor.

The fear which must be instilled is set out previously herein under "Elements of Fear".

COERCION IN THE FIRST DEGREE: A person is guilty of Coercion First when:

1. He commits the crime of Coercion second, and
   a. Commits it by instilling fear that he will:
      (1) Cause physical injury to a person, or
      (2) Cause damage to property, or
   b. By committing it compels or induces the victim to:
      (1) Commit or attempt a felony, or
      (2) Cause or attempt to cause physical injury to a person, or
      (3) Violate his duty as a public servant. (P.L. Sec. 135.65).

Coercion first is a Class D felony.

LARCENY (BY EXTORTION): A person steals property and commits Larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof (P.L. Sec. 155.05, subd. 1).

1. Larceny includes a wrongful taking, obtaining or withholding of another's property, by extortion (P.L. Sec. 155.05, subd. 2).

a. A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling fear of the consequences if the property is not delivered (P.L. Sec. 155.05, subd. 2-e).

The fear which must be instilled is set out previously herein under "Elements of Fear."

The various degrees of larceny are:

PETIT LARCENY: A person is guilty of Petit Larceny when he steals property. Petit Larceny is a Class A misdemeanor. (P.L. Sec. 155.25).

GRAND LARCENY IN THE THIRD DEGREE: A person is guilty of Grand Larceny in the Third Degree when he steals property and when the property, regardless of its nature and value, is obtained by extortion.

Grand larceny in the Third Degree is a Class E felony. (P.L. Sec. 155.30, subd. 5).

GRAND LARCENY IN THE SECOND DEGREE: A person is guilty of Grand Larceny in the Second Degree when he steals property and when the value of the property exceeds one thousand five hundred dollars.

Grand Larceny in the Second Degree is a Class D felony. (P.L. Sec. 155.35).

GRAND LARCENY IN THE FIRST DEGREE: A person is guilty of Grand Larceny in the First Degree when he steals property and when the property, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will:

1. Cause injury to some person in the future, or (P.L. Sec. 155.40, subd. a);

2. Cause damage to property, or (P.L. Sec. 155.40, subd. b);

3. Use or abuse his position as a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely (P.L. Sec. 155.40, subd. c).

Grand Larceny in the First Degree is a Class C felony.

LARCENY; PLEADING AND PROOF: Where it is an element of the crime charged that property was obtained by Extortion, an indictment for Larceny must so specify and an indictment charging Larceny by Extortion must be supported by proof establishing Larceny by Extortion (P.L. Sec. 155.45).

PROPERTY AND VALUE: Property means money, personal property, real estate, evidence of a debt or contract or any article, substance or thing of value (P.L. Sec. 155.00, subd. 1).

Value means the market value of the property at the time and place of the crime. If market value cannot be satisfactorily determined, the value may be taken as the replacement value within a reasonable time after the crime (P.L. Sec. 155.20, subd. 1).

For further information as to the definition of property and of value, see section on Larceny, this Manual.

FEDERAL CRIME OF EXTORTION: Transmitting in interstate commerce any communication containing a threat to injure or kidnap any person, with intent to extort money or anything of value, is a felony punishable by fine not over $5,000, imprisonment not more than 20 years, or both (Title 18 U.S. Code, Sec. 875, subd. b). The "communication" may be in writing, on the telephone, by radio, telegraph, etc. The law makes no restriction on the kind of communication.

If such communication is transmitted without intent to extort (such as to vex, annoy or for other reasons), the penalty is a fine not over $1,000, imprisonment not more than 5 years, or both (Title 18 U.S. Code, Sec. 875, subd. c).

If the threat is to injure the property or reputation of any living or deceased person, or to accuse of crime, the penalties are fine not over $500., imprisonment not more than 2 years, or both (Title 18 U.S. Code, Sec. 857, subd. d).

RANSOM DEMANDS: It is a Federal felony, punishable like extortion, to transmit in interstate commerce any communication containing any demand or request for a ransom or reward for the release of a kidnapped person (Title 18 U.S. Code, Sec. 875, sub. a). Officers should note that no intent to extort is required, only a knowing transmission.

MAILING THREATENING COMMUNICATIONS: Title 18 U.S. Code, Section 876, makes it also a crime to knowingly deposit any communication as described in the Federal extortion law, in the U.S. Mails. Mailing in a foreign country is included (Title 18 U.S. Code, Sec. 877).

The FBI handles violations of the Federal extortion laws (except that threats to injure reputation or to accuse of crime are handled by U.S. Postal Inspectors when the communication was deposited in or sent through the U.S. Mails). Federal officers should be promptly informed of any complaint alleging a violation.

DURESS: It is an affirmative defense to any prosecution that the defendant engaged in the criminal conduct because he was coerced to by:

1. The use (or threatened imminent use) of unlawful physical force upon him or a third person, and

2. If the force or threatened force could not have been resisted by a person of reasonable firmness in the same situation. (P.L. Sec. 35.35).

An affirmative defense is one which the defendant must establish at trial by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

THREATENING COMMUNICATIONS: Instances of communications or telephone calls, which do not constitute Coercion or Larceny by Extortion for lack of intent may be Aggravated Harassment (See Section 54, "Disorderly Conduct," etc., this Manual).

INVESTIGATIONS

INSTRUCTING COMPLAINANT: When a complaint is received, the officer should insure that the victim or complainant is specifically instructed not to handle any written communication, to permit no one else to handle it and to keep the matter confidential.

The communication, if any, should be promptly obtained, protected to prevent contamination of any latent fingerprints on either envelope or enclosure, and photographed before being submitted for laboratory examination. Photographs should include the envelope.

INTERVIEW OF VICTIMS: The victim should be questioned in detail, based upon the contents of the communication, in efforts to develop

any logical suspect or class of suspects. The contents of the communication should be carefully analyzed for clues as to the possible identity of the subject, including his means of learning any facts which it set out.

PAYOFFS: If a payoff is demanded, the victim's cooperation should be sought. Payoff may be in marked money or with a dummy package, depending on the circumstances of the demand. In planning coverage of payoff, officers must always consider that the offenders may have the payoff spot or routes thereto under surveillance. Be certain that approach is discreet and that all avenues of escape are covered. This may require assistance from other agencies in cases of small departments. Be alert to the fact that extortioners have frequently sent messengers to make pickups and the messenger may be an innocent participant. Consequently, shooting to prevent escape should be avoided and careful plans made for successful capture or surveillance of the pickup man. In making a payoff, follow the extortioner's instructions carefully to avoid arousing suspicion or missing the "meet."

LABORATORY AIDS: Communications should be given expert examination for latent fingerprints and to determine the kind and source of paper, handwriting characteristics (for informal comparison during invesigations) and if typed, kind of typewriter. In communities where separate postmark stamps are used for different stations, the postmark may pinpoint the area from which the communications were mailed.

HANDWRITING OR TYPEWRITING COMPARISON: A basic line of investigation in all cases involving writing is location and laboratory comparison of handwriting specimens of suspects and the location and comparison of typing from suspect machines. Samples may be found in innumerable places, from school test papers in cases of juvenile or youthful suspects, to business letters or correspondence with friends in cases of older suspects.

OPEN INVESTIGATION: Any open investigation should be deferred in cases in which a payoff appears possible, since it cannot be known what police inquiry might be learned of by the extortioner or other offender. Inquiries made while a payoff is still possible should only be made very discreetly.

When a payoff is not in prospect, open interviews with logical suspects may be conducted. A request for handwriting or typewriting specimens should always be made (see Section 78, "Investigations," this Manual, under subheading "Documents," for procedure).

TELEPHONED COMMUNICATIONS: In cases involving telephoned communications, the victim should be instructed, in the event of additional calls, to carefully note the caller's accent, exact words and all background noises, if any. Consideration should be given to installing a tap on the victim's phone with his consent. Where logical suspects are identified, consider eavesdropping on their telephone lines. In cases in which there are no logical suspects, the telephone company should be informed and consideration given to call-tracing procedures.

EXTORTIONERS WHO ARE KNOWN: In a limited number of cases, extortion may be direct, with the offender known to the victim. In such cases, for evidentiary purposes, a planned payoff under police surveillance and police monitor (microphone coverage with the victim's agreement) will offer the best proof. The arrest should be made when the victim passes the marked money or other valuables, and it is taken by the offender.

CONCEALMENT OF POLICE ACTIVITY: In all surveillances and payoffs, careful concealment of the police interest and activity is of paramount importance and considerable planning should be devoted to this phase of any such case. In the event of more than usually difficult situations, the advice of other officers, FBI agents and U.S. Postal Inspectors experienced in such cases, should be sought.

USE OF POLICE FILES: In all Extortion and Coercion cases, officers should make diligent use of their own and nearby departments' police files to identify possible suspects. More than one interview may be had with the victim to make certain that all facts known to him which could be of value in identifying the criminal are known.

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61. FALSE INSURANCE CLAIMS

The false claims dealt with in this Manual section are solely false insurance claims. Other types of false claims must be considered and handled as larcenies or attempted larcenies (larceny by trick, by false pretenses or by false promise—See Section 82, "Larceny", this Manual).

PRESENTING A FALSE INSURANCE CLAIM: A person is guilty of presenting a False Insurance Claim who:

1. With intent to defraud an insurer,
2. In respect to an alleged claim or loss upon a contract of insurance,
3. Knowingly presents to:
   a. The insurer, or
   b. An agent of the insurer,
4. A written instrument,
5. Containing a false statement relating to such alleged claim (P.L. Sec. 175.50).

Presenting a False Insurance Claim is a Class A misdemeanor.

VERBAL CLAIMS: One of the elements of the offense is that there be presentation of a *written* instrument. A verbal claim, therefore, no matter how far the claim succeeds, cannot be the basis of an offense under this statute. It could be the basis of a Larceny or Attempted Larceny.

INVESTIGATIONS

In all investigations, the initial step after receipt of complaint should be to obtain the original or an exact copy of the written instrument, together with detailed information as to the false statement or statements contained in the instrument.

As in any other type of case, if the original is obtained, it must be handled as evidence and care must be taken to maintain the continuity of proof necessary. In addition, the instrument must be protected from contamination of any latent fingerprint evidence and should (in the usual case) not only be processed for latent prints but also examined in the Scientific Laboratory to determine what proof of origin and identity may be obtained from the paper, its watermark or other characteristics and also by means of the writing, typing, or printing on it, as well as from any seals, stamps, etc., which it may bear.

The usual false claim case will involve a claim instrument which was fully prepared by the violator or violators and which will not, through any scientific examination, offer any proof of the violation other than

proof of origin and responsible creator of the instrument. Proof of the falsity will of necessity be developed from outside facts. Thus, in a claim for personal injuries based on an alleged vehicle-pedestrian accident which actually never happened, the false claim instrument will offer no proof of falsity in itself. Detailed neighborhood inquiries at the alleged scene of the accident, examination of the alleged vehicle, interview of medical personnel, review of hospital records and similar investigation must be relied upon to establish the falsity of the claim.

The fact that so much other investigation will be required should not cause the officer to lose sight of the need for submitting the written instrument for handwriting, typing, and latent fingerprint examination as early in the investigation as is practicable, for positive proof as to the identity of the person or persons responsible for the preparation of the false claim instrument or instruments.

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62. FALSE WRITTEN STATEMENTS

Article 175 of the New Penal Law (False Written Statements) concerns only certain specified kinds of statements. It does not make falsity a crime as to all kinds of written statements.

Only business records, public records, documents offered for filing in public offices or with public servant, certificates issued by public servants and statements of financial condition or ability to pay are covered by Article 175.

False Insurance Claims are also offenses under Article 175 and are discussed in Section 61 of this Manual, "False Insurance Claims."

FALSIFYING BUSINESS RECORDS IN THE SECOND DEGREE: A person is guilty of Falsifying Business Records Second who:

1. With intent to defraud:
   a. Makes or causes,
   b. A false entry,
   c. In the business records of an enterprise (P.L. Sec. 175.05, subd. 1); or
2. With intent to defraud:
   a. Alters, or
   b. Erases, or
   c. Obliterates, or
   d. Deletes, or
   e. Removes, or
   f. Destroys,
   g. A true entry,
   h. In the business records of an enterprise (P.L. Sec. 175.05, subd. 2); or
3. With intent to defraud:
   a. Omits to make a true entry,
   b. In the business records of an enterprise,
   c. In violation of a duty to do so,
   d. Which duty he knows to be imposed upon him by:
      (1) Law, or
      (2) The nature of his position (P.L. Sec. 175.05, subd. 3); or
4. With intent to defraud:
   a. Prevents the making of, or
   b. Causes the omission of,

c. A true entry,

d. In the business records of an enterprise (P.L. Sec. 175.05, subd. 4).

Falsifying Business Records Second is a Class A misdemeanor.

FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE: A person is guilty of Falsifying Business Records First when he:

1. Commits the crime of Falsifying Business Records in the Second Degree, and

2. His intent to defraud includes an intent to:
   a. Commit another crime, or
   b. Aid the commission of another crime, or
   c. Conceal the commission of another crime
   (P.L. Sec. 175.10).

Falsifying Business Records First is a Class E felony.

DEFENSES: In any prosecution for Falsifying Business Records, it is an affirmative defense that the defendant was:

1. A clerk, bookkeeper or other employee who,

2. Without personal benefit,

3. Merely executed the order of:
   a. His employer, or
   b. A superior officer, or
   c. An employee generally authorized to direct his activities (P.L. Sec. 175.15).

An affirmative defense is one which the defendant has the burden of establishing by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

ENTERPRISE DEFINED: An enterprise is an entity, whether one person or more than one person, and whether a corporation or otherwise, whether public or private, whether engaged in business, commerce, a profession, industry, eleemosynary (charitable) activities, or social, political or governmental activity (P.L. Sec. 175.00, subd. 1).

The Penal Law's definition of an "enterprise" is broad enough to include almost any conceivable kind of entity. There is no requirement in the law that the enterprise be engaged in business or in a profit-making activity.

An enterprise can be an individual or a group of individuals, or a legal person, like a corporation. It can be actually in business like a store, a manufacturer or a salesman, or it can be a non-business entity like a social club, a jail, a school, a town government, a city, an agricultural fair, or it can be in between, like a charity bazaar.

BUSINESS RECORD DEFINED: A business record is any writing, typing or printing or any article of any kind kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity (P.L. Sec. 175.00, subd. 2).

A business record, as defined by the law, is thus just not an account book or ledger in a business office, but could also include things like the dues sheet of a yacht club, the roster of the inmates of a jail, a log of repair calls kept by a service office, and any number of other things besides old fashioned account books.

In addition, the law does not require that the business record be maintained in writing or be a typed or printed record. The record can be maintained by means of any article reflecting condition or activity. Business records can include, for purposes of prosecution under this law, such things as punch cards in accounting machines, electronic computer tapes on which

electrical impulses are stored as a record, and similar modern methods of keeping track of condition or activity.

TAMPERING WITH PUBLIC RECORDS IN THE SECOND DEGREE: A person is guilty of Tampering with Public Records Second who:

1. Knowing that he does not have the authority of anyone entitled to grant it,
2. Knowingly:
   a. Removes, or
   b. Mutilates, or
   c. Destroys, or
   d. Conceals, or
   e. Makes a false entry in, or
   f. Falsely alters
3. Any record or other written instrument:
   a. Filed with a public office or public servant, or
   b. Deposited in a public office, or
   c. Otherwise constituting a record of a public officer or public servant (P.L. Sec. 175.20).

Tampering With Public Records Second is a Class A misdemeanor.

TAMPERING WITH PUBLIC RECORDS IN THE FIRST DEGREE: If the tampering with public records is committed with intent to defraud, it becomes first degree (P.L. Sec. 175.25). Tampering with Public Records First is a Class D felony.

OFFERING A FALSE INSTRUMENT FOR FILING IN THE SECOND DEGREE: A person is guilty of Offering a False Instrument for Filing Second who:

1. Knowing that a written instrument contains:
   a. A false statement, or
   b. False information,
2. Offers or presents it,
3. To a public officer or public servant,
4. With the knowledge or belief that it will be:
   a. Filed with such public office or public servant, or
   b. Registered in such public office, or
   c. Recorded in such public office, or
   d. Otherwise become a part of the records of such public office or public servant (P.L. Sec. 175.30).

Offering a False Instrument for Filing Second is a Class A misdemeanor.

OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE: If the offering or presenting is with intent to defraud either the state or a political subdivision of the state, the crime becomes Offering a False Instrument for Filing in the First Degree (P.L. Sec. 175.35). This is a Class E Felony.

ISSUING A FALSE CERTIFICATE: A person is guilty of Issuing a False Certificate who:

1. Being a public servant,
2. Authorized by law to make or issue:
   a. Official certificates, or
   b. Other official written instruments,
3. And with intent to:
   a. Defraud another, or
   b. Deceive another, or
   c. Injure another

4. Issues such an instrument, or
5. Makes such an instrument with intent that it be issued,
6. Knowing that it contains:
   a. A false statement, or
   b. False information (P.L. Sec. 175.40).

Issuing a False Certificate is a Class E felony.

ISSUING A FALSE FINANCIAL STATEMENT: A person is guilty of Issuing a False Financial Statement who:

1. With intent to defraud:
2. Knowingly:
   a. Makes, or
   b. Utters,
3. A written instrument,
4. Which purports to describe:
   a. The financial condition of some person, or
   b. The ability to pay of some person,
5. And which is inaccurate in some material respect (P.L. Sec. 175.45, subd. 1).

A person is also guilty of Issuing a False Financial Statement who:

1. With intent to defraud,
2. Represents in writing,
3. That a written instrument purporting to describe:
   a. A person's financial condition, or
   b. A persons ability to pay,
   c. As of a prior date,
4. Is accurate with respect to the person's current financial condition or ability to pay,
5. While knowing that the written instrument is materially inaccurate in respect to the person's current financial condition or ability to pay. (P.L. Sec. 175.45, subd. 2).

Issuing a False Financial Statement is a Class A misdemeanor.

PERSONS: Officers should bear in mind that the word "person" includes not only an individual human being but also, where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a government instrumentality (P.L. Sec. 10.00, subd. 7).

INVESTIGATIONS

In the types of cases dealt with in this Manual section, it is best to obtain the fullest possible detail from the initial complainant. Ascertain the specific instance or instances of falsity, tampering, etc., complained of and the particular means used to produce them. The documents or articles involved should be fully identified, and the originals obtained and preserved as evidence, where practicable to do so.

The officer investigating the types of cases discussed in this section should never approach the investigation on the basis that his proof will come from a confession by the violator. In each case, reliance should be placed instead on full development of the factual situation, determining at the beginning (1) who profited, (2) who had opportunity, and (3) what scientific examinations and latent fingerprint examinations are feasible.

It should be noted that Falsifying Business Records and Tampering with Public Records are crimes whose elements are similar to the elements of forgery. In each such case, the officer should analyze the facts to de-

termine whether one of the degrees of forgery should be charged rather than "Falsifying" or "Tampering".

In many cases involving business records it will be found that the "records" are something other than the bound ledgers with handwritten entries which business records always used to be in years gone by. Modern accounting machinery and electronic equipment make it essential that the officer identify the records involved as soon as possible and that he recognize the need to secure disinterested and competent experts for appropriate checks and examinations.

In addition, even where the records are the handwritten ledger type, it may be beyond the ability of the police officer to conduct a proper examination of the records because of the need for expert accounting knowledge. In such instances also the officer should be prompt to recognize the need for expert assistance.

Whether records are old fashioned ledgers or the most modern equipment, the officer must continually bear in mind the fact that the Scientific Laboratory may be able to assist him and that latent fingerprint examinations should be conducted whenever possibly pertinent.

In Tampering with Public Records cases (except those where a specific offender is caught in the act and identified) initial investigation must include an analysis of the records in question and of the specific tampering found, to determine the beneficiary or possible beneficiary and the probable purpose of the offender.

The possible value of latent fingerprints should not be overlooked, even though many people may have access to the record.

If useful latents are developed, they may be fingerprints of persons whose duties required them to handle or prepare the records, or of others who had legitimate access to the premises and records. The identities of possible suspects must thus usually be developed by investigation into the problem of who should benefit by the tampering. Latent fingerprints establish only that the owner of the fingerprints had access to and touched the record.

In cases involving false instruments for filing, the individual who actually gives the instrument to the public office or public officer may be no more than a messenger, with no knowledge of or connection with the falsity of the instrument. Detailed investigation will be required to determine not only who would profit by the false instrument's filing, but to prove who actually caused it to be offered or presented by the messenger.

In cases involving issuing of a false certificate, the certificate should be secured as soon as possible, so that it may be examined for latent fingerprints and any characteristics in printing, writing, stamping, torn edges, etc, which would tend to identify the certificate and/or the one who prepared the certificate.

Officers should not, in this type of investigation, rely upon testimonial evidence alone. The certificate should always be examined by fingerprint experts and scientific laboratory document experts for internal evidence of its source and creator.

In those instances where fingerprint and scientific document evidence are lacking, the officer's investigation can be given direction and guidance by constant consideration (1) "who profited by this?" and (2) "how did he (or she) profit?"

In cases involving false financial statements, a key point is that to have a violation, there must be knowledge of both the material inaccuracy and that the document was a financial statement. Obtaining proof of the inaccurate facts and of their materiality will be no problem since such a case is unlikely to come to police attention until the inaccuracy and its

materiality are well established by the complainant. The essential element of additional proof to be obtained is that the defendent knew of the material inaccuracy.

Proof of knowledge that the document was a financial statement will not, in the usual case, present any difficulty and the mere form of the document and the circumstances of its delivery should ordinarily be sufficient proof of this element.

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63. FEDERAL CRIMES

There are two kinds of Federal crimes under Federal laws — (1) crimes which are crimes anywhere within the jurisdiction of the United States, such as theft of government property or bank robbery; (2) crimes which are Federal crimes only because they occur on Federal reservations over which the United States exercises criminal jurisdiction, such as murder of a private citizen or theft of private property.

The Federal crimes which are crimes anywhere are set out mainly in Title 18 United States Code, which is equivalent to the New York State Penal Law.

The other class of crimes arise under the provisions of Title 18 United States Code, Section 13, which provides that on lands under the exclusive or concurrent jurisdiction of the United States, any person guilty of an act which would be punishable if committed within the jurisdiction of the state in which lands lie, is guilty of a like Federal offense and subject to the same punishment as provided in the state law — in effect, this statute incorporates into Federal law all the criminal laws of the State of New York and makes them apply to all Federal lands in New York over which the Federal government has exclusive or concurrent jurisdiction. All such crimes are prosecutable in Federal court.

Arrest and court procedures concerning Federal crimes are set out in Part 2 of Title 18 and in the Federal Rules of Criminal Procedure, which are the equivalent of the New York State Code of Criminal Procedure.

The FBI is the Federal law enforcement agency which has general jurisdiction over Federal criminal violations.

FEDERAL LANDS: At various times the Federal Government has acquired lands in the State of New York for government purposes. A legal question as to criminal jurisdiction may arise in respect to some parcels held by the government and in such cases the question should be resolved by the officer through consultation with the United States Attorney and the District Attorney. The FBI will also be of assistance as to whether there is Federal criminal jurisdiction on any particular piece of Federal property. It is possible for the Federal government to own land in New York just as a private citizen does, and to exercise no criminal jurisdiction over it, and there are a number of such Federal holdings in New York. The mere fact that a place is Federal land does not establish that the Federal Government has criminal jurisdiction. As a matter of policy, officers should determine the jurisdictional status of each piece of Federal land in their jurisdiction, so that they will know whether they or the FBI and/or military or other Federal authorities are charged with the responsibility for criminal law enforcement on the Federal land.

ACQUISITION OF LAND BY THE FEDERAL GOVERNMENT: The Constitution of the United States, Article 1, Section 8, Clause 17, provides that "The Congress shall have Power To . . . exercise exclusive Legislation . . . over all Places purchased by the Consent of the Legislature

of the State . . . for the erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful building; . . ."

By Section 50 of the State Law, New York State gives general consent to the acquisition of land in New York by the Federal Government. All title papers to lands so acquired must be recorded in the office of the County Register or County Clerk where the lands are.

The United States may acquire the lands by gift, by outright purchase, like a private person, or through condemnation. The Governor, under Sections 52 or 59-e of the State Law, may grant the United States a "deed of cession," giving the Federal Government jurisdiction over the land in addition to its legal ownership. He does not have to make such a grant.

Sections 53 and 59-f of the State Law require that the Governor cede any jurisdiction only upon the express condition that the State shall retain a concurrent jurisdiction with the Federal Government to the extent that all civil and criminal process of the State may be executed on the Federal land. This reservation of a right to execute process does *not* reserve to the State the right to prosecute for crimes committed on the Federal land so ceded. The right to prosecute is solely in the Federal Government (Peo. vs. Kraus, 212 App. Div. 397; Peo. vs. Segui, 11 Misc. 2d. 999).

PROSECUTION OF FEDERAL CRIMES: Arrests for Federal crimes are ordinarily made by Federal officers, but the law does not prohibit local officers from arresting for Federal crimes. In practice, it is a desirable rule to immediately inform the FBI, U.S. Postal Inspector, etc., when Federal violations are found.

When a Federal crime is committed, a local offense is also usually committed — if a bank robbery occurs in violation of Title 18 United States Code, Section 2113, it is also a violation of New York State robbery laws; if a theft from an interstate shipment occurs in violation of Title 18 United States Code, Section 659, it is also a larceny or burglary under New York law. Thus, the local officer may make an arrest for a state offense, even though a Federal offense also exists.

Although the same actions may constitute a crime under both state and Federal law, the Federal law does not bar Federal prosecution even after the State has prosecuted the offender (except in certain limited cases specified by Federal law). However, Section 139, Code of Criminal Procedure, would bar New York State prosecution after a Federal prosecution for the same acts.

If the factual situation is that the same series of actions produce Federal and State crimes at different stages, there is no bar to prosecuting both. Thus, a robber fleeing the State in a stolen getaway car could be prosecuted locally for the robbery and in Federal court for the interstate transportation of the stolen motor vehicle.

Where an officer has any problem in regard to Federal Jurisdiction his District Attorney, the United States Attorney and local FBI, U.S. Postal Inspection, Secret Service, and Internal Revenue officers are all possible sources of knowledge and assistance.

All officers should note that the Federal crimes which are crimes solely because they occur on a Federal reservation cannot at any time also constitute local crimes. They must be handled as Federal crimes at all times.

A Federal felony is any Federal offense punishable by death or imprisonment for a term exceeding one year. A Federal misdemeanor is any Federal offense not a felony. A petty offense in Federal law is any Federal misdemeanor punishable by not more than $500 fine or imprisonment for not more than six months or both.

Felonies and misdemeanors are tried in United States District Courts (Title 18, U.S. Code, Sec. 3231). Petty offenses may be tried in such courts or by any United States Commissioner designated for the purpose by the court which appointed him — this is the Federal equivalent of New York Special Sessions courts (Title 18 U.S. Code, Sec. 3401). Not all United States Commissioners are so designated.

COURTS AND MAGISTRATES IN FEDERAL CRIMINAL CASES: For any Federal offense, the following may act to cause the arrest and imprisonment or bail pending trial, of any offender: any justice or judge of the United States, any United States Commissioner, any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace or other magistrate of any state (and at the expense of the United States) (Title 18 U.S. Code, Sec. 3041).

Any state judge or magistrate acting under this authority in a Federal case may proceed according to the usual rules of procedure of his state — however, his acts and orders have no affect beyond determining to hold the prisoner for trial or to discharge him from arrest (Title 18 U.S. Code, Sec. 3041).

WHAT ARE FEDERAL CRIMES: On Federal lands over which the Federal government exercises criminal jurisdiction, all the crimes defined in the laws of the State of New York are Federal crimes, with the exception that if a Federal law covers the same subject, the Federal law controls (Title 18 U.S. Code, Sec. 13). The exceptions are limited.

The main Federal criminal laws, applicable anywhere in the state, which the local officer may have to deal with may be found in this Manual in connection with related sections of New York criminal law.

COOPERATION

COOPERATION BETWEEN LAW ENFORCEMENT AGENCIES: In order to insure close cooperation and good working relations between law enforcement agencies a uniform procedure for handling problems which may arise between organizations should be followed. All such problems of a significant nature should be brought to the attention of a specified ranking officer, so that the problem may be properly resolved, on an amicable basis.

INTERSTATE COOPERATION WITH LAW ENFORCEMENT OFFICERS AND AGENCIES OF OTHER STATES AND THE FEDERAL GOVERNMENT: All law enforcement officers and agencies of this state and its subdivisions are authorized by Section 621 of the Correction Law to cooperate with agencies of other states and of the United States, having similar powers, to develop and carry on a complete interstate, national and international systems of criminal identification and investigation, and to obtain and furnish, or to assist in obtaining and furnishing, any information from and to a law enforcement officer or agency of another jurisdiction to assist in the conduct of an investigation into any criminal matter or for use in a criminal prosecution.

Nothing in this law may be construed to authorize or empower any law enforcement officer or agency to engage in any activity or type of work for which he or it does not otherwise have authority in conducting investigations or prosecutions in connection with crimes alleged to have been committed within this state, but the obtaining and furnishing of information pursuant to this section shall be deemed a part of the regular functions of the officer or agency obtaining and furnishing the same.

64. FINGERPRINTS AND IDENTIFICATION

Fingerprints are the basic means of identification used by law enforcement. The officer deals with two kinds of fingerprints — those taken from subjects at the time of arrest or from other persons at various times, and "latent" fingerprints found at the scene of a crime or found on tools of a crime or other evidence.

Fingerprints are impressions formed by the skin ridges of the fingers, which leave their exact impression in ink when persons are fingerprinted or leave deposits of perspiration, body oil, etc., when a finger touches a sufficiently smooth surface, paper, etc.

Fingerprint patterns are unchanged in individuals from birth to death. No two individuals have ever been found who had identical fingerprints.

Dead bodies retain their fingerprint characteristics until after decomposition of the skin sets in.

LAW RELATING TO FINGERPRINTS: The fingerprinting which officers are required by law to do is explained in this Manual in Section 18, "ARRESTS AND BAIL."

The laws of evidence control fingerprints as well as any other evidence and individuals' fingerprints cards as well as "latent" fingerprints must be considered and handled as evidence at all times. This means that fingerprints of persons taken by officers must always be fully identified on the card with the signature of the taking officer, the signature of the person whose fingerprints were taken and full identifying information, properly entered.

"Latent" fingerprints found at the scenes of crimes or on evidence must be carefully preserved and identified. They should be handled as evidence and appropriately marked. Proper notes must be made and preserved by the officer who finds and develops and lifts them, for later testimony.

TAKING FINGERPRINTS: Officers are regularly required to take fingerprints of arrested persons and others. As a public service officers are also frequently called upon to take fingerprints of persons applying for public employment or other accommodation.

Taking fingerprints is a manual skill which any officer can develop with a little practice. The equipment required to take fingerprints consists only of a tube of black printer's ink, a rubber composition roller to spread the ink and a smooth, flat plate (a small block of plate glass is usual) on which to roll out the ink for inking the fingers, plus fingerprint cards.

To take a fingerprint, the fingers are inked by being rolled on the ink-covered plate and are then pressed on the fingerprint card. The process is roughly the same as using a rubber stamp. The officer practicing will quickly discover that a little ink, well rolled out, is generally most satisfactory. He should make a number of tests, using his own hands and those of available volunteers, until he knows the amount of ink and the light pressure required to produce clean, clear impressions with grey-black or black lines and clear, clean whites.

In most departments a stand of convenient height is provided to securely hold the inking plate, with a fingerprint card holder or clip to keep the card from slipping while in use. The clip is always beside the plate, not in back of it or in front of it. Such a stand is not at all essential but is very convenient.

Many departments have their own fingerprint cards printed. The FBI Identification Division, Washington, D. C., will furnish fingerprint cards and mailing envelopes free on request. The Bureau of Identification, New York State Identification and Intelligence System (NYSIIS) Albany, will also furnish cards and envelopes free on request. Any card which a de-

partment may independently procure for its own use should be of the universally used eight inch square size. The forms used on FBI and Bureau of Identification cards are similar and have stood the test of time. They should be utilized by local departments.

In New York it is required that in criminal cases, two sets of fingerprints be taken, one for the FBI and one for NYSIIS, Bureau of Identification. One should also be made for the department's own files. Only an FBI card should be used for the FBI and only a NYSIIS card for NYSIIS. This will avoid mixups of sending two cards to one agency and none to another. NYSIIS will return unhandled any fingerprints not on its own card.

The standard fingerprint card requires two kinds of impressions: (1) a rolled impression of the last joint of each individual finger, putting each impression in the block designated for that finger. The blocks for rolled impressions are in two rows of five, the top row always for right hand, bottom always for left. In each row the impressions always are, from left to right: thumb, index, middle, ring, little finger. (2) flat impressions made by pressing the inked fingers flat and all together at the bottom of the card, left hand at left and right hand at right, with similar impressions of each thumb beside them, in the center, all in the blocks provided.

In cases of persons with more than five fingers on a hand, print the extra fingers on the back of the card (with appropriate note on front). Double thumbs or webbed fingers are printed together as one.

In making the rolled impressions of individuals' fingers, each finger should be rolled from the most difficult to the easiest position, starting and finishing the print well up the sides of the finger.

In taking each fingerprint, the major problem is avoiding smudges, which obscure ridge detail and make the print useless. Smudges come from excess ink, material on the fingers or moving the finger improperly while printing — the roll should be with moderate pressure and in a continuous motion. The beginning officer should practice on volunteers until he is able to produce clean, clear impressions at all times.

An important factor in getting good impressions is pre-cleaning the fingers. A soap-and-water wash followed by drying and wiping with cleaning fluids, denaturated alcohol or benzene is best. A cleaning with fluids only is generally satisfactory, if no washing facility is used.

It is poor police work to take fingerprints badly and to submit prints with smudges. Only a clean, neat impression is proper for classifying and identification purposes. Careless fingerprinting or unskilled fingerprinting occasioned by a lack of practice make extra work for the officer in struggling to get three proper sets and extra work for the identification bureaus which receive poor prints. Both the NYSIIS Bureau of Identification at Albany and the FBI Identification Division in Washington have no choice but to return smudged prints as unusable. This poses a serious problem for the officer when his subject is no longer available for re-printing.

Hands may be cleaned after printing with cleaning fluid, followed by soap and water. Officers and subjects at all times during the fingerprinting should remember that fingers are inked and subjects should be cautioned against adjusting clothing, etc. Officers must take care to avoid getting ink on their own clothing or uniforms.

Officers must ensure that they properly sign every fingerprint card they take, in the space provided, and enter the date. They must also ensure that each card is signed by the person fingerprinted. However, there is no statute requiring that an accused sign a fingerprint card.

All identifying information called for on the card should be carefully entered, with exact date of birth, full addresses and full physical description.

HOW TO TELL GOOD FINGERPRINTS: An officer can judge the quality of his fingerprinting by a careful examination of the completed card. It is good if the prints are clear and sharp, showing each individual ridge and detail. In addition, the officer must examine each rolled impression to see that it shows a full and complete pattern, with all details clear and unsmudged. Just as good money can be told from counterfeit (by its clarity of image and precise printing) a good fingerprint card can be told from an unacceptable one.

FINGERPRINT FILES: Fingerprint files are ordinarily kept by classification in local departments. The classification is derived from certain characteristics of the prints in each of the ten fingers and is written on the top of the card, somewhat like an algebraic fraction.

Fingerprints files are kept by classification to permit searching of incoming fingerprints. After incoming fingerprint cards are classified they may be visually compared with cards in file having the same or nearly the same classification.

A necessary adjunct of a fingerprint file is a card index of names and aliases of persons whose fingerprints are in the file. This is maintained in alphabetical order, with the person's fingerprint classification also on each index card. Thus searches can be made from fingerprints or by name.

Positive identification can only be made by *expert* comparison of the fingerprint cards.

Further details as to fingerprints and maintaining and using fingerprint files may be secured from the book "The Science of Fingerprints," published by the FBI and for sale for a small sum by the Superintendent of Documents, U.S. Government Printing Office, Washington, D. C. Copies should be requested on official stationery of the officer's department.

FINGERPRINTS AT CRIME SCENE OR ON EVIDENCE: Any one or more of the fingerprints of an offender may be found at the scene of a crime or on evidence connected with it, such as a weapon, a document, a stolen car's rear view mirror, etc. Such fingerprints are referred to as "latent fingerprints." Latent means not visible or apparent, and in fact such fingerprints are almost never readily observable but must be "developed" and then photographed and "lifted." Any "latent" may include one or more fingers. Even a part of a fingerprint may be useful.

The techniques of developing and lifting latent fingerprints may be developed by any officer. An officer should practice solely on latents he himself or others have specifically made for practice and should not attempt a development or lift in an actual case until he has developed proper skill and technique. Detailed instruction for developing and lifting latents will be found in "The Science of Fingerprints," previously mentioned.

In brief, latents are developed by lightly coating with powder all surfaces where fingerprints may be expected, except that paper, cardboard and similar substances suspected of bearing latents should, in most instances, be processed with chemical fumes or baths and not with powders.

When powder is used, it adheres to residues left by the finger ridges and forms a replica of the finger ridges. The impression so developed should be gently brushed clean and then photographed. After photographing, and only then, the impression should be lifted by carefully pressing an adhesive material over it and carefully removing the adhesive material with the powder clinging to it in the exact shape of the fingerprint impression. A transparent covering is then placed over the lifted print.

Officers will find that a supply of gray and of black powder will suit their needs. Special fingerprint powder must be used and it may be secured commercially from various supply houses. The powder may be applied with a brush designed for fingerprint work or an atomizer type instrument, and

then brushed out until a clear pattern is obtained. The adhesive material used to "lift" developed latents should be a fingerprint lifting tape manufactured for the purpose. It may be secured in white and black and both kinds should be available to the officer, using the white for black powder and the black for grey powder. It comes with transparent covering material attached. The color of powder to use depends on the color of the surface — the powder giving best contrast should be used. A little practice will show the officer which powder suits various surfaces.

It should be remembered that the "lift" with fingerprint tape shows the print in a reversed or mirror image. It is possible to use transparent adhesive tapes for lifts, but these are not as sure as the specially prepared fingerprint tapes, since the adhesive coating is not as uniform, and may have minute gaps which would spoil part of the print. Transparent tapes, when viewed from the back, show the lifted print directly and not reversed.

CHEMICAL DEVELOPMENT OF FINGERPRINTS ON PAPER, ETC.: Chemical development should be used on paper, cardboard and similar materials and on newly finished or unfinished wood, rather than fingerprint powder, to develop latent fingerprints. It is possible to develop latent fingerprints with powder on such materials, but unsatisfactory results may occur, including having powder obscure prints which could be developed chemically but would not respond to the powder.

There are a number of chemicals available from fingerprint supply houses for use in developing latents. Two basic materials used successfully over the years are iodine fumes and silver nitrate solution.

Documents and similar materials requiring chemical development of latents may be exposed to iodine fumes, which develop an image gradually. This image fades and must be promptly photographed. The fumes are generated from iodine crystals. The FBI on request will supply plans and instructions for preparing an iodine gun or cabinet for fuming latents. Their uses are discussed in detail in the previously mentioned FBI book, "The Science of Fingerprints."

Silver nitrate solution is prepared with proportions of one quart of distilled water (tap water cannot be used) to one ounce of silver nitrate. This is approximately a 3% solution. Experience has shown that this is generally a very satisfactory strength. The material believed to bear latents is briefly immersed (not soaked) in a tray of solution and dried between blotters. When dry it is exposed to sunlight or to a source of blue or violet light such as a blue photographer's bulb, or a mercury arc light. The image develops rapidly. It is permanent, except that the paper may gradually darken and eventually obscure the image. It should be removed from light as soon as the ridge detail on the latents is clear. The silver nitrate may be removed at a later time by use of a solution of one quart of distilled water, two-thirds of an ounce of mercuric nitrate crystals and one-third of a fluid ounce of nitric acid — the document to be cleared is merely immersed in this solution.

In case of cardboard boxes or other things which cannot conveniently be immersed in solutions, the solutions may be flowed on with a brush and the same results achieved.

EXPERT SERVICES: All officers should bear in mind that only an expert fingerprint man can qualify as a witness to give proper testimony as to the identity of two fingerprint impressions or sets of fingerprints or any other identification based on fingerprints. Officers should be wary of making use of fingerprint identifications by officers who are not trained fingerprint men.

The New York State Police Identification Sections at the various troop headquarters and other police identification bureaus will assist officers in

criminal cases by processing documentary or other evidence for latent fingerprints. The NYSIIS Bureau of Identification at Albany will also assist in processing problems and in making identifications of latents with known prints, or identifying full sets of fingerprints in criminal matters.

No officer who is not an expert fingerprint man should attempt to make positive identifications from fingerprints but should secure the assistance of an officer who is expert in the field, or of the Bureau of Identification.

USING LATENT FINGERPRINTS: Latent fingerprints connected with crimes are most often used by comparing them with known fingerprints of logical suspects. The suspect's known fingerprints may be obtained from police or identification bureaus' files or may be taken from the suspect, with the suspect's consent, solely for the purpose of comparison.

It is not possible to search a latent fingerprint through the regular files of the FBI Identification Division in Washington or the Bureau of Identification at Albany.

Latent fingerprints can, of course, always be compared with the fingerprints of specified individuals whose prints are on file with either the FBI or the Bureau of Identification.

In addition, both the FBI Identification Division and the Bureau of Identification at Albany maintain files of prints of the individual fingers of selected individuals, including burglars, and unknown latent prints will be searched against these files on request.

The single fingerprint file of the Bureau of Identification at Albany is referred to as the "Latent Print" file. It includes only single fingerprints of selected criminals.

Any officer arresting an individual for burglary who has reason to believe that the individual will commit further burglaries should recommend that the individual's prints be included in the Latent Print File. Known burglars not under arrest may also be recommended. Individuals are recommended for file by forwarding two copies of their fingerprints to the Bureau of Identification and attaching to one copy an executed Form 7. A supply of forms will be furnished by the Bureau of Identification on request.

SERVICES OF THE IDENTIFICATION AGENCIES: The services of the FBI Identification Division and of the Bureau of Identification at Albany were established to assist law enforcement agencies. Officers should take advantage of these services whenever it appears that useful results may be anticipated.

PERSONS WANTED: Both the FBI Identification Division and the Bureau of Identification at Albany will, on request, post wanted notices against fingerprint cards of subjects in their files and will notify the agency for which the notice is posted whenever an arrest fingerprint card or other notice on the subject is received. They will telephone collect or will telegraph or teletype if requested, in urgent cases.

OTHER SERVICES: Both agencies maintain files of criminal fingerprint cards and of civil fingerprint cards, such as Federal or state job applicants, together with true name and alias indexes. The FBI Identification Division also maintains files of military fingerprints.

These agencies will provide criminal record data on request. The request should include the name and an arrest number (specifying the agency which made the arrest) for positive identification, or a fingerprint card may be submitted and any prior record will automatically be returned to the submitting department. A request may also be made by specifying the name and FBI Identification Division number or Bureau of Identification number. A search by name and physical description is possible but impractical in the case of common names, in view of the very large numbers of fingerprints on file in these agencies.

Bureau of Identification civil files include applicants for pistol permits, civil service and some other public employees, including police applicants, cabaret performers, taxi drivers, persons connected with boxing and wrestling, visitors to state prisons and patients of state mental hospitals.

The Bureau of Identification can also supply the following on request:

1. Copies of fingerprints on file;
2. Handwriting (ordinarily only signatures on fingerprint cards);
3. Type of occupation, residences, photographs, known associates and relatives of persons whose fingerprints are on file;
4. Names of visitors to subjects who were in state prisons (this information is also available at the prison);
5. Physical descriptions.

SPECIAL FILES, BUREAU OF IDENTIFICATION: The Bureau of Identification at NYSIIS maintains 4 special kinds of files of particular value to officers as follows:

1. Nickname File: This file is compiled from nicknames of subjects shown on incoming fingerprint cards and from other sources, arranged alphabetically. When an officer has a case in which a subject is unknown and it is found that he was referred to by a nickname, a search of the nickname file may be requested. Furnish known nickname, crime involved, approximate age, height and other know physical description when requesting the search.

2. Personal Appearance File: The personal appearance file is made up from personal appearance forms containing physical descriptions and other data on all persons released from any New York State penal institution since 1937. The actual file consists of punch cards onto which are put the physical description, area to which released and crime for which confined, so that electronic sorting equipment can search the cards by physical description, place of release and criminal specialty.

In view of the size of this file and the numbers of persons included, requests for search should be restricted to those instances where the physical description of the unknown subject is sufficient in detail to indicate that a specific search can be made. All requests should furnish as full a physical description as possible, the crime involved and a brief description of the modus operandi.

In cases involving arsonists, abortionists and sex criminals, it is practical to request a search for such types of individuals released to specified areas. In other types of cases, this is impractical, due to the numbers involved, unless the subject's physical description is very complete and detailed. The Bureau of Identification will forward to the requesting department photographs and descriptions of individuals in the file selected as corresponding to the descriptive and criminal data submitted. These photographs must be promptly returned after they have served their purpose. Personal Appearance Form blanks may be obtained from the Bureau of Identification for use in requesting such searches.

3. Arrestee File: An arrestee file is maintained. It is made up of punch cards which include physical description, and the crime charged (only felonies and indictable misdemeanors are in this file). The data are taken from arrest fingerprint cards. In view of the very large numbers of persons included in the file it is not practical to search it solely by physical description. Unusual items of physical description may be searched, such as an amputation, palsy or "the shakes" and similar outstanding characteristics. A search should be requested in any case of an unknown subject who has an unusual physical deformity or charac-

teristic. The request should include all known physical description of the unknown subject, the crime involved and the modus operandi. The Bureau will furnish the names of arresting agencies and arrest numbers of possible subjects located by the search so that photographs may be requested from the arresting agencies.

4. Photograph File (Micro File): The Photograph or "Micro" file is composed of photographs of prison releasees on microfilm, in 100 foot rolls, which may be viewed at the Division of Identification in Albany. The film is viewed by projection to life size on a screen. In instances where witnesses cannot be brought to Albany, arrangements can be made in special cases to bring the film to the locality for viewing. The films are added to periodically during the year. The photographs are divided by general areas in the state to which the releases were paroled or discharged. They are further divided by age of releasees and height. Swindlers, forgers, sex criminals and bank robbers are included on separate films. Arrangements should be made directly with the NYSIIS Bureau of Identification at Albany for any desired viewing. No females are included in the file.

LOCAL SOURCES OF FINGERPRINTS: Officers should bear in mind that local police agencies may have fingerprints of individuals in their files due to local ordinances or otherwise, in addition to those individuals required to be filed with the Bureau of Identification at Albany and the FBI Identification Division.

CLASSIFICATION OF FINGERPRINTS: Knowledge of the science of classifying fingerprints and using the classifications to properly prepare and maintain files and search incoming fingerprints against such files is not essential to the average law enforcement officer. An officer desiring detailed information on the subject may consult the FBI's book "The Science of Fingerprints" and other texts. The subject is often taught at police schools and there are commercial schools in the business of training fingerprint men. There is also, of course, on-the-job training in the identification units of larger departments.

Officers who are not fingerprint men will find it useful to know the basics of fingerprint classification and will find that an understanding of the subject will often permit them to eliminate suspects from consideration when the subject's proper fingerprint analysis or classification is known (such as in cases of teletyped general alarms giving the subject's fingerprint analysis or fingerprint classification).

A fingerprint analysis is a listing of the *kinds* of fingerprint patterns in each finger of each hand, showing whether each is a whorl, loop or arch, the tracings of each whorl, whether each loop is ulnar or radial and the loop count, and whether an arch pattern is a plain or tented arch. Fingerprint analyses should be prepared only by qualified identification personnel. A typical fingerprint analysis would be set out as follows: FPA RIGHT HAND W–O U–9 U–10 U–8 U–3 FPA LEFT HAND W–M U–12 U–5 A T.

In sending teletype alarms the fingerprint analysis (abbreviated "FPA") should be used, when available, in preference to a fingerprint classification.

A fingerprint classification is the complete classification of a set of fingerprints, written as a fraction on the face of a fingerprint card, ordinarily in the upper right corner of the front of the card. Fingerprint classifications should be prepared only by qualified identification personnel.

Briefly, all fingerprints fall into one of three kinds of patterns: arches, loops and whorls. Generally, the arch pattern lines run across the finger, with a rise in the center, loop patterns start on one side of the finger and recurve back to the same side, and all other kinds are whorls. This is not

an exact technical description, but only a description of the general appearance of patterns.

Arch patterns are divided into plain arch and tented arch, loops into ulnar loop and radial loop and whorls into plain whorl, central pocket loop, double loop and accidental whorl.

A fingerprint classification is arrived at by a determination of the kind of pattern in each finger, which is noted on the card under each print.

The classification is determined by factors in the right hand over factors in the left hand. The kinds of patterns, the fingers in which found, the numbers of ridges in loops between the core and the delta of the pattern and the tracing of ridges across whorls, are all used in determining classification.

IDENTIFICATION OTHER THAN BY FINGERPRINTS: Before fingerprints became established as the basic system of identification in law enforcement work, a system of identification based on precise measurements of various parts of the body and other descriptive data was widely used. It was called "The Bertillon System." It did not provide the positive identification possible with fingerprints.

Photographs, although they give quite exact reproductions of physical appearance, also lack the possibility of positive identification which can be obtained with fingerprints.

Physical descriptions and photographs, however, are of major importance in law enforcement work. Any identification by such means must always, of course, be supplemented by fingerprint identification where the factual situation makes it possible to do so.

To be of the greatest value, physical descriptions should be precise and detailed. In many instances and for various reasons witnesses may be unable to give either precise or detailed descriptions of subjects. Police officers, however, are in a position to prepare exact and detailed descriptions of persons arrested and persons they question, so that police descriptions, whether in an officer's notebook, in reports or on fingerprint cards or other record cards, should always be full and exact. Refer to the section "DESCRIPTIONS OF PERSONS OR PROPERTY," in this Manual for details as to proper personal descriptions.

Photographs should always supplement descriptions and it is most desirable to have both close-up and full length pictures, in profile and directly facing camera. If facilities are limited, a close-up full face is most desirable.

Where possible, a photograph of the person fingerprinted should be affixed to every set of criminal fingerprints. Care in fastening must be used to avoid marring fingerprint impressions on the front of the card. Secure gluing is preferred.

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65. FIREARMS AND WEAPONS

DEFINITIONS: A firearm is any weapon which, by the force of gunpowder, expels a projectile. In practice, the term is restricted to weapons small enough to be carried, such as rifles, shotguns, pistols and the smaller automatic firing weapons.

All firearms designed to be held and fired with one hand are pistols. A revolver is a pistol with a revolving cylinder containing several cartridges which can be fired in quick succession without reloading. Other pistols are automatic or semi-automatic pistols in which a magazine holding several cartridges is contained in the weapon, which fires, ejects the shell and inserts a fresh cartridge from the magazine into the firing chamber automatically by use of the force generated by the gas of the explosion, and single-shot pistols in which one shot may be fired at a time and which require manual loading for each shot.

A weapon is semi-automatic when each pull of the trigger fires one shot, ejects the spent cartridge and inserts a fresh cartridge in the firing chamber ready for firing. It is automatic (or "full automatic"), when a single pull of the trigger will result in rapid discharge of a number of shots. Pistols may be either semi-automatic or more rarely, full automatic weapons, depending on their construction.

A machine gun is a shoulder or larger weapon which will fire full automatic. A pistol which will do so is often referred to a machine pistol. A machine gun fired from the shoulder is usually called a sub-machine gun.

"Gun" is a general term for any explosive weapon of any size and the word would include pistols, shoulder arms and cannon of all sizes. Officers should use the specific word aptly describing a particular weapon rather than the general term "gun," referring to a "revolver," "automatic pistol," "rifle," etc., as the case may be.

Caliber is the designation of the size (diameter) of the inside of the bore of a barrel measured between the rifling grooves. It is ordinarily expressed in decimals of an inch. The term caliber is used for "rifled" firearms, which are those having "rifling" or lands and grooves spiraling the length of the barrel, designed to give a bullet spin and stability in flight.

Gauge is the designation of the size (diameter) of the bore of a firearm which is not rifled, i.e. a shotgun, the bores of which are smooth, without lands and grooves (Gauge is determined by the size of a single round pure lead ball which will closely enter the barrel at the muzzle. Thus, if a singe ball of pure lead weighing one pound could be fitted into a shotgun barrel, it would be a 1 gauge shotgun. If 10 balls weighed 1 pound and 1 such ball could be fitted into the barrel, the shotgun would be a 10 gauge shotgun. Twelve balls to a pound is 12 gauge, 16 balls to a pound is 16 gauge, etc. The .410 gauge is an exception. This gauge is determined by inside measurement of the barrel at the muzzle; i.e. forty-one hundredths of an inch, written ".410" in distinction to ".41" caliber, a popular caliber of rifled arms in past years.

The ammunition for all modern firearms is a cartridge, consisting of four principle parts:

a. Bullet (or shot)
b. Shell or casing (may be metal, plastic or paper)
c. Powder or charge (furnishes propelling force)
d. Primer or cap (ignites the charge when struck by firing pin)

CRIMINAL LAWS CONCERNING WEAPONS

Under New York law, New York State peace officers are not prohibited from possessing any weapon. This exemption should, by rules of comity, be construed to include peace officers of other states whose duties require them to come into New York (Opinion, Atty. Gen. 1933, 48 St. Dept. 477).

Persons in the military service of the state may possess any weapon when authorized by regulations of the Chief of Staff. Federal military personnel or civil officers on official duty or when authorized by Federal Law, regulation or order may possess any weapons without license.

The law also permits wardens, superintendents, headkeepers or deputies of a state prison, penitentiary, workhouse, county jail or other criminal detention place, when authorized by regulation or in pursuit of official duty, to possess a machine gun, firearm, switch-blade knife, gravity knife, billy or blackjack without a license.

The law excepts persons employed on government defense contracts when possession of any weapon is needed for manufacture transport, installation or testing under the contract (P.L. Sec. 265.20, subd. a-l-c).

FIREARMS DEFINED BY LAW: New York law defines a "firearm" as any pistol, revolver, sawed-off shotgun or other firearm of a size which may be concealed on the person (P.L. Sec. 265.00, subd. 3).

POSSESSION AND DISPOSAL OF FIREARMS: Possessing or disposing of a firearm by a nonexempt, unlicensed person is a Class A misdemeanor and if the violator has previously been convicted of any crime, it is a Class D felony (P.L. Secs. 265.05, subd. 3; 265.10, subd. 4).

"Dispose of" includes give away, lease, lend, keep for sale, offer, offer for sale, sell, transfer or otherwise dispose of (P.L. Sec. 265.00, subd. 6).

Possession of a loaded firearm or of an unloaded firearm and ammunition for it is a Class D felony except it is only a Class A misdemeanor if the possession is in the home or place of business (unless the possessor was previously convicted of a crime, when it is a Class D felony) (P.L. Sec. 265.05, subd. 2).

KNIVES AND BLUNT WEAPONS: It is a Class A misdeameanor to manufacture, transport, ship as merchandise, possess or dispose of in any way any gravity knife, switchblade knife, billy, blackjack, bludgeon, metal knuckles, sandbag, sandclub or slungshot. It is a Class D felony to possess or dispose of any one of them if the possessor was previously convicted of any crime (P.L. Sec. 265.05, subd. 3; Sec. 265.10, subd. 1, 2, 4).

Officers should note that a "slungshot" is not the forked stick "slingshot" with rubber side pieces used by children for shooting pebbles, shot, etc, but is a small mass of stone, metal, shot or other heavy material fixed on a flexible handle, i.e., like a flexible blackjack but not necessarily with a leather cover or any cover.

The law permits the manufacture of gravity knives, switchblade knives, billies and blackjacks as merchandise only if they are disposed of and shipped directly to police, sheriffs, peace officers, prisons and other criminal detention facilities or the state or federal military services (P.L. Sec. 265.20, subd. 7).

A gravity or switchblade knife may be possessed for use while hunting, trapping or fishing if the possessor also carries a valid hunting, trapping or fishing license (P.L. Sec. 265.20, subd. 5).

WEAPONS REQUIRING POSSESSION AND INTENT: Possession of any dagger, dangerous knife, dirk, razor, stiletto, imitation pistol or any dangerous or deadly instrument or weapon with intent to use the same unlawfully against another is a Class A misdemeanor and if the possessor has previously been convicted of any crime, a Class D felony (P.L. Sec. 265.05, subd. 9).

Officers should note that the law presumes that the possession of anything designed, made or adapted for use primarily as a weapon is with intent to use it unlawfully against another (P.L. Sec. 265.15, subd. 4). The defendant must overcome this presumption by actual proof. Officers should note that razors and imitation pistols are not something "designed, made or adapted" for use primarily as a weapon and some proof of intent would be required as to such instruments.

MACHINE GUNS: Possession, manufacture, transporting, shipping, disposing of or using a machine gun is a Class D felony (P.L. Sec. 265.05, subd. 1; Sec. 265.10, subd. 1, 2, 3; Sec. 265.35, subd. 1).

When a machine gun is found in any room, dwelling, structure or vehicle, its presence constitutes presumptive evidence of its illegal possession by all persons occupying the place where it is found (P.L. Sec. 265.15, subd. 1). In the absence of actual proof to the contrary, all may be considered illegal possessors and guilty of a Class D felony.

The law permits the manufacture of machine guns and disposal and shipment of them directly to police, sheriffs, prisons, etc., as previously stated (P.L. Sec. 265.20, subd. 7).

Machine guns include not only the familiar "tommy gun" and other machine guns and fully automatic rifles but also a weapon of any description irrespective of size, known by any or no name, whether loaded or unloaded, from which a number of shots may be rapidly or automatically discharged from a magazine with one pull of the trigger (P.L. Sec. 265.00, subd. 1). Thus, automatic pistols adapted to fire full automatic are machine guns under the law. Various firearms may be so adapted or altered. It is not necessary that the arm was originally made to fire full automatic. In cases of doubt, the assistance of a firearms expert should be sought. The key is whether the firearm will fire several or more shots when the trigger is held back.

DEFACED SERIAL NUMBERS ON MACHINE GUNS OR FIREARMS: It is a Class D felony to knowingly possess any machine gun, pistol, revolver, sawed-off shotgun or other firearm of a size which may be concealed on the person, which has been "defaced" for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such gun (P.L. Sec. 265.05, subd. 8).

"Deface" means to remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing number or identification mark (P.L. Sec. 265.00, subd. 7).

It is also a Class D felony to wilfully deface any machine gun, pistol, revolver, sawed-off shotgun or other firearm of a size which may be concealed on the person, or to knowingly buy, receive, dispose of or conceal one which was defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of the weapon (P.L. Sec. 265.10, subd. 3, 6).

COMMITTING CRIME WHILE ARMED: Under the old Penal Law, if any person in the commission or attempted commission of a crime or in leaving the scene of a crime was armed with a pistol or any weapon, possession of which was forbidden by the Penal Law, punishment on conviction of a felony was increased by imprisonment of not less than 5 nor more than 10 years, and for a second conviction of felony armed, not less than 10 nor more than 15 years, and for a third such conviction, not less than 15 nor more than 25 years. This statute has been ommitted from the new Penal Law.

WEAPONS IN STOLEN VEHICLES: The presence in a stolen vehicle of any of the weapons whose possession is prohibited by Section 265.05 of the Penal Law is presumptive evidence of the possession of such weapon by all persons occupying the vehicle (P.L. Sec. 265.15, subd. 2).

WEAPONS IN OTHER THAN STOLEN AUTOMOBILES: The presence in any automobile other than a stolen one of any pistol, revolver, sawed-off shotgun or other firearm of a size which may be concealed on the person, a defaced firearm, silencer, gravity knife, switchblade knife, dagger, dirk, stiletto, billy, blackjack, metal knuckles, sandbag, sandclub or slungshot is presumptive evidence of its possession by all persons occupying the vehicle at the time it is found, except:

1. If the vehicle is a public omnibus, or
2. If the weapon is found on the person of one occupant, or
3. If the weapon is a pistol or revolver and one of the occupants (who is not present under duress) is in possession of a valid license to carry the pistol or revolver concealed, or

4. If the weapon is found in an automobile being operated for hire by a duly licensed driver in lawful pursuit of his trade, the presumption does not apply to the driver (PL. Sec. 265.15, subd. 3).

LOADED FIREARMS IN AUTOMOBILES: The Conservation Law forbids possession of any loaded gun in or on a motor vehicle whether loaded in chamber or in magazine, except a pistol or revolver and except possession by crippled persons with a special permit from the Conservation Department (Conserv. L. Sec. 245, subd. 2). Violations are Class A misdemeanors (Conserv. L. Sec. 387, subd. 1-1). Possession of a pistol or revolver must of course be lawful, under authority of either license or an exempt status.

SILENCERS: It is a felony to possess, transport, ship or dispose of a firearm silencer (P.L. Sec. 265.05, subd. 1; Sec. 265.10, subd. 2, 3).

The silencer may be for any firearm and not just the firearms whose possession is prohibited (P.L. Sec. 265.00, subd. 2).

POSSESSION OF RIFLE OR SHOTGUN BY CERTAIN PERSONS: It is a misdemeanor for anyone who has been convicted of a felony or any misdemeanor specified in Section 552 of the Code of Criminal Procedure to possess a rifle or shotgun unless such person has a Certificate of Good Conduct from the State Board of Parole (P.L. Sec. 265.05, subd. 6; Sec. 265.20, subd. 4).

The misdemeanors under Section 552 of the Code are listed in this Manual in the section "ARRESTS AND BAIL".

POSSESSION BY PERSONS UNDER SIXTEEN: A person under 16 who possesses any of the following must be adjudged a juvenile delinquent; a machine gun, pistol, revolver, sawed-off shotgun or other firearm of a size which may be concealed on the person (whether loaded, unloaded or with or without ammunition for it), firearm silencer, gravity knife, switchblade knife, billy, blackjack, bludgeon, metal knuckles, sandbag, slungshot (not slingshot), air-gun, spring-gun, any gun or other instrument for using loaded or blank cartridges, any loaded or blank cartridges or ammunition for such gun or instrument, or any dangerous knife (P.L. Sec. 265.05, subd. 4).

It is a Class A misdemeanor to dispose of any air-gun, spring-gun or other instrument or weapon in which the propelling force is a spring or air, or any gun or other instrument for using loaded or blank cartridges or any loaded or blank cartridges for such gun or instrument, or any dangerous knife, to any person under sixteen (P.L. Sec. 265.10, subd. 5).

POSSESSION BY PERSONS BETWEEN 12 AND 16: A person between ages 12 and 16, if a member of a club, team or society organized for educational purposes may possess a rifle or air-gun not larger than .22 caliber rimfire at its rifle range, under supervision of an authorized instructor (P.L. Sec. 265.20, subd. 6).

ALIENS: An alien possessing any dangerous or deadly weapon is guilty of a Class A misdemeanor and of a Class D felony if he has previously been convicted of any crime, except that any alien possessing a silencer, machine gun, loaded pistol, revolver, sawed-off shotgun or other firearm of a size which may be concealed on the person (or unloaded but with ammunition for it in possession) is always guilty of a Class D felony (P.L. Sec. 265.05, subd. 5).

Officers should note that aliens may be licensed to possess and carry concealed revolvers and pistols ("firearms") (P.L. Sec. 400.00, subd. 7).

Under the Conservation Law, aliens are permitted to obtain hunting licenses, which permit hunting with rifle, shotgun or long bow. These are

all "dangerous" weapons. Since it would be illogical for the state to issue a hunting license to a person and then arrest the person for having a hunting gun or bow, it is suggested that all officers, before arresting an alien with a valid hunting license solely for possessing a rifle, shotgun or long bow, ascertain the desires of the District Attorney in such cases. The District Attorney's views should of course be obtained beforehand, since he cannot be contacted readily when the officer is in the field.

Under Federal Law, any alien convicted of illegal possession (under State or Federal Law) of any automatic or semi-automatic weapon or sawed-off shotgun is subject to deportation by order of the Attorney General of the United States (Title 8 U.S. Code, Sec. 1251, subd. a-14). Officers should promptly notify the U.S. Immigration and Naturalization Service of any such alien.

PAWNBROKERS: Pawnbrokers may not receive in pawn or as a pledge any of the firearms or weapons described in the firearms laws previously listed in this section (Genl. Bus. L. Sec. 47). Violators are subject to civil fine and to revocation of license.

IMITATION PISTOLS: Any person who attempts to use against another an imitation pistol is guilty of a Class A misdemeanor, and of a Class D felony if he has previously been convicted of any crime (P.L. Sec. 265.35, subd. 1).

SWITCHBLADE KNIVES: Federal law makes it a Federal felony to knowingly introduce or manfacture for introduction into interstate commerce, or to transport or distribute in interstate commerce, any switchblade knife. Violators may be fined not over $2,000, imprisoned not more than 5 years, or both. (Title 15 U.S. Code, Sec. 1242). Violations are handled by the Federal Bureau of Investigation.

The Federal law excepts common carriers or contract carriers in the ordinary course of their business, knives shipped under contract with the armed forces, transporting by the Armed Forces or any member thereof in performance of his duty and transportation upon the person of a switchblade knife with a blade not over 3 inches long by a person who has one arm (Title 15 U.S. Code, Sec. 1244).

POINTING AND SHOOTING GUNS: It is a Class A misdemeanor for any person, other than in self defense or in the discharge of official duty, to point any gun, the propelling force of which is gunpowder, at or toward any other person, if this is done intentionally, even though without malice. It is likewise a Class A misdemeanor for any person to discharge such a gun while it is aimed intentionally, even though without malice, at or toward any person (P.L. Sec. 265.35, subd. 4-b, c).

The Penal Law makes it a violation of "Offensive Exhibition" for a person to knowingly produce, operate, manage, furnish premises for or in any way promote or participate in any exhibition in the nature of public entertainment or amusement in which a firearm is discharged or a knife, arrow, or other sharp or dangerous instrument is thrown or propelled at or toward a person (P.L. Sec. 245.05, subd. 3).

SHOOTING AT AIRCRAFT AND VEHICLES: Any person who wilfully discharges any loaded gun, the propelling force of which is gunpowder, at an aircraft while in the air or in motion or stationary upon the ground or at any railway or street railroad train or a locomotive, car, bus or vehicle standing or moving on any railway, railroad or public highway, if thereby the safety of any person is endangered is guilty of a Class D felony and in every other case of a Class E felony (P.L. Sec. 265.35, subd. 3).

SHOOTING IN A PUBLIC PLACE: Any person who (other than in self defense or in the discharge of official duty) wilfully discharges any species of firearms, airgun or other weapon, or throws any other deadly missile in a public place or in any place where there is any person to be endangered thereby, or in Putnam County, within one-quarter mile of any occupied school building, other than under supervised instruction by properly authorized instructors although no injury to any person ensues, is guilty of a Class A misdemeanor. (P.L. Sec. 265.35, subd. 4-a). Officers should note that this violation includes shooting bows and other weapons as well as guns.

SHOOTING WITHIN FIVE HUNDRED FEET OF DWELLING, ETC.: It is a Class A misdemeanor to discharge any firearm or long bow within 500 feet of a dwelling, farm building or structure actually used, school building, school playground, or occupied factory or church, except that the owner or lessee of a dwelling, his family, employees or guests are exempt from this requirement (and the guest may not discharge a firearm within 500 feet of any prohibited place except the dwelling or farm building or structure of the host). Also excepted are public school instruction programs, or use of a target range by police or any duly organized membership corporation or shooting a shotgun over water with clear line of discharge of 500 feet or more (Conserv. L. Sec. 245, subd. 4-a, b). Violations are Class A misdemeanors (Conserv. L. Sec. 387, subd. 1-1).

SHOOTING NEAR MAGAZINE: It is an Unclassified misdemeanor to discharge a firearm within 500 feet of any explosives magazine or factory or to discharge a firearm at or against such place (Labor L. Secs. 455, 464).

SHOOTING OVER HIGHWAY: It is a Class A misdemeanor to shoot a firearm (of any kind) or long bow so that the load or arrow will pass over a public highway (Conserv. L. Sec. 245, subd. 4-a-i).

HUNTING IN A CITY: Any person hunting with a dangerous weapon in any county wholly embraced within the territorial limits of a city is guilty of a Class A misdemeanor (P.L. Sec. 265.35, subd. 2).

INJURY BY FIREARMS: Any person who, other than in self defense or in discharge of official duty, maims or injures any other person by the discharge of any gun, the propelling force of which is gunpowder, pointed or aimed intentionally, but without malice, at any such person is guilty of a Class A misdemeanor (P.L. Sec. 265.35, subd. 4-d).

REPORTING OF WOUNDS REQUIRED: Every case of a bullet wound, gunshot wound, powder burn or any other injury arising from or caused by the discharge of a gun or firearm, and every case of a wound which is likely to or may result in death and is actually or apparently inflicted by a knife, icepick or other sharp or pointed instrument, must be reported at once to the police authorities of the city, town or village where the person reporting is located by:

1. The physician attending or treating the case, or
2. The manager, superintendent or other person in charge, whenever such case is treated in a hospital, sanitarium or other institution,

Failure to make such report is a Class A misdemeanor.

This law does not apply to such wounds, burns or injuries received by a member of the armed forces of the United States or of the State of New York while engaged in the actual performance of duty (P. L. Sec. 265.25).

PERSONS MENTALLY INCOMPETENT: Whenever the director or physician in charge of any hospital or institution for mental illness, public or private, shall certify to the superintendent of state police or to any organized police department of a county, city town or village of this state, that a person who has been judicially adjudicated incompetent, or who has been confined to such institution for mental illness pursuant to judicial authority, upon the release of such person from such institution, is not suitable to possess a rifle or shotgun, a member of such police department or of the state police shall forthwith seize any rifle or shotgun possessed by such person. Any such person who refuses to yield possession of such rifle or shotgun to such police officer shall be guilty of a misdemeanor. A rifle or shotgun seized shall not be destroyed, but shall be delivered to the headquarters of such police department, or state police, and there retained until the aforesaid certificate has been rescinded by the director or physician in charge, or other disposition of such rifle or shotgun has been ordered or authorized by a court of competent jurisdiction (P.L. Sec. 265.05, subd. 10).

LICENSES

Applications for licenses to carry, possess, dispose of or repair firearms must be in writing, and must be signed and verified. A photograph of the applicant is required to be attached (P.L. Sec. 400.00, subd. 3). Applications should be directed to the Police Commissioner in New York City or Nassau County, to the County Judge in Suffolk County and to a judge or justice of a court of record elsewhere in the State (P.L. Sec. 265.00, subd. 10).

Licenses may be issued only after investigation and a finding that all statements in the application are true (P.L. Sec. 400.00, subd. 1). Except in New York City, licenses must be in a form approved by the Superintendent of the New York State Police (P.L. Sec. 400.00, subd. 7).

No license may be issued to a person other than of good moral character, or to anyone who has been convicted of a felony or of any misdemeanor listed in Section 552, Code of Criminal Procedure.

An investigation of each application considered must be made by the police authorities of the locality where the application is made and in accordance with Section 400.00, subd. 4 of the Penal Law. All applicants must be fingerprinted and their prints forwarded to the Bureau of Identification, New York State Identification and Intelligence System at Albany and the FBI Identification Division at Washington, D.C., to determine any prior record. A copy of their fingerprints must also be filed with the New York State Police Pistol Permit Section within 10 days after issuance of a license and with the investigating police authorities (P.L. Sec. 400.00, subd. 4).

The Division of Identification will notify the licensing officer and New York State Police Pistol Permit Section directly of any later criminal record received on the applicant.

Every license granted makes the application a public record which must be filed by the licensing officer with the county clerk (in New York City and Nassau County, with the Police Department), and a duplicate copy of the application must be filed with the New York State Police Pistol Permit Section within 10 days after issuance (P.L. Sec. 400.00, subd. 5).

REVOCATION OF LICENSES: Conviction of a felony or of a misdemeanor listed in Section 552 of the Code of Criminal Procedure automatically revokes a license. The Police Commissioners in New York City and Nassau County may revoke a license at any time and any judge or

justice of a court of record elsewhere may revoke a license except in New York City. The New York State Police Pistol Permit Section must be immediately notified of any revocation, as must the police authorities of the locality (P.L. Sec. 400.00, subd. 11).

REVOLVER AND PISTOL LICENSES

Applications for revolver or pistol licenses must be made to a licensing officer in the city or county of applicant's residence, or principal place of employment or business (P.L. Sec. 400.00, subd. 3). Such licenses may be issued to:

1. Have and possess in his dwelling, by a householder;

2. Have and possess in his place of business, by a merchant or storekeeper;

3. Have and carry concealed while so employed by a messenger employed by:
   a. a banking institution, or
   b. express company;

4. Have and carry concealed while so employed by a regular employee of an institution of the state, or of any county, city, town or village, under control of a commissioner of correction of the city, or any warden, superintendent or head keeper of any state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of a crime or held as witnesses in criminal cases;
   a. provided that application is made therefor by such commissioner, warden, superintendent or head keeper; and

5. Have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof (P.L. Sec. 400.00, subd. 2-b-c).
   a. The law does not specify what may be "proper cause".

A license is not transferable as to any other person or premises (P.L. Sec. 400.00, subd. 6).

NEW YORK CITY: A revolver or pistol license issued outside New York City is not valid in New York City without a special permit from the New York City Police Commissioner. However, it is permissible for a licensee to pass through New York City with licensed guns and without a special permit. The guns must be in a locked container and the trip through New York City must be continuous and uninterrupted (P.L. Sec. 400.00, subd. 6).

LICENSE COUPON: Every revolver or pistol license must have attached a coupon, which must be detached and retained by whoever disposes of a revolver or pistol to the licensed person (P.L. Sec. 400.00, subd. 7).

EXHIBITING LICENSE: All licenses must carry the licensee's photograph (P.L. Sec. 400.00, subd. 7). A licensee must have his license on the premises or if the license is to carry concealed, it must be in his possession while carrying the licensed weapon. He must exhibit it on demand to any peace officer and failure to exhibit a license or to display it is presumptive evidence that he is unlicensed (P.L. Sec. 400.00, subd. 8).

CHANGE OF ADDRESS: The licensee must inform the New York State Police Pistol Permit Section (in New York City, the Police Commissioner, in Nassau County, the Nassau County Police Commissioner),

within 10 days of any change of residence and must enter the change on his license (P.L. Sec. 400.00, subd. 9).

AMENDMENTS TO LICENSES: Licenses may be amended by a licensing officer (except in New York City), on application, to include one or more weapons or to cancel weapons held under the license. The licensing officer must notify the New York State Police Pistol Permit Section of the amendment, describing the weapons involved (P.L. Sec. 400.00, subd. 9).

DURATION OF REVOLVER AND PISTOL LICENSES: In New York City, Nassau and Suffolk Counties, revolver or pistol licenses expire on the first day of the second January after the date of issue. Elsewhere in the state, such licenses are valid until revoked, unless otherwise specified in the license. Any application to renew an existing valid license extends it until the application is disposed of (P.L. Sec. 400.00, subd. 10).

LOST LICENSES: A duplicate license may be issued by the licensing officer on proof of loss (P.L. Sec. 400.00, subd. 10).

GUNSMITH AND DEALER LICENSES

An applicant for a gunsmith or dealer license must be a citizen, over 21 years of age and maintain a place of business in the city or county where the license is issued. All partners, or officers, if a corporation, must sign and verify the application and must be citizens over 21 (P.L. Sec. 400.00, subd. 1).

Applications must be made to the licensing officer where the business is located (P.L. Sec. 400.00, subd. 3).

Licenses are valid only for the premises for which issued. They must be prominently displayed on the premises and failure to display is presumptive evidence that the business is unlicensed (P.L. Sec. 400.00, subd. 6, 8). Gunsmith and dealer licenses are not valid outside the city or county where issued (P.L. Sec. 400.00, subd. 6).

TRANSPORTATION BY DEALER OR GUNSMITH: No handguns may be transported by the dealer or gunsmith from the premises for the purposes of testing or delivery. He must use the facilities of a common carrier. A license as dealer or gunsmith is valid only on the premises described in the license (P.L. Sec. 400.00, subd. 6).

DURATION OF LICENSE: All gunsmith or dealers licenses expire on the first day of the second January following the date of issue, unless limited (in the license) to expire at an earlier date. (P.L. Sec. 400.00, subd. 10).

GUNSMITH AND DEALER RECORDS: All gunsmiths and dealers must keep a record book in the form approved by the Superintendent of the New York State Police (in New York City, by the Police Commissioner) and enter therein the required data as to every transaction involving a pistol, revolver, sawed-off shotgun or other firearm of a size which may be concealed on the person. These records must be open for inspection of any peace officer (P.L. Sec. 400.00, subd. 12).

SALES OR DELIVERY OF FIREARMS BY GUNSMITH OR DEALER: A gunsmith or dealer, before delivering to anyone a firearm described in the preceding paragraph must require production of a valid license or proof of exempt status such as a peace officer or other person exempt under the law. He must remove and retain the coupon on the license (P.L. Sec. 400.00, subd. 12).

SALE, SEIZURE AND DESTRUCTION OF WEAPONS

It is a Class A misdemeanor to sell or otherwise dispose of a legally possessed pistol, revolver, sawed-off shotgun or firearms of a size to be concealed on the person, without first notifying in writing the Police Commissioner in New York City or Nassau County, if in those places, or the Pistol Permit Section, New York State Police, if elsewhere in the state. This rule does not apply to a wholesale dealer, or a licensed gunsmith or dealer in firearms (P.L. Sec. 265.10, subd. 7).

Any such weapon illegally possessed or any of the guns, weapons and silencers whose possession is forbidden under the firearms laws, are nuisances. When an officer takes possession of any of them from anyone, he is required to surrender it immediately to the county sheriff, or the Police Commissioner in Nassau County and in any city with a population of 75,000 or more, to the Police Commissioner or head of the police department, or to the officer designated by such police commissioners or department heads. State Police surrender guns to the Superintendent of State Police (P.L. Sec. 400.05, subd. 1).

Weapons so surrendered must be destroyed once a year, unless in respect to any particular weapons, a judge or justice of a court of record or a district attorney files with the official to whom a weapon was surrendered a certificate that non-destruction is proper "to serve the ends of justice," or the official may direct that a weapon be retained in a laboratory conducted by any police department or sheriff's office for the prevention and detection of crime (P.L. Sec. 400.05, subd. 2, 3).

Any officer taking possession of a weapon as a nuisance must notify the Pistol Permit Section, New York State Police at Albany, giving the caliber, make, model, manufacturer's name and serial number. If there is no serial number, he must give any other distinguishing number or identifying marks. The Pistol Permit Section will search its files and advise of the results. A similar notice is required before destroying any firearm under the law. The Pistol Permit Section permanently retains notices and will advise the sheriff or other official of the results of a file search on each weapon to be destroyed (P.L. Sec. 400.05, subd. 4, 5).

VOLUNTARY SURRENDER OF WEAPONS

Every year from June 1 through June 30, any person may surrender firearms and weapons whose possession is forbidden by law to the same individuals as previously mentioned for surrender of weapons seized by officers (i.e. sheriffs, police commissioner, etc.). The persons making the surrender must give such official notice in writing of intent to surrender stating name, address, nature of weapon and time of day and place to be surrendered. The sheriff, police, etc. must immediately acknowledge any such notice. If a surrender is so made, the person obtains immunity from prosecution for illegal possession of the weapon but not any other immunity at all. He cannot lawfully be arrested solely on grounds of possession of the weapons surrendered (P.L. Sec. 265.20, subd. a-1-d).

A person may surrender a weapon at any time of the year and if the surrender is voluntary, under circumstances not suspicious, peculiar or involving the commission of any crime, such person is immune to arrest for possession of the weapon, but the officer who might make the arrest shall issue or cause to be issued, in a proper case, a summons or other legal process to the person surrendering for an investigation of the source of the weapon (P.L. Sec. 265.20, subd. b).

LOCAL ORDINANCES, FIREARMS AND AIRGUNS: Any license issued is valid notwithstanding any local law or ordinance (P.L. Sec.

400.00, subd. 6). However, towns are authorized to regulate by ordinance the sale, storage and transportation of firearms and the possession, sale or use of air or spring guns, and shooting galleries (Town L. Sec. 130, subd. 5, 26; Sec. 136, subd. 3). Villages may regulate the storage, sale, or discharge of the same things and may also regulate shooting galleries (Vill. L. Sec. 89, subd. 52, 58, 58-b, 91). Cities may also regulate firearms such as prohibiting possession in public of a loaded rifle or shotgun (Administrative Code, City of New York, Sec. 346, subd. 2).

Officers should become familiar with their local ordinances, if any, relating to firearms, air rifles or pistols.

TRANSPORTATION OF FIREARMS

The laws against possession of firearms (as defined in the law) make exceptions for regular and ordinary transportation of firearms as merchandise, under the following rules:

1. Where the person transporting the firearms knows or has reasonable means of ascertaining what he is transporting, he must

2. Notify in writing the police commissioner, police chief or other law enforcement officer performing such functions at the place of delivery, of

   (a) name and address of consignee and place of delivery.

3. The person transporting the firearms must then withhold delivery for any reasonable period of time designated in writing by the police commissioner or other officer notified, for investigation as to whether the consignee may lawfully receive and possess such firearms (P.L. Sec. 265.20, subd. 8).

USE OF U.S. MAILS: Title 18 U.S. Code, Section 1715 and U.S. Postal Regulations Section 125.5 generally forbid mailing of firearms capable of being concealed on the person, either as regular mail or parcel post. Certain exceptions are made for state enforcement officers to permit use of the mails, but under stringent conditions requiring affidavits and certificates. No loaded firearm can be sent.

It is most usual to ship such firearms by express or parcel service, with due regard to the regulations of such companies. Under no circumstances should loaded firearms ever be shipped.

By force of Section 125.56 of the Postal Regulations, it is permissible for officers to send firearms capable of being concealed on the person via the mails to the FBI Laboratory at Washington, D.C., or to the New York State Police Scientific Laboratory at Albany, New York, without filing any affidavit or certificate with the postal authorities. It is only necessary to plainly mark the parcel "FIREARMS FOR SCIENTIFIC LABORATORY."

The requirements for use of the mails to ship such firearms to any other addressees should be ascertained from local postal authorities. The requirements should be complied with exactly, since violations are punishable as Federal crimes.

Ammunition should not be sent through the mails.

FEDERAL LAWS ON FIREARMS

FEDERAL FIREARMS ACT: A "firearm" under the Federal Firearms Act is any weapon designed to expel a projectile by the action of an explosive. "Firearms" also includes silencers and any parts for firearms. Ammunition under the law includes only pistol or revolver ammunition and does not include any .22 rimfire cartridges, shotgun shells or metallic ammunition suitable for use only in rifles (Title 15 U.S. Code, Sec. 901).

Antique or unserviceable firearms and ammunition possessed and held as curios or museum pieces are not included in the law (Title 15 U.S. Code, Sec. 904).

FEDERAL LICENSES: Every New York manufacturer or dealer transporting or shipping any firearms or ammunition out of New York state or receiving them from outside New York must have a Federal license (Title 15 U.S. Code, Sec. 902, subd. a). Licensing is handled through the District Directors of Internal Revenue in each Federal district. Investigations of violations (which are felonies) are handled by the Alcohol and Tobacco Tax Division units of the Treasury Department. Wholesalers are required to be licensed under Federal law (Title 15 U.S. Code, Sec. 901).

FEDERAL VIOLATIONS: The following acts are felony violations under Federal law, punishable by fine not over $2,000, imprisonment not more than 5 years, or both (Title 15, U.S. Code, Sec. 905, subd. a). The firearms or ammunition involved must move in interstate or foreign commerce (i.e. either into or out of New York) to constitute a violation. Where "knowledge" is required under the law, it may be either actual knowledge or "reasonable cause to believe";

1. Receiving from unlicensed dealer or manufacturer with knowledge that unlicensed (Title 15 U.S. Code, Sec. 902, subd. b).

2. Shipping or transporting to someone other than a licensed dealer or manufacturer in a state where a license to possess the things shipped is required (unless the intended receiver has exhibited a valid license to the shipper) (Title 15 U.S. Code, Sec. 902, subd. c).

3. Shipping or transporting, with knowledge, to anyone under indictment (state or federal), or convicted of a crime punishable by imprisonment for more than 1 year or to a fugitive from justice (a fugitive from justice is anyone who has fled from any state or a territory or possession of the United States or the District of Columbia to avoid prosecution for a crime punishable by imprisonment for more than 1 year or to avoid giving testimony in any criminal proceeding) (Title 15 U.S. Code, Sec. 902, subd. d; Sec. 901, subd. 6).

4. Shipping, transporting or causing the same, by anyone who is under indictment or who has been convicted of a crime punishable by imprisonment for more than 1 year or who is a fugitive from justice (Title 15, U.S. Code, Sec. 902, subd. e).

5. Receiving by anyone convicted of a crime punishable by imprisonment for more than 1 year or a fugitive from justice (Possession is presumptive evidence of the illegal movement in interstate or foreign commerce in this instance) (Title 15 U.S. Code, Sec. 902, subd. f).

6. Shipping, transporting or causing the same of stolen firearms or ammunition, with knowledge that stolen (Title 15 U.S. Code, Sec. 902, subd. g).

7. Receiving, concealing, storing, bartering, selling, disposing of, pledging or accepting as security for a loan any firearm or ammunition stolen while in interstate or foreign commerce, with knowledge that stolen (the law does not require knowledge that it was stolen from interstate or foreign commerce, only that it was stolen) (Title 15 U.S. Code, Sec. 902, subd. h).

8. Transporting, shipping or receiving, with knowledge, any firearm with the manufacturer's serial number removed, obliterated or altered. Possession is presumptive evidence of illegal movement in interstate or foreign commerce (Title 15 U.S. Code, Sec. 902, subd. i).

EXCEPTIONS: Firearms and ammunition for government, state and local public agencies are not included under the law, nor shipments to or from those to whom the Secretary of the Army may lawfully deliver firearms and ammunition. Also, shipments to or from banks, public carriers, express and armored truck companies granted exemption by the Secretary of the Treasury are excepted (Title 15 U. S. Code, Sec. 904).

NATIONAL FIREARMS ACT: A "firearm" under the National Firearms Act is a machine gun or a shotgun having a barrel less than 18 inches long or less than 26 inches overall or any other gun from which a shot is discharged by an explosive (except a pistol or revolver) if it is capable of being concealed on the person. Silencers for any gun are also included (Title 26 U.S. Code, Sec. 5848, subd. 1).

Rifles are not included, provided their barrel is at least 16 inches in length and they are at least 26 inches overall (Title 26 U.S. Code, Sec. 5848, subd. 1).

A tax of $200 is required on the manufacture or transfer of any "firearm" (except certain single shot weapons) payable by the maker or transferor, but transfers to a peace officer are exempt from tax (Title 26 U.S. Code, Sec. 5811, 5821).

The transfer of any firearm which is unserviceable and which is transferred as a curiosity or ornament is not taxable (Title 26 U.S. Code, Sec. 5812, subd. d-3).

Every person possessing any "firearm" as described in the Act must register its number and the owner's name and address with the United States Treasury Department, unless all rules relating to its making, importation or transfer were previously complied with (Title 26 U.S. Code, Sec. 5841).

The mere possession of a "firearm" transferred without payment of the transfer tax is a crime, unless explained to the satisfaction of the jury. Violations are punishable by fine not over $2000, imprisonment not more than 5 years, or both (Title 26 U.S. Code, Sec. 5851, 5861).

Manufacturers and importers of "firearms" must pay an annual license tax, as must dealers and pawnbrokers who deal in such weapons. Every manufacturer, importer or dealer must register with the Treasury and maintain detailed records of transactions (Title 26 U.S. Code, Sec. 5801, subd. d).

Registration, taxes, etc., are handled through District Directors of Internal Revenue. The Alcohol and Tobacco Tax Division of the Treasury Department handles investigations.

TRANSPORTATION OF FIREARMS: It is a Federal crime to transport, carry or convey any firearm, with respect to which there has been committed any violation of any provision of or regulation under the National Firearms Act in, on or by means of any vessel, vehicle or aircraft (Title 49 U.S. Code, Sec. 781). The vessel, vehicle or aircraft is subject to seizure and forfeiture (Title 49 U.S. Code, Sec. 782) by officers designated by the Secretary of the Treasury (Title 49 U.S. Code, Sec. 783) Violations should be reported to the Alcohol and Tobacco Tax Division.

WEAPONS ON VESSELS: Taking any dangerous weapon aboard a vessel registered under the laws of the United States without previously obtaining the permission of the owner or master is a crime punishable by fine not over $1,000, imprisonment not more than 1 year, or both. Local officers are excepted (Title 18 U.S. Code, Sec. 2277). The Federal Bureau of Investigation handles violations.

WEAPONS ON AIRCRAFT: Possession of a concealed dangerous weapon aboard an aircraft in interstate or foreign transportation or attempting to board such an aircraft with such a weapon on or about the

person is a crime punishable as in the preceding paragraph (Title 49 U.S. Code, Sec. 1472, subd. 1). Local and Federal law enforcement officers authorized to carry arms are excepted by the terms of the law. Violations are handled by the FBI.

FIREARMS AND ALCOHOL VIOLATIONS: Possession of firearms capable of being concealed on the person (except pistols or revolvers) in connection with violations of the Federal liquor tax laws (bootlegging, moonshining, possession of untaxed liquor, etc.) carries severe penalties, with up to 20 years imprisonment for possession of machine guns or sawed-off shotguns (Title 26 U.S. Code, Sec. 5685). Violations are handled by the Alcohol and Tobacco Tax Division of the U.S. Treasury Department.

POLICE USE OF FIREARMS

The force which an officer may use in self defense or in making an arrest is discussed in Section 11, "Defenses and Use of Force," and Section 18, "Arrests and Bail," this Manual. Departmental regulations should exist in all departments to supplement the law discussed in those sections. The following are suggested as a basis for individual departments' rules to supplement the law:

1. Unauthorized use of firearms will be cause for disciplinary action.
2. No officer shall fire so-called "warning shots."
3. "Dry firing" or snapping the action of a firearm is forbidden in or on any departmental premises except under personal direction of firearms instructor.
4. No officer shall fire at a vehicle, conveyance or structure when the identity of the occupants is not known to him, except in defense of himself or others as permitted by law.
5. The responsibility for any use of a firearm shall be borne by the officer who fires the weapon.
6. Officers shall display and/or discharge firearms only in self defense, or in effecting an arrest, or preventing an escape from custody and only to the extent permitted by law. Firearms shall be fired only when their use is permitted by Section 35.30, subdivision 2 of the Penal Law (see "Defenses and Use of Force," Section 11, this Manual).
7. Except as set out in rules 3, 4 and 6, officers shall draw their firearm only for cleaning, official supervisory inspection, destructions of animals as permitted by law, and for emergency or distress signals.
8. Only an officially issued pistol or an officially approved personally owned pistol shall be carried at any time by an officer.
   (a) No approval will be given for carrying a personally owned pistol chambered for a cartridge smaller than .38 Special or less than five-shot capacity.
   (b) No approval will be given for carrying a personally owned pistol unless and until the officer has qualified in its use on the department range under the personal supervision of a firearms instructor. Approval may be granted upon written certification of the instructor that the officer is qualified with the pistol.

CARE AND MAINTENANCE OF SERVICE REVOLVER

The service revolver should be examined and cleaned once a month and after each firing.

In cleaning, make certain the weapon is unloaded and keep the action open. Use powder solvent and brush in barrel and cylinder chambers,

followed by oil on patches. Leave bore clean, not obviously oily. Do not saturate the weapon with oil. Wipe exterior with oily rag to prevent rust. Do not disassemble revolvers in cleaning process.

The monthly examination should include check to see that revolver cylinder rotates freely and that when cocked, a chamber is correctly centered and locked in front of the firing pin. Check to see that the firing pin has proper protrusion past the recoil pad of the revolver and that it is free and moves properly in automatic pistols.

Carefully check barrel for cleanliness and obstructions or indication of rust or corrosion.

All outside screws should be examined to ensure they are tight.

In case of malfunction or other need of repair, the authorized departmental gunsmith or other professional gunsmith should do the work. This is a safety guarantee for the officer who may later need the weapon in defense or combat.

FIREARMS TECHNIQUE AND TRAINING

Firearms training is an important phase of the training of a law enforcement officer and is required, under the regulations of the Municipal Police Training Council, for police officers prior to permanent appointment (Exec. L. Sec. 480-487). Firearms in the possession of untrained officers may be a danger to them, their associates and the public. Proper grounding in safety rules and shooting techniques, supplemented by training, gives the officer a required police skill as well as the confidence necessary to handle dangerous situations.

Firearms training should be a regular part of the training program in all police agencies. Budget planning should include funds for firearms training. Reloading of ammunition may be useful to reduce training costs.

TRAINING COURSES: Information as to specific courses of training with hand-guns and shoulder arms, for officers, may be obtained through the Municipal Police Training Council, the FBI, the International Association of Chiefs of Police, the National Rifle Association (NRA) and some of the major firearms manufacturing companies.

INSTRUCTORS: Only qualified and experienced persons should be utilized as firearms instructors at law enforcement training courses.

RANGES: Safety, particularly from ricochets and high shots, should be the main consideration in selecting a range for firearms training. Safety of trainees and safety of all others in possible range of the most powerful firearm to be used must be carefully investigated before a decision is made to use a particular range.

It is mandatory, in the interests of safety, that the range instructor shall be in complete charge of the range and all persons attending firearms training, irrespective of the departmental rank of any trainee.

DEPARTMENTAL REGULATIONS: Departmental regulations should provide for mandatory attendance at firearms training and require adequate planning and assignments to ensure that all personnel can attend. Accurate records should be maintained and reviewed to ensure that attendance is complete and that personnel who miss any training because of illness or emergency duty are identified and afforded required "make-ups." All scores in training should be recorded and reviewed by a ranking officer.

SHOOTING TECHNIQUES

The fundamentals of good handgun shooting consist in learning proven techniques and putting them into practice. Techniques learned in practice

become second nature, to be automatically employed on or off the range, in contest or combat.

The 4 fundamentals are:

1. Grip
2. Stance
3. Trigger control
4. Sighting

GRIP: Place back strap of the revolver centered in the fork formed by the thumb and forefinger of the shooting hand. It should be held firmly and hard, but short of the muscle tension which would cause trembling. The thumb should be beside and high on the frame, without side pressure. Pressure around the grip should be mainly with the middle and ring fingers. The revolver must be held high enough in the hand to permit cocking it without excessive loosening of the grip each time the hammer spur is thumbed back.

In gripping for double-action shooting, the revolver must be held very tightly with thumb locked down, as in a closed fist. Most shooters will find that a slight adjustment of grip to put the trigger finger further through the trigger guard than in single-action shooting, will be advantageous.

STANCE: Relaxation, ease and steadiness are the keynotes to proper position in pistol shooting. Officers will find that some calisthenic exercises in assuming positions and changing positions will be of assistance to them in later actual firing. Muscle habit in assuming positions should be built up until the officer can be steady and relaxed in each position. All the usual training positions will have field application under particular circumstances.

TRIGGER CONTROL: The trigger finger in single-action revolver shooting should be entirely free of the frame or stock and should lie on the trigger in such a position that the trigger can be pulled straight back. Different hand sizes will require slightly different hand and trigger-finger positions. In double-action shooting, the trigger finger must be placed further in the trigger guard to give better leverage against the heavier double-action pull.

In all shooting, the trigger pull must be smooth and without interruption, to avoid slight, involuntary muscle contractions which would throw the revolver off line.

SIGHTING: The front sight must be framed in the rear sight, top of front sight level with top of rear sight with an equal amount of light on both sides of the front sight. In sighting, the shooter must see the sights sharply and clearly. Vision must be focused on the front sight and not the target. Since it is not possible to focus one's eyes on objects at different distances at the same time, the front sight must always be clear and sharp. The target will always be slightly blurry, when sighting is correct.

Only a machine rest will hold sights absolutely still and the officer, when shooting, will find it impossible to keep his sights absolutely still and always on the target. His training must therefore be devoted primarily to squeezing off a shot at any precise instant when his sight picture comes to dead center on his point of aim.

DEFENSE AND COMBAT SHOOTING: Defense and combat shooting consists of double-action shooting, using a quick draw followed by hip-shooting or point-shoulder shooting. Speed and accuracy are the keynotes in defense and combat shooting. Great accuracy at short range can be readily attained if a proper form is developed and used until it becomes second nature, so that when fast action is taken under stress, the shooter

will fall easily and naturally into the proper sequence of actions. It is very helpful to diligently practice "dry-firing" in the hip-shooting and point-shoulder shooting positions. For safety, any practice should be under supervision of an authorized firearms instructor.

For speed and safety, revolver holsters should be of a type designed to be worn on the shooting hand side with revolver butt to the rear. Holsters should be open on top, with snap safety straps if desired.

HIP-SHOOTING: Hip-shooting distance is traditionally 7 yards. The holstered revolver's butt should be gripped and pulled forward rapidly in a motion as if the shooter were a boxer punching a low blow into the abdomen of an opponent. Keep the trigger finger out of the trigger guard until the revolver clears the holster and begin a double-action trigger squeeze as the muzzle comes to a horizontal position. The "punch" or draw should end with the revolver barrel parallel to the ground, shooting arm elbow close to the body (to align the revolver barrel with target center). The draw motion should end far enough forward for the shooter to see the revolver while his vision is focused on the part of the target it is desired to hit, which should always be the middle body part of the target. "Dry-firing" practice in grasping the revolver correctly and the fast, "punching" draw, are recommended. Constant attention should be paid to form and the building of speed.

The correct stance is a well balanced athletic position. The foot opposite the gun hand is slightly forward.

In hip-shooting, the hand gripping the revolver may be supported (after the draw is completed) by the other hand, slapping the palm of the other hand close against the butt of the revolver and overlapping shooting hand and revolver grip with the thumb and fingers of the non-shooting hand. This gives most shooters increased accuracy and better grouping of shots on the target and is a position generally used in competitive combat shooting.

POINT SHOULDER SHOOTING: This type of shooting is for longer range than hip-shooting, normally at 15 yards. The draw is identical to hip-shooting, but the revolver is swung up high enough to give a shotgun type sight picture along the weapon. The sights need not be actually used, and the revolver can be pointed at the target while looking over the barrel, much as a shotgun is pointed at a moving target, but of course without any side-to-side "swing" of the pistol. The shooter's vision should be focused on the target. Sights can be used, but in the interests of speed, shooters should develop skill in just pointing and pulling the trigger. This will give very consistent hits at the short ranges in which this type of shooting is used.

It will be found helpful to support the shooting hand with the other hand, as described under hip-shooting. The stance is approximately the same as for hip-shooting.

POSITION SHOOTING: Position shooting is designed for aimed, accurate fire at longer distances, in contrast to the point-fire technique in close range defense and combat shooting. Training courses in position shooting develop the use of various positions and objects for steadiness, accuracy and protection of the shooter.

PRONE POSITION: The prone position is for steadiness and accuracy at long distances, where no cover is available. It permits the shooter to present the smallest possible target to return fire. A usual training distance is 50 yards.

The body is extended on the ground, head toward the target in as relaxed a position as possible, with the feet together. In training, the

shooter should kneel, then draw, then go forward to prone. The gun hand is extended first, then the other hand brought forward to support the gun hand. A support made by cupping the gun hand in the other hand, palm of non-shooting hand up and parallel to the ground, is most satisfactory to the majority of shooters, rather than the palm-to-palm support position of hip-shooting and point-shoulder shooting.

SITTING POSITION: The sitting position is designed for steadiness at long range where no full cover is available and only logs, low walks or similar things are available and terrain does not permit use of the prone position.

The shooter sits with body weight on buttocks, one or both knees raised, with arm or arms supported by knees. The non-shooting hand may be extended to the rear for support. Elbow should be either forward or to the rear of knee cap to prevent the "ball bearing" motion of both joints together.

KNEELING POSITION: This position consists of kneeling on one knee (the knee opposite the gun hand). The gun hand may be supported by the other hand, resting the supporting arm on the knee for steadiness. The shooter may kneel upright or back on the heel, as is most steady and relaxed for the individual shooter. In training, the shooter should first kneel, then draw the weapon.

BARRICADE POSITION: This position is for firing from behind full cover, such as a building corner, telephone pole, etc. It takes full advantage of the cover and provides steady support for the gun hand.

Both feet are behind the barricade, with the foot opposite the gun hand most advanced. This pulls the body behind the cover and keeps it there. The gun hand should be first advanced and the non-shooting hand thereafter brought up for support. The stance should be upright, head held well back, to give the best sight picture.

OFF-HAND POSITION (SHOOTING UPRIGHT): Off-hand shooting at long range is not recommended and the previously mentioned positions are all steadier and will give better accuracy. It is recommended that off-hand shooting be done with a square stance and the gun hand supported by the other hand as in point-shoulder shooting. The knees should be quite straight, with the upper body bowed backward slightly to assist in getting the head away from and down behind the sights. If supporting hand is not used, correct stance is about 45 degree angle, body erect and relaxed, gun arm fully extended.

INVESTIGATIONS INVOLVING FIREARMS AND OTHER WEAPONS

Cases involving firearms and other weapons may arise through complaints of illegal possession, temporary questioning of persons in public places under authority of Section 180-a of the Code of Criminal Procedure, arrests of persons for other offenses, observation of officers, admissions during questioning of suspects or subjects, checks on occupants of vehicles and in other ways, including weapons being found at the scene of a crime.

SEARCH WARRANTS: In every instance, in connection with illegal possession, a search warrant for the weapon should be obtained if possible and practicable.

SEARCH WITHOUT WARRANT: Where search is made without warrant under the authority of Section 180-a of the Code of Criminal Procedure, a search of a person for any dangerous weapon may precede an arrest. In all other instances of search without a search warrant, a

validly based arrest must be made before the search is begun. The search is then conducted incident to the arrest.

In cases of observation of an officer determining that a forbidden firearm is in possession, the officer must also determine whether the possessor has a valid license for it, and should always question the possessor on this point before making an arrest. Failure to exhibit a license is presumptive evidence that the person has no license.

HANDLING WEAPONS: The circumstances of each case will determine whether latent fingerprints on a weapon are of importance. Where such evidence may be pertinent to the case, the officer should always handle the weapon in such a way as to prevent damage to any latent prints. In case of firearms, this may be best done by handling them only on the side of the trigger guard, the checkered part of the grip or knurled fittings, none of which may be expected to contain useful latents.

Other types of weapons should be protected from bare hand contact and should be handled at points where no latents could be found, such as rough ends, cloth coverings, etc. In case of completely smooth weapons, such as smooth leather-covered flat blackjacks, handling should be avoided and they should be slipped into envelopes or other proper containers in a manner designed to least disturb any possible latent.

SAFETY FACTORS: When any firearm comes into an officer's possession, basic safety rules must be followed. All firearms must be considered loaded and dangerous until proved otherwise. Officers should be certain that all cartridges, expended or live, are removed from any firearm of which they take possession. In unloading automatic or semi-automatic weapons, be certain that after the magazine is removed, the action is opened and the firing chamber examined to be certain that it does not contain a cartridge. Until any firearm is determined to be unloaded, it must be handled as if it will fire at any moment and accordingly should never be permitted to point at any person or near any person or be carelessly carried or moved about.

MARKING WEAPONS FOR IDENTIFICATION: All weapons which may be evidence in any matter should immediately be both tagged and marked. All cartridges should also be identified, with particular attention paid to revolvers, so that exact information is recorded as to the condition of the revolver and the position of fired, unfired and empty cylinders of the revolver.

A weapon is tagged by affixing a tag containing case name and number, date and time found, signature of officer who found or took possession, and note where found or from whom taken. Weapons are marked by means of a pointed instrument used to scratch the officer's name or initials and date on a part of the weapon where latent fingerprints will not be marred.

Revolvers may be marked on the underside of the barrel near the muzzle and on the side of the frame as low on the frame and as near the grip as possible.

Automatic pistols should be marked on the front of the grip, on the slide near the breech and on the side of the barrel near the muzzle. The barrel marking is important since barrels on automatic pistols are readily removable. The magazine should be marked on the bottom.

Each cartridge in a revolver should be marked with a number as removed from the cylinder and great care should be exercised in opening the cylinder to be certain to identify the cartridge which was under the firing pin, which should always be marked as #1. The other cartridges should be marked 2, 3, 4, etc., in numerical order, counterclockwise as viewed from the rear of the cylinder.

Cartridges in automatic pistols may be marked (after fingerprint processing of the magazine) by sealing the magazine with adhesive tape, on which is written identifying data as on the tag, or as much thereof as is practicable, but always including the officer's signature and the date. Any cartridge in the firing chamber should be separately identified and under no circumstances put back in the magazine.

Fired cartridges may be identified by scratching on the inside of the case near the open end. Loaded cartridges may be identified on the side of the case.

After marking, cartridges should be individually packed in soft cotton or paper and their containers identified as mentioned for tags. Cartridges in magazines should be left in the magazine and not individually packaged.

Rifles, shotguns and machine guns should be handled and marked as above described. Be certain in all cases of automatic or semiautomatic shoulder arms that after the magazine is removed (or unloaded) the action is opened and examined to ensure that no cartridge is left in the firing chamber.

IDENTIFICATION OF FIREARMS: The caliber, make and serial number are not sufficient data to properly identify a firearm, since several guns of the same caliber could be of the same make and serial number. It is essential that all pertinent information available be noted for proper identification, and the following information should be recorded as to each:

1. Caliber or gauge
2. Make
3. Type (i.e. revolver, automatic, etc.)
4. Model (i.e. "Official Police," "Master .357 Magnum," "Sidekick," etc.)
5. Manufacturer's name, trade mark, grip medallion, etc.
6. Serial number
7. Proof marks, other marks, wording, letters, codes and where located on the firearm
8. Cylinder or magazine capacity
9. Barrel length
10. Overall length
11. Type of action (single shot, double action, pump or trombone, bolt, semi-automatic, full automatic)
12. Material, type, checkering or other styling of grips and/or grip cap
13. Type of finish (blue, nickeled, dull (state color), etc.)
14. Engraving, special plating, insets of gold, silver, chased figures, etc.
15. Type of sights
16. Other peculiarities (barrel ramp, spur trigger, cutaway triggerguard, no triggerguard, duckbill hammer, grip adapter, beavertail foregrip, sling swivels, etc.)

PISTOL PERMIT SECTION: All firearms coming into police possession in connection with crimes should be checked with the New York State Police Pistol Permit Section, Albany. This may be done by teletype, giving full identifying data on the firearm. This Section has a record of all licenses and dealer transactions (except dealer transactions in New York City, which are filed in the New York City Police Department Pistol Permit Bureau). In checking, always furnish brief facts of the case involved.

Federal Firearms Act requires manufacturer of handguns to maintain a record of all weapons for a period of 10 years. This information is available to authorized police upon request.

LABORATORY ASSISTANCE: The New York State Police Scientific Laboratory at Albany and the FBI Laboratory, Washington, D.C. will conduct examinations of firearms for purposes of establishing that a firearm is capable of discharging a projectile. This is an important factor in many cases, since it has been held that a pistol with a broken firing pin, mechanically inoperative and incapable of being fired, was not a pistol under Section 1897 of the Penal Law (Peo. vs. Grillo, 11 NY 2d. 841).

In appropriate cases, firearms should always be sent to the Laboratory for firing of test bullets for comparison with unidentified bullets in open homicide cases. It is possible to make positive identification of bullets having been fired from a particular firearm. Fired cartridge cases can also be identified as having been fired in a particular firearm.

Laboratory assistance should also be sought in any instance where examination of bullets, spent cartridges or ammunition is desired.

LICENSE CASES: In cases involving licensed or allegedly licensed possessors of firearms, the officer should take care to check the expiration date of the license, and the terms and/or restrictions, for conformance with developed facts. He should compare the description and photograph on the license with the possessor and should note whether the license coupon was detached, as should have been done by the dealer disposing of a firearm to the license holder.

If an officer develops information indicating that the license of any firearms licensee should be revoked, a factual report should be prepared in the form used by his department and forwarded with a covering letter through channels of his department directed to the Police Commissioner in New York City or Nassau County or the county judge in Suffolk County, or a judge or justice of a court of record in other counties. When a reply is received from the revoking authority, an investigation should be made to determine whether the licensee has surrendered his firearm and/or complied with the order of the revoking authority. A copy of the reply and results of investigation should be promptly sent to the New York State Police Pistol Permit Section at Albany.

TELETYPE MESSAGE USE: An adequate description of the firearm should be included in all General Alarm teletypes sent as a result of arrests in serious cases involving firearms, to permit departments with unsolved crimes involving similar firearms an opportunity to consider whether Laboratory comparisons or other investigation may be warranted on the basis of the facts in the teletype.

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66. FIREWORKS

It is a Class B misdemeanor to offer or expose any fireworks for sale, or to possess or sell fireworks, or to furnish, use, or explode any fireworks, except as provided by Section 405.00 of the Penal Law (P.L. Sec. 270.00, subd. 2).

Fireworks unlawfully possessed are a public nuisance and may be seized by any peace officer who must deliver them to the magistrate before whom the person arrested is required to be taken (P.L. Sec. 405.05).

Fireworks under the law are: blank cartridges, blank cartridge pistols, toy cannons in which explosives are used, firecrackers, torpedoes, skyrockets, roman candles, bombs, sparklers or other combustibles or explosives of like construction, or any preparation containing any explosive or inflam-

mable compound or any tablets or other device commonly used and sold as fireworks containing nitrates, chlorates, oxalates, sulphides of lead, barium, antimony, arsenic, mercury, nitroglycerine, phosphorus, or any compound containing any of the same or other explosives or any substance or combination of substances or articles prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation or other device containing any explosive substance (P.L. Sec. 270.00 subd. 1).

The law clearly states that the following are not fireworks: flares of the type used by railroads, any warning lights commonly known as red flares, marine distress signals of a type approved by the United States Coast Guard, toy pistols, canes or guns or other devices in which paper caps are used which contain less than twenty-five-hundredths grains of explosive compound and the paper caps for such devices. The devices for caps must be so constructed that the hand cannot come in contact with the cap when the cap is in place for use (P.L. Sec 270.00, subd. 1).

PUBLIC DISPLAYS OF FIREWORKS: A regional state park commcommission, a county park commission or other agency having control of parks, a city licensing agency or designated licensing officer, or a village or town officer designated, may issue a permit for a public fireworks display (P.L. Sec. 405.00, subd. 1).

Permits may be granted to municipalities, fair associations, amusement parks or organizations of individuals (P.L. Sec. 405.00, subd. 2).

No local ordinance may regulate or prohibit fireworks displays but towns and villages may regulate storage and sale. Towns may also regulate transportation (Vill. L. Sec. 89, subd. 58, Town L. Sec. 130, subd. 5).

Local ordinances may provide that permits must be approved by either the head of the police or fire department or both (P.L. Sec. 405.00).

Permits must provide that no fireworks display may be held during any wind storm in which the wind reaches a velocity of more than thirty miles per hour. All person in actual charge of firing the fireworks must be over the age of eighteen (P.L. Sec. 405.00, subd. 3).

EXEMPTIONS: The following are exempted from the law:

1. Fireworks in possession of railroads and transportation agencies for the purpose of transportation;

2. Manufacture and sale of fireworks to be shipped directly out of state;

3. Manufacturers, wholesalers, dealers or jobbers may manufacture, or posses fireworks or sell them at wholesale to municipalities, religious or civic organizations, fair associations, amusement parks or other organizations or groups of individuals authorized to obtain a permit for public display;

4. The use or storage, transportation or sale for use of fireworks in the preparation for or in connection with television broadcasts are exempted;

5. Fireworks for state or Federal army or navy use and blank cartridge sales or use for theatrics, signaling in sporting events, or dog trials or training are exempt (P.L. Sec. 270.00, subd. 3).

6. Ammunition for revolvers or pistols, rifles, shotguns or other arms does not come under the Fireworks Law, (P.L. Sec. 270.00, subd. 4).

FIREWORKS FOR TELEVISION BROADCASTS: Cities, towns and villages may regulate by ordinance the use, storage, transportation or sale for use of fireworks in the preparation for or in connection with television broadcast (P.L. Sec. 405.00, subd. 5).

SEIZED FIREWORKS: The magistrate may order them destroyed or deliver them to the District Attorney as he judges best. The district attorney must destroy them if the defendant is convicted (P.L. Sec. 405.05). Officers instructed to destroy fireworks should secure expert advice before attempting destruction of any quantity. Officers should handle fireworks with the care and caution due explosive materials.

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67. FORGERY AND SLUGS

FORGERY DEFINED: It is forgery to falsely make, complete, or alter a written instrument, with intent to defraud, deceive or injure another (P.L. Sec. 170.05, 170.10, 170.15).

FALSE MAKING: A person falsely makes a written instrument when he:

1. Makes or draws a complete written instrument in its entirety, or
2. An incomplete written instrument,
3. Which purports to be an authentic creation of its ostensible maker or drawer, but
4. Which is not such because:
   a. The ostensible maker or drawer is fictitious, or
   b. If real, he did not authorize the making or drawing (P.L. Sec. 170.00, subd. 4).

FALSELY COMPLETING: A person falsely completes a written instrument when he:

1. By adding, inserting or changing,
2. Transforms an incomplete into a complete written instrument,
3. Without the authority of anyone entitled to grant authority,
4. So that the complete instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer (P.L. Sec. 170.00, subd. 5).

FALSELY ALTERING: A person falsely alters a written instrument when he:

1. Without the authority of anyone entitled to grant authority,
2. Changes a written instrument (whether incomplete or complete),
3. By means of:
   a. Erasure, or
   b. Obliteration, or
   c. Deletion, or
   d. Insertion of new matter, or
   e. Transposition of matter, or
   f. In any other manner,
4. So that the instrument in its altered form appears or purports to be in all respects:
   a. An authentic creation of its ostensible maker or drawer, or
   b. Fully authorized by its ostensible maker or drawer (P.L. Sec. 170.00 subd. 6).

WRITTEN INSTRUMENT: A written instrument is:

1. Any instrument or article containing written or printed matter or the equivalent thereof,
2. Used for the purpose of reciting, embodying, conveying or recording information, or

3. Constituting a symbol or evidence of value, right, privilege, or identification,

4. Which is capable of being used to the advantage or disadvantage of some person (P.L. Sec. 170.00, subd. 1).

COMPLETE WRITTEN INSTRUMENT: A complete written instrument is one which purports to be a genuine written instrument, fully drawn with respect to every essential feature.

1. An endorsement, attestation, acknowledgement or other similar signature or statement is both a complete written instrument in itself and is also a part of the main instrument in which it is contained or to which it attaches (P.L. Sec. 170.00, subd. 2).

INCOMPLETE WRITTEN INSTRUMENT: An incomplete written instrument is one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

FORGERY IN THE THIRD DEGREE: A person is guilty of Forgery Third who:

1. With intent to:
   a. Defraud, or
   b. Deceive, or
   c. Injure,
2. Any other person,
3. Falsely:
   a. Makes, or
   b. Completes, or
   c. Alters,
4. Any written instrument (P.L. Sec. 170.05).

Forgery Third is a Class A misdemeanor.

FORGERY IN THE SECOND DEGREE: A person is guilty of Forgery Second under the same elements as for Forgery Third, when the written instrument is:

1. Any written instrument which is, or purports to be, or which is calculated to become or to represent if completed, any of the following:

   a. A deed, will, codicil, contract, assignment, commercial instrument, or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status (P.L. Sec. 170.10, subd. 1), or

   b. A public record, or an instrument filed or required or authorized by law to be filed in or with a public office or public servant (P.L. Sec. 170.10, Subd, 2), or

   c. A written instrument officially issued or created by a public office, public servant or governmental instrumentality (P.L. Sec. 170.10, subd. 3), or

   d. Part of an issue of tokens, public transportation transfers, certificates or other articles manufactured and designed for use as symbols of value usable in place of money for the purchase of property or services (P.L. Sec. 170.10, Subd. 4), or

   e. A prescription of a duly licensed physician or other person authorized to issue the same for any drug or any instrument or device used in the taking or administering of drugs for which a prescription is required by law (P.L. Sec. 170.10, subd. 5).

Forgery Second is a Class D felony.

FORGERY IN THE FIRST DEGREE: A person is guilty of Forgery First under the same elements as for Forgery Third when the written instrument is:

1. Any written instrument which is, or purports to be, or which is calculated to become or to represent if completed, any of the following:

a. Part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental instrumentality (P.L. Sec. 170.15, subd. 1), or

b. Part of an issue of stock, bonds or other instruments representing interests in or claims against a corporate or other organization or its property (P.L. Sec. 170.15, subd. 2).

Forgery First is a Class C felony.

POSSESSION OR UTTERING: A knowing possessing or uttering of a forged instrument is as much a crime as the forging of the instrument. The various degrees of the crime are set out under the following headings.

"Uttering" may be taken to mean offering the forged instrument with a representation, either in words or actions, that it is genuine.

A forged instrument is any instrument which has been falsely made, or falsely completed or falsely altered (P.L. Sec. 170.00, subd. 7).

In any prosecution for criminal possession or uttering of a forged instrument, it is no defense that the defendant forged (or participated in the forgery of) the instrument in issue.

However, a person cannot be convicted of both criminal possession (or uttering) and of forgery of the same instrument (P.L. Sec. 170.35).

CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE THIRD DEGREE: A person is guilty of Criminal Possession of Forged Instrument Third who:

1. With knowledge that it is forged, and
2. With intent to
   a. Defraud, or
   b. Deceive, or
   c. Injure,
3. Any other person,
4. Utters, or
5. Possesses
6. Any forged instrument (P.L. Sec. 170.20).

Criminal Possession of Forged Instrument Third is a Class A misdemeanor.

CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE SECOND DEGREE: A person is guilty of Criminal Possession of Forged Instrument Second, under the same elements as for third degree, if the forged instrument is any of the kinds of instruments described in Penal Law Section 170.10 for the crime of Forgery Second (P.L. Sec. 170.25).

Criminal Possession of Forged Instrument Second is a Class D felony.

CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE FIRST DEGREE: A person is guilty of Criminal Possession of Forged Instrument First under the same elements as for third degree, if the forged instrument is any of the kinds of instruments described in Penal Law Section 170.15 for the crime of Forgery First (P.L. Sec. 170.30).

Criminal Possession of Forged Instrument First is a Class C felony.

CRIMINAL POSSESSION OF FORGERY DEVICES: A person is guilty of Criminal Possession of Forgery Devices who:

1. Makes, or
2. Possesses,
3. With knowledge of its character,
4. Any:
   a. Plate, or
   b. Die, or
   c. Other device, apparatus, equipment or article,
5. Specifically designed for use in:
   a. Counterfeiting, or
   b. Otherwise forging,
6. Any written instruments (P.L. Sec. 170.40, subd. 1).

A person is also guilty of Criminal Possession of Forgery Devices who:

1. Makes, or
2. Possesses,
3. With intent to:
   a. Use for purposes of forgery, or
   b. Aid or permit another to use for purposes of forgery,
4. Any:
   a. Device, or
   b. Apparatus, or
   c. Equipment, or
   d. Article,
5. Capable of or adaptable to use for forgery (P.L. Sec. 170.40, subd. 2).

Criminal Possession of Forgery Devices is a Class D felony.

FORGERY OF ART, ANTIQUES, ETC.: Section 959 of the old Penal Law covered forgery of any archeological object which derived its value from its antiquity. The word archeology means the study of the material remains of past human life and activity, and thus "archeology" covered almost any object.

There was no statute specifically covering forgery of paintings, sculpture, signatures of famous persons, ancient documents and similar rare things, although obtaining money or property through the use of such forgeries could have been a fraud or larceny, depending on the facts.

The new Penal Law has remedied the situation with a novel and complete forgery statute aimed at this kind of violation. The law calls this new crime "Criminal Simulation."

CRIMINAL SIMULATION: A person is guilty of Criminal Simulation who:

1. With intent to defraud,
2. Makes, or
3. Alters,
4. Any object in such manner that it appears to have:
   a. An antiquity, or
   b. A rarity, or
   c. A source of authorship,
5. Which it does not in fact possess (P.L. Sec. 170.45, subd. 1).

A person is also guilty of Criminal Simulation who:

1. With intent to defraud, and
2. With knowledge of its true character,

3. Possesses, or
4. Utters,
5. Any object made or altered, with intent to defraud:
   a. In such a manner that it appears to have:
      (1) An antiquity, or
      (2) A rarity, or
      (3) A source of authorship,
   b. Which it does not in fact possess (P.L. Sec. 170.45, subd. 2).

Criminal Simulation is a Class A misdemeanor.

FORGED CHECKS: The forging, possessing or uttering of forged checks may be either Forgery Third (a misdemeanor) or Forgery Second (a felony). This is true whether the check forgery was of an entire instrument or merely an alteration of an amount or forging of a signature to complete the check.

Even when the checks are purportedly checks of a government, (whether local, state or Federal) or a corporation, Forgery First could not be charged. Forgery First applies only to government issues of money, stamps, bonds and other instruments or corporation issues of stamps, stocks, bonds and similar instruments. It seems clear that a check could not be considered part of an "issue" of any of the kinds of things described in the Forgery First statute.

LARCENY CHARGES: In any Forgery, Criminal Possession of Forged instrument or Criminal Simulation case, when the violation has progressed sufficiently to become an attempted or successful obtaining of money, property, etc., by means of the forged or false thing, Larceny (or Larceny attempt) charges should be considered if the facts would permit charging a Larceny or attempted Larceny of a degree higher than the Forgery, Criminal Possession or Criminal Simulation charge.

COIN MACHINE SLUGS: In the old Penal Law (Section 1293-d) the manufacture or sale of slugs for coin machines was a felony under the article on Larceny. The use of a slug in a machine was an offense (old P.L. Sec. 1293-c). The new Penal Law incorporates this kind of crime in the article relating to Forgery, as "Unlawfully Using Slugs." The use of slugs can also be a Larceny, or may be the means of a Theft of Services (see sections in this Manual with those titles).

COIN MACHINE DEFINED. A coin machine is:

1. Any coin box, turnstile, vending machine or other mechanical or electronic device or receptacle.
2. Designed:
   a. To receive a coin or bill or a token made for the purpose, and
   b. In return for the insert or deposit of the coin, bill or token to automatically:
      (1) Offer some property or service, or
      (2) Provide some property or service, or
      (3) Assist in providing some property or service, or
      (4) Permit the acquisition of some property or service (P.L. Sec. 170.50, subd. 1).

SLUG DEFINED: A slug is:

1. Any object or article,
2. Which by:
   a. Its size, or
   b. Its shape, or
   c. Any other quality,

3. Is capable of being inserted or deposited in a coin machine,

4. As an improper substitute for a genuine coin, bill or token (P.L. Sec. 170.50, subd. 2).

VALUING SLUGS: The value of a slug is the value of the coin, bill or token for which it is capable of being substituted (P.L. Sec. 170.50, subd. 3).

UNLAWFULLY USING SLUGS IN THE SECOND DEGREE: A person is guilty of Unlawfully Using Slugs Second who:

1. With intent to defraud,

2. The owner of a coin machine,

3. Inserts or deposits a slug in such machine (P.L. Sec. 170.55, subd. 1).

A person is also guilty of Unlawfully Using Slugs Second who:

1. With intent to enable a person to insert or deposit it in a coin machine,

2. Makes, or

3. Possesses, or

4. Disposes of,

5. Any slug (P.L. Sec. 170.55, subd. 2).

Unlawfully Using Slugs Second is a Class B misdemeanor.

UNLAWFULLY USING SLUGS IN THE FIRST DEGREE: A person is guilty of Unlawfully Using Slugs First who:

1. With intent to enable a person to insert or deposit them in a coin machine,

2. Makes, or

3. Possesses, or

4. Disposes of,

5. Slugs valued at over $100 (P.L. Sec. 170.60).

Unlawfully Using Slugs in the First Degree is a Class E felony.

RETAINING FORGED INSTRUMENTS: Persons such as bankers, transfer agents of corporations, railroad agents, warehousemen, or any other person charged with the issue, reissue, transfer or payment of securities, evidences of indebtedness or interests in property, are entitled to retain any counterfeit or spurious document of this kind, for the purpose of preserving it, and may return in its place a photostatic copy and affidavit setting out what is wrong with the original and the name and address of the person retaining the original.

The original must be delivered to the District Attorney within 14 days and must be produced for use in court or by a public officer under any proper notice, demand or subpoena (Genl. Bus. L. Sec. 554).

COUNTERFEIT MONEY: Under the old Penal Law (Section 894) it was a felony to possess any counterfeit gold or silver coins, with knowledge and intent to use. The new Penal Law's Forgery and Possession of Forged Instrument statutes include (as First Degree) forgery or possession of "part of an issue of money . . . issued by a government."

Officers should note that this includes money of any government (not only the United States).

It should also be noted that a "written instrument" includes ". . . any . . . article containing written or printed matter . . . constituting a symbol or evidence . . . of value . . . which is capable of being used to the advan-

tage or disadvantage of some person." "Written instrument" would thus include money, whether in the form of bills or coins. Thus what was counterfeiting under the old law could be Forgery under the new law.

FEDERAL VIOLATIONS: It is a Federal crime to forge or counterfeit or possess the tools or means for so doing, any United States or foreign money, or to utter or attempt to utter or pass such counterfeit money.

Federal law also protects United States bonds and securities and forbids forgeries designed to defraud the United States and forgeries of other specified documents, including military or naval discharges, passes, postal money orders and stamps.

The Federal forgery and counterfeiting laws are contained in Chapter 25 of Title 18, United States Code, section 471 through 509.

Forgery, or uttering of counterfeit money, bonds or securities of the United States or any foreign country are Federal crimes, handled by the Secret Service of the United States Treasury Department.

The FBI handles cases involving forging and altering documents, accounts, etc. to defraud the United States. The United States Post Office Inspectors handle matters relating to forgery of money orders, stamps and other postal items. Federal officers should be promptly informed of violations in their jurisdiction.

CIGARETTE TAX STAMP: Counterfeiting or knowingly using any counterfeit cigarette tax stamp is a felony, punishable by imprisonment for not more than five years (Tax L. Sec. 481, subd. 4).

VIOLATIONS UNDER PHARMACY LAW: It is a misdemeanor to counterfeit any mark, stamp, tag, label or identification required under Article 137 of the Education Law (Sec. 6801-6828) dealing with pharmacy. A second or later offense is a felony (Educ. L. Sec. 6821, subd. 8, Sec. 6823, subd. 1).

TRADE MARKS: It is a misdemeanor to counterfeit a trade mark, or to possess the same, or a die, plate, brand, or other thing for the purpose of counterfeiting a trade mark, or goods marked with a counterfeit trade mark, with intent to sell, or to actually sell the same (Genl. Bus. L. Sec. 279-n).

UNION MARKS OR LABELS: It is a misdemeanor to counterfeit any mark, label, brand, name or other character adopted by a bona fide union or employee association for the purpose of designation of the product of the labor of the members of such union or association (Labor L. Sec. 209).

INVESTIGATIONS

Upon receipt of a complaint of Forgery, the thing allegedly forged should be immediately obtained and preserved as evidence. It should be completely protected from handling which might spoil latent fingerprints or other pertinent marks on it. If the forged item is needed by the complainant for business or other reasons, ordinarily a photostatic copy will suffice for such use, under the provisions of Section 554 of the General Business Law.

The officer should determine, from the complainant and logical witnesses: (1) the exact source of the forged item, (2) persons who handled or dealt with it up to the time of the complaint, (3) persons who have any specific knowledge of the forged item, (4) detailed facts involved in receipt of the forged item by the complainant or victim and (5) the specific known or believed forgery in the item (i.e., if a forged motor vehicle registration, is

the validating stamp and typed material the forgery and the remainder a genuine form). If a contract, is only the date a forgery, has just one forged paragraph been inserted?

In all Forgery cases the forged item must be handled as evidence from the beginning. It is well in all cases to have expert examinations conducted (1) for latent fingerprints and (2) to determine pertinent factors as to alterations, changes, age of imprint or of paper, inks used, etc., including comparison of handwriting, typing, printing, paper, etc., with known standards.

It should be borne in mind that examination of documents to develop latent fingerprints is a special kind of work not always done by the document expert. It is most usually handled by a fingerprint expert. Skilled identification bureau personnel, the Bureau of Identification NYSIIS and the FBI Identification Division are equipped to handle this type of examination.

Other phases of document examination are handled by the scientific laboratory document examiner, such as those of the New York State Police Scientific Laboratory or the FBI Laboratory.

In planning necessary laboratory work or requests, officers must bear in mind the difference between latent fingerprint examinations and all other types of document examinations.

The facts of each case will determine the specific kinds of analysis required, whether examination for erasure and alteration, or the genuineness of signatures, similarity of typing or printed impressions, similarity of validating stamp impression to genuine stamp, etc.

Additional investigation required will also be determined by the facts. In criminal possession and uttering cases, care must be taken to establish knowledge and intent by independent evidence.

The officer handling a Forgery case should bear in mind that the document examiner in the laboratory is almost entirely dependent upon the officer in the field for the materials on which examination is to be based. It is thus essential that at the outset of any investigation, a careful analysis is made of what documentary evidence should, if possible, be secured in addition to the forged item itself. Consideration should be given to whether samples of a suspect's handwriting should be secured from his employer, correspondents, schools, etc., whether samples of genuine forms or of paper ordinarily used for a genuine document should be secured, and so on.

Where latent fingerprints are found, the officer must immediately analyze the case to determine from whom elimination prints should be obtained for comparison and what steps are necessary to obtain fingerprints of suspects for comparison. In many instances it will, of course, be impracticable to make a direct request of a suspect that he submit to fingerprinting for such purpose.

It should be borne in mind throughout the case that standards for comparison may, in any particular instance, be necessary evidence and they should be handled as evidence at all times.

Where the forgery is not of a business paper, will, contract or similar current item but is instead an art forgery, simulation of an antique document, etc., the officer must be alert to recognize the need for the services of experts in the particular field which the forged item represents—i.e., a police scientific laboratory document examiner is not ordinarily in a position to determine whether a forged painting is the work of a particular artist or is merely a skilled copy and the services of a reputable and established art expert would be required.

In all interviews of persons having a knowledge of the origin, receipt or handling of the forged item, the officer must take care to pin down specifics. Ordinarily such interviews should be reduced to signed statements, if any information of value at all is obtained from the one interviewed.

Care should be taken to pin-point exact handlng of the forged item and all statements made in connection with its use or uttering, including the exact words said.

To give initial direction to the investigation it is important to determine specifically, in the initial stages of the case, who did or could have profited by the forgery.

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68. FORTUNE TELLING

Fortune Telling is a violation new to the Penal Law.

FORTUNE TELLING DEFINED: A person is guilty of Fortune Telling when:

1. For a fee or compensation,
2. Which he solicits or receives, directly or indirectly,
3. He claims or pretends to tell fortunes, or
4. Holds himself out as being able by claimed or pretended use of occult powers to:
   a. Answer questions or give advice on personal matters, or
   b. Exorcise, influence or affect evil spirits or curses (P.L. Sec. 165.35).

The law does not apply to a person who engages in such conduct as part of a show or exhibition and solely for the purpose of entertainment or amusement (P.L. Sec. 165.35).

Fortune Telling is a Class B misdemeanor.

INVESTIGATIONS

Fortune Telling may be engaged in for a fee, with the offender's profit solely in the fee. It may also be used as a means of Larceny (by False Pretense, by Trick or by False Promise) in a "con" game to extract major sums from a credulous victim.

In the usual Fortune Telling violation for a fee, the crime is committed by (1) the claim or pretense and (2) the solicitation or receipt of compensation. It is not required that money change hands, only that there be a solicitation. The solicitation may be direct or indirect. If compensation or a fee is in fact paid, it is no more a violation than if there had merely been a solicitation, although it may be more convicing proof of the violation.

Where an officer personally observes the violation, he should ensure that he identifies the victim or victims for possible testimony.

In other cases, where the complaint is received after the violation, the officer must take care as to the identification of the offender. In addition, the complainant should be specifically interviewed as to the identity and whereabouts of witnesses, for testimony as to the claim or pretense and as to the solicitation or receipt of compensation. Where time permits, complaints are best taken as signed statements.

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69. FRAUDS

FRAUDS ON CREDITORS

Article 185 of the new Penal Law is "Frauds on Creditors." These fraud crimes involve insolvency, or property which secures obligations, or which is mortgaged or was bought on a conditional sales contract. The offenses are all Class A misdemeanors.

FRAUD IN INSOLVENCY: This crime relates to dealings with the property, goods, money or securities of insolvent debtors. A person is insolvent when the fair value of his assets is less than the amount required to pay his debts as they become due (Debtor and Creditor Law, Sec. 271, subd. 1) or when he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts when they come due (Uniform Commercial Code, Sec. 1-201, subd. 23).

The Debtor and Creditor Law contains provisions relating to voluntary and involuntary arrangements leading to the appointment of assignees, trustees, liquidators, etc., to take custody of the assets of insolvent debtors and to administer the same for the benefit of creditors. Such type of person is referred to as an administrator in the Fraud in Insolvency statute, which defines an "administrator" as being any assignee or trustee for the benefit of creditors, or a liquidator, a receiver or any other person entitled to administer property for the benefit of creditors (P.L. Sec. 185.00, subd. 1).

A person is guilty of Fraud in Insolvency who:

1. With intent to defraud any creditor, and

2. Knowing that proceedings have been or are about to be instituted for the appointment of an administrator, or

3. Knowing that a composition agreement or other arrangement for the benefit of creditors has been or is about to be made

4. Does any of the following:

a. Conveys, transfers, removes, conceals, destroys, encumbers or otherwise disposes of:
(1) Any part of the debtor's estate, or
(2) Any interest in the debtor's estate (P.L. Sec. 185.00, subd. 2-a), or

b. Obtains:
(1) Any substantial part of the debtor's estate, or
(2) Any substantial interest in the debtor's estate (P.L. Sec. 185.00, subd. 2-b), or

c. Presents any writing or record relating to the debtor's estate:
(1) To any creditor or to the administrator,
(2) Knowing that it contains a false material statement (P.L. Sec. 185.00, subd. 2-c), or

d. Misrepresents or fails to disclose:
(1) To the administrator,
(2) The existence, amount or location of,
(3) Any part of or interest in the debtor's estate, or
(4) Any other information which he is legally required to furnish the administrator (P.L. Sec. 185.00, subd. 2-d).

Fraud in Insolvency is a Class A misdemeanor.

The crime can be committed by the debtor or anyone else. An intent to defraud one or more of the creditors of the debtor is essential. This does not mean that the criminal act must be done with the sole object of defrauding a creditor or creditors. It means that the act must be done

with a conscious objective of causing a situation where the defrauding of one or more creditors will result. The usual objective or motive for causing such a situation is profit for the violator (P.L. Sec. 15.05, subd. 1).

BANKRUPTCY: Bankruptcy is solely a Federal Court proceeding (Title 11, U.S. Code). It is somewhat similar to the proceedings for insolvent persons under the New York Debtor and Creditor Law. Instead of "insolvency" it deals with "bankruptcy," and permits filing, in Federal District Court, of voluntary (by the bankrupt) or involuntary (by creditors) petitions for the court to entertain bankruptcy proceedings. The court, if it agrees, appoints persons to collect and administer the bankrupt's assets.

Under Federal Criminal laws in Title 18, U.S. Code, there are various criminal violations similar to Fraud in Insolvency, including such violations as concealment of assets, false oaths and bribery (Sec. 152), embezzlement by trustee or others (Sec. 153), improper acts by referees, trustees, etc. (Sec. 154) and other crimes.

The FBI handles violations of these Bankruptcy criminal laws and should be promptly informed when any information concerning such a violation comes to attention. Up until the time an insolvent's affairs are petitioned into Federal court, the case may ordinarily be considered one for local enforcement as a Fraud in Insolvency.

FRAUD INVOLVING A SECURITY INTEREST: The violator in this type of crime must have executed a security agreement involving personal property. Others may violate this law only as accessories.

An "agreement" means a bargain or contract between parties as established in fact by their language and the circumstances, including the usages of the trade (Unif. Comm. C. Sec. 1-201, subd. 3). A "security agreement" is one which established a "security interest".

A "security interest" is an interest in personal property which secures payment or performance of an obligation (Unif. Comm. C. Sec. 1-201, subd. 37). The retaining of title by a seller who delivers the property to the buyer is limited in its effect to being the same as retaining a security interest (Unif. Comm. C., Secs. 1-201, subd. 37; 2-401, subd. 1).

A security interest may be created by any transaction, regardless of its form, if there is an intent to create such an interest (Unif. Comm. C. Sec. 9-102, subd. a). A security interest can be created by a contract, pledge, assignment, chattel mortgage, chattel, trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, title retention contract, consignment intended as security, etc. (Unif. Comm. C. Sec. 9-102, subd. 2).

A person is guilty of Fraud Involving a Security Interest who:

1. Having executed a security agreement,
2. Which created a security interest in personal property,
3. To secure a monetary obligation,
4. Owed to a secured party, and
5. Having under the security agreement both:
   a. Right of sale or other disposition of the property, and
   b. Duty to account to the secured party for the proceeds of the sale or other disposition,
6. Sells or otherwise disposes of the property, and
7. Wrongfully fails to account to the secured party for the proceeds of disposition (P.L. Sec. 185.05, subd. 1).

A person is also guilty of Fraud Involving a Security Interest who:

1. Having executed a security agreement,
2. Which created a security interest in personal property,
3. To secure a monetary obligation,
4. Owed to a secured party, and
5. Having under the security agreement no right of sale or other disposition of the property.
6. Knowingly:
   a. Secretes, or
   b. Withholds, or
   c. Disposes of the property,
7. In violation of the security agreement (P.L. Sec. 185.05, subd 2).

Fraud Involving a Security Interest is a Class A misdemeanor.

FRAUDULENT DISPOSITION OF MORTGAGED PROPERTY: A person is guilty of Fraudulent Disposition of Mortgaged Property who:

1. Has executed a mortgage of:
   a. Real property, or
   b. Personal property, or
2. Has executed any instrument intended to operate as a mortgage, and
3. Sells, assigns, exchanges, secretes, injures, destroys or otherwise disposes of,
4. Any part of the property on which the mortgage or other instrument is (at the time) a lien,
5. With intent to defraud the mortgagee or a purchaser.

Fraudulent Disposition of Mortgaged Property is a Class A misdemeanor (P.L. Sec. 185.10).

FRAUDULENT DISPOSITION OF PROPERTY SUBJECT TO A CONDITIONAL SALE CONTRACT: A person is guilty of Fraudulent Disposition of Property Subject to a Conditional Sale Contract who:

1. Being a buyer or successor in interest of the buyer,
2. Of any property subject to a conditional sales contract,
3. Sells, assigns, mortgages, exchanges, secretes, injures, destroys or otherwise disposes of the property,
4. Under claim of full ownership,
5. Prior to the performance of the condition of the contract,
6. With intent to defraud (P.L. Sec. 185.15).

Fraudulent Disposition of Property Subject to a Conditional Sale Contract is a Class A misdemeanor.

A conditional sale is a selling of goods with possession of the goods given to the buyer at the time of sale and title to or property in the goods remaining with the seller until the full price of the goods are paid or until some other condition of the contract is performed or until some contingency set out in the contract is performed (former Section 61, Personal Property Law).

OTHER FRAUDS IN THE PENAL LAW

FRAUDULENTLY OBTAINING A SIGNATURE: This crime is derived from several old Penal Law sections dealing with frauds, particularly Section 932, "Obtaining Property by False Pretenses." Under the new law, Fraudulently Obtaining a Signature and Larceny by False

Pretenses are separate crimes. If property is obtained as a result of fraudulently obtaining a signature the offender may be charged with Fraudulently Obtaining a Signature and also with Larceny by False Pretenses, since it is settled law that an act or acts may violate more than one criminal statute at the same time.

A person is guilty of Fraudulently Obtaining a Signature who:

1. With intent to:
   a. Defraud another, or
   b. Injure another, or
   c. Acquire a substantial benefit for himself, or
   d. Acquire a substantial benefit for a third person,
2. Obtains the signature of a person,
3. To a written instrument,
4. By means of any misrepresentation of fact,
5. Which he knows to be false (P.L. Sec. 165.20).

Fraudulently Obtaining a Signature is a Class A misdemeanor.

COMPLETION CERTIFICATES: One of the old Penal Law Sections on which new Penal Law Section 165.20 is based is "Fraudulently Obtaining or Using a Completion Certificate" (Section 937-a). It is still a violation under the new law to obtain a signature to a Completion Certificate by any knowing false representation.

If the property as to which the signed completion certificate is unlawfully obtained is residential real estate subject to Federal Housing Administration (FHA) insurance, obtaining and using a completion certificate before completion is a violation of Title 18, U.S. Code, Sec. 1010. This Federal law makes it a felony to pass, make, utter, or publish any statement knowing it to be false, or to alter, forge or counterfeit any instrument for the purpose of influencing FHA action in any way (fine not over $5000, imprisonment not more than 2 years, or both). The FBI handles investigation of such cases.

FRAUDULENT ACCOSTING ("CON" GAMES): Fraudulent Accosting is aimed at the "con" artist who makes his pitch but is unsuccessful in "scoring" (obtaining any property). If property is obtained, the crime would ordinarily be Larceny by False Pretenses and the offender could be prosecuted for either or both crimes.

A person is guilty of Fradulent Accosting who:

1. Accosts any person,
2. In a public place, and
3. At that time and place, or
4. Subsequently at any place,
5. Makes statements to the person accosted,
6. Of a sort commonly made or used in the perpetration of a known type of confidence game (P.L. Sec. 165.30).

Fraudulent Accosting is a Class A misdemeanor.

To accost a person means to approach, to greet, to make up to or to speak first to a person.

A confidence ("con") game may be taken to be any kind of swindling operation in which the confidence ("con") man takes advantage of confidence reposed in him by the person accosted. This may be a simple game, like coin-matching or three-card monte or a complex game, like a "Judge Baker" involving a fully furnished and staffed fake horse-room or brokerage office, or one of in-between complexity like the "pigeon drop" where the "con man" arranges to drop a purse or wallet immediately ahead of

a confederate, who arranges to "find" it in company with the selected victim, and insures that they agree to split the money in it and that it is inadvisable at the time to attempt to cash bills etc. found in it. The victim of a "pigeon drop" is mulcted of "good faith" money he puts up. He is allowed to "hold" the wallet, but by means of a switch, counterfeits, etc., nothing of value is in it, and the "con man's" "score" consists of the "good faith" money the victim puts up.

UNLAWFULLY CONCEALING A WILL: A person is guilty of Unlawfully Concealing a Will when, with intent to defraud, he conceals, secretes, suppresses, multilates or destroys a will, codicil or other testamentary instrument (P.L. Sec. 190.30).

Unlawfully Concealing a Will is a Class E felony.

FRAUDS OUTSIDE THE PENAL LAW

There are set out hereinafter various frauds created by laws other than the Penal Law, with which the officer should be familiar. They are set out in alphabetical order, by subject. Most are misdemeanors.

AUCTIONS: If any property (except real estate or ships) is exposed for sale by auction, it is a misdemeanor to pretend to sell and buy. An actual sale and change of ownership must take place. (fine not over $100, imprisonment not more than 30 days, or both.)

It is also a misdemeanor to obtain money or property from another or a signature to a writing the false making of which would be forgery, by means of any false or fraudulent sale by auction or by any practice known as a mock auction (Genl. Bus. L. Sec. 24).

BILLS OF LADING: It is a misdemeanor for an owner, officer or agent of a vessel, or of a railway, express or transportation company, with intent to defraud, to issue a bill of lading for goods not received (Genl. Bus. L. Sec. 98) or knowing that the bill contains any false statement (Genl. Bus. L. Sec. 99).

Article 9 of the General Business Law (Sections 90-111) includes a number of related misdemeanors concerning bills of lading or property held by carriers.

BLIND PERSONS: It is a misdemeanor to display or offer goods as made by the blind unless at least 75% of the hours of labor involved in producing the goods were actually done by the blind.

A blind person is one with vision not better than 20/200 corrected, in the better eye, or with a field of vision the widest diameter of which subtends an angle no greater than 20 degrees (Genl. Bus. L. Sec. 396-f).

BUCKET SHOPS: A "bucket shop" involves fraudulent brokerage operations. Under the law, a "bucket shop" is a place where customers' orders are taken for security or commodity purchases (or sales) but are not actually executed.

In "bucket shop" operations, no buying or selling on an order is done by the broker. He merely settles with the customer on the basis of current market quotations (Genl. Bus. L. Sec. 351-d).

Section 351 of the General Business Law makes it a felony to engage in such activity.

A customer may always demand from a broker a statement showing the person from whom the broker purchased the stock or commodity on the customer's order (or to whom he sold it). The statement must also include the time, place, amount and price of the sale or purchase. A failure to furnish the statement within 48 hours after a written demand

is prima facie evidence that a felony "bucket shop" violation occurred (Genl. Bus. L. Sec. 351-d).

BUDGET PLANNING: Budget Planning is the making of a contract with an individual debtor whereby the debtor agrees to pay money periodically to the budget planner, who is required to distribute the money among specified creditors according to some plan agreed on. The debtor is required to pay the budget planner valuable consideration for the service (Genl. Bus. L. Sec. 455, subd. 1). New York Lawyers are exempted from this law and may engage in budget planning (Genl. Bus. L. Sec. 455, subd. 2). Engaging in the business of budget planning is prohibited to all others (Genl. Bus. L. Sec. 456). It is a misdemeanor, punishable by fine not over $500 imprisonment not more than 6 months or both (Genl. Bus. L. Sec. 457).

FOOD COMMODITIES: It is a misdemeanor to wilfully sell or make any other unathorized disposition of any food commodity donated under any program of the United States government. It is also a crime to wilfully convert such food to one's own use or benefit (except an authorized recipient) (Agr. & Mkts. L. Sec. 45-c).

FOOD ORDER STAMPS: Any person (other than a person authorized by regulations) who shall possess, or purchase, sell, or exchange any food stamps, books, book covers or any other instruments or documents relating to food stamps, for money or for any article or articles other than those foods authorized by the regulations and conditions prescribed by the Secretary of Agriculture governing the food stamp plan, or for food the value of which is less than the face amount of such food stamps, or in any other manner in violation of the regulations and conditions prescribed is guilty of a misdemeanor (Agr. & Mkts. L. Sec. 45-b).

HOTEL, BOARDING-HOUSE, ETC. GUESTS: It is a misdemeanor for any person, for gain and by means of false statement regarding a hotel, boarding-house, rooming-house, or lodging house, to divert or attempt to divert any person to another such establishment (Genl. Bus. L. Sec. 206-c, par. 1). It is also a misdemeanor to pay or offer to pay money or any reward to a person for diverting patrons knowing the diversion was in such manner (Genl. Bus. L. Sec. 206-c, par. 3).

KICK-BACK OF WAGES: When a workman is engaged to perform labor at an agreed rate of pay, it is a misdemeanor to demand or receive any part of his wages as a condition of his procuring or retaining the employment. This is generally termed a "kickback." It makes no difference whether the rate of pay is set by agreement with the workman individually or by agreement between the employer and a labor organization.

The collection of dues or assessments by a representative of a duly constituted labor organization is excepted from this law (Labor Law Sec. 199-c, subd. 2, 4, 5).

LIQUID FUELS AND LUBRICANTS: The General Business Law protects petroleum industry practices of dispensing gasoline, diesel fuel, lubricants, etc., under trade names, from distinctively marked pumps and containers, etc. Section 391-a of the General Business Law sets out a general description of such practices and establishes as misdemeanors the following kinds of violations:

1. Storing, exposing, selling, offering for sale so as to deceive or tend to deceive as to nature, quality or identity of product (Genl. Bus. L. Sec. 391-a, subd. 1).

2. Using a pump or distributing device for products other than those indicated by the trade name or markings on the pump or device (Genl. Bus. L. Sec. 391-a, subd. 2).

3. Disguising equipment by imitating design, symbol or trade name or recognized brands (Genl. Bus. L. Sec. 391-a, subd. 3).

4. Using name in general use for products not manufactured or distributed by the manufacturer or distributor owning the name (Genl. Bus. L. Sec. 391-a, subd. 4).

5. Deceiving as to nature, origin, quality, grade or identity of product sold or offered, including failing to identify reclaimed oil (Genl. Bus. L, Sec. 391-a, subd. 5).

6. Aiding or assisting to violate 1 through 5 above by delivering into tanks, receptacles or containers any other products than those intended to be stored there (Genl. Bus. L. Sec. 391-a, subd. 6).

MANUFACTURING AND SELLING: Under the General Business Law, a number of misdemeanors are created in respect to identification of products or their source. The identification must be in the form set out in the law and by markings, tags or as otherwise provided.

1. DIAMONDS: Selling artificially coated or tinted diamonds without notice in writing that the diamonds have been colored or tinted (Genl. Bus. Law. Sec. 229).

2. LINEN: Making, selling or possessing with intent to sell any collars or cuffs improperly indicated as "linen," "pure linen," or "all linen" (Genl. Bus. L. Sec. 396-e).

3. FALSE LABELS: Putting on any article of merchandise or on container, etc., any false description or indication of kind, number, quantity, weight, measure, place where made, quality or grade if quality or grade are required by law is a misdemeanor (Genl. Bus. L. Sec. 392-b, subd. 1).

a. It is also a misdemeanor to knowingly sell an article with such false description (Genl. Bus. L. Sec. 392-b, subd. 2) or to sell goods in bulk and orally or otherwise represent that they are the product of someone other than the actual producer (Genl. Bus. L. Sec. 392-b, subd. 3).

4. MARKS OF ORIGIN: A "mark of origin" is any name, mark or indication of the place or country from which an article was imported into the United States (Genl. Bus. L. Sec. 392-c, subd. 1-d). It is a misdemeanor to remove or conceal a mark of origin, or to knowingly sell an article with the mark of origin removed or concealed or to sell an article with the mark removed or concealed if inspection before sale would have revealed the removal or concealment. If the origin is plainly stated on the article in English, there is no violation, even if the "mark of origin" is removed or concealed (Genl. Bus. L. Sec. 392-c, subd. 2).

5. PRECIOUS METALS: The following are misdemeanors:

a. Improperly using marks "sterling," "sterling silver," "coin," "coin silver," (Genl. Bus. L. Secs. 220–227).

b. Improperly indicating degree or karat of fineness of articles of gold or gold alloy (Genl. Bus. L. Sec. 228).

c. Using improper mark or quality mark on articles which consist of or have applied any platinum, iridium, palladium, ruthenium, rhodium, osmium or any alloys of such metals (Genl. Bus. L. Sec. 230–238).

6. SECOND HAND HATS: Failure to label second hand hats properly or to display proper sign in place of business manufacturing or selling second hand hats (Genl. Bus. L. Sec. 392-a).

7. SECOND HAND WATCHES: Second hand watches must be identified as such with a tag if exposed, possessed or offered for sale or exchange or if sold or exchanged. A written invoice must be delivered with such watch when sold and a copy must be kept on file by the vendor for 3 years. All advertisements for such watches must state they are second-hand (Genl. Bus. L. Sec. 392).

8. TRADE-MARKS AND LABELS: A trade-mark is a mark used to indicate the maker, owner or seller of an article, fully adopted by him and usually affixed to an article of merchandise. Trade-marks include signatures or marks commonly used by painters, sculptors or other artists on a work of art (Genl. Bus. L. Sec. 279-j). A number of misdemeanors exist as to trade-marks, as follows:

a. False making or counterfeiting of trade-mark (Genl. Bus. L. Sec. 279-n. subd. 1).

b. Affixing false or counterfeit trade-mark (Genl. Bus. L. Sec. 279-n, subd. 2).

c. Knowing, selling, keeping or offering for sale, article with false or counterfeit trade-mark, or with genuine trade-mark without consent of trade-mark owner (Genl. Bus. L. Sec. 279-n, subd. 3).

d. Knowing possession of counterfeit trade mark, or dies or things for falsely making or counterfeiting a trade-mark (Genl. Bus. L. Sec. 279-n, subd. 4).

e. Making, selling, offering to sell or dispose of article with false trade mark or label appearing to indicate quantity character, place of manufacture or production or person manufacturing, packing, bottling, boxing or producing the article, but not indicating it truly (Genl. Bus. L. Sec. 279-n, subd. 5).

f. Selling, offering, or exposing for sale goods represented to be the product of another not in the original package, box or bottle and not under the *labels or* marks of the manufacturer entitled to use them (Genl. Bus. L. Sec. 279-n, subd. 6).

g. Selling or exposing for sale bulk goods without any *label or* trade mark, representing them as the production or manufacture of a person who is not the manufacturer (Genl. Bus. L. Sec. 279-n, subd. 7).

h. Selling, offering or exposing for sale with oral or other representation which is false as to maker, manufacturer, finisher, processor, marketer, bottler, etc. (Genl. Bus. L. Sec. 279-n, subd. 8).

i. Refilling and selling trade-marked containers for milk, ale, beer, cider, mineral water and other beverages (Genl. Bus. L. Sec 279-0).

j. Using without consent of owner trade-mark registered with the Secretary of State for milk, ale, beer, cider, mineral water, other beverages or articles of pastry (Genl Bus. L. Sec. 279-0).

k. Person engaged in business of buying and selling bottles, siphons, barrels, platters or other vessels or things knowingly selling trade-marked thing to a person whom he has reason to believe wrongfully intends to use the trade-mark or to refill in violation of law (Genl. Bus. L. Sec. 279-p).

MERCHANDISE ESTABLISHMENT OWNERSHIP: Every person, partnership, association or corporation owning or conducting any shop, store or other sale establishment must cause the true, full name, or names of the proprietor or owner or proprietors or owners to be publicly revealed and prominently and legibly displayed in English either on a window or a sign conspicuously placed on the exterior of the building. Failure to comply with the provisions of this law is a misdemeanor (Genl. Bus. L. Sec. 131).

MERCHANDISE, FOREIGN MATTER IN: It is a misdemeanor for any person, with intent to defraud, while putting up in a barrel, bag, bale, box, or other package any cotton, hops, hay or any other article of merchandise whatsoever which is usually sold by weight in a package, to place or conceal therein any other thing whatever. This law is applicable in any case where special provision for punishment is not provided in another statute (Agr. and Mkts. L. Sec. 194-e).

MUSIC: It is a misdemeanor to print, publish, etc., for profit without the consent of the owner anything containing the words or musical score of a musical composition which (or any part of which) is copyrighted under the laws of the United States (Genl. Bus. L. Sec. 338-a).

NAMES-MISDEMEANORS IN USE OF: The General Business Law covers a number of misdemeanor violations concerning the use of names, both in business and in other areas, as follows:

1. BENEVOLENT, HUMANE OR CHARITABLE ORGANIZATIONS: It is a misdemeanor to adopt or use the name of any benevolent, humane or charitable organization incorporated in New York (or a name so nearly resembling it as to be calculated to deceive the public) with intent to acquire or obtain for person or business reasons any benefit or advantage (Genl. Bus. L. Sec. 135).

2. CORPORATION NAMES: It is a misdemeanor for any person, association or corporation, (other than a moneyed corporation) to transact business under, or use a corporate name or a corporate title with the words "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," "benefit," as a part of the name or title (Genl. Bus. L. Sec. 139).

3. DECEPTIVE NAMES OR ADDRESSES: It is a misdemeanor for any person, firm or corporation to assume, adopt or use, with intent to deceive or mislead the public, any name or symbol which may deceive or mislead the public as to its identity or connection with any other person, firm or corporation, or to use any address or designation of location which may deceive or mislead the public as to the true address or location of such person, firm or corporation (Genl. Bus. L. Sec. 133).

4. PARTNERSHIPS: Doing business using the name as partner of one who is not a partner, or using the designation "and Company" or "& Co." when there is no actual partner is a misdemeanor. In some instances the law may permit the continuation of a partnership name by a successor or survivor (Genl. Bus. L. Sec. 132).

5. SECRET FRATERNAL ORGANIZATIONS: It is misdemeanor to use the name of any secret fraternal association, society, order or organization which has had a grand lodge in New York for ten years, whether in publications, circulars, advertisements, or in various other ways, without authority (Genl. Bus. L. Sec. 134).

6. TRUE NAME LAW: It is a misdemeanor for an indivdual to carry on or transact any business under any name except his own true name, unless he files a certificate with the County Clerk as required by the General Business Law. It is also a misdemeanor to carry on business as a member of a partnership without such filing (Genl. Bus. L. Sec. 130, subd. 1). It is a misdemeanor, under the same section, to fail to file necessary corrections or changes in certificates.

7. UNITED NATIONS: It is a misdemeanor for any person, firm or corporation to assume, adopt or use, without express authority

from the Secretary General of the United Nations, for any purpose, the name United Nations or UN (or any abbreviation of United Nations) or any official emblem or insignia of the Unted Nations, or any name, designation or style which may deceive or mislead the public as to the true identity of such persons, firm or corporation or official connection with the United Nations (Genl. Bus. L. Sec. 141).

PEDIGREES: It is a misdemeanor to obtain the false registration of an animal or a transfer of any such registration by any false pretense, in respect to any animal, from any club, association, society or company for improving the breed of cattle, horses, sheep, swine or other domestic animals. It is also a misdemeanor for any person to knowingly give a false pedigree of any animal (Agr. & Mkts. L. Sec. 95-b).

PIPE-LINE CORPORATIONS: The General Business Law makes it a misdemeanor for a pipe-line corporation or any officer, agent, manager or representative thereof to accept, make, or issue any receipt, certificate or order for any commodity unless the commodity is actually, at the time, in possession of the corporation (Genl. Bus. L. Sec. 91, subd. 1). It is a misdemeanor for such persons to deliver any commodity without presentation and surrender of all vouchers, receipts, orders or certificates issued or accepted for the commodity (Genl. Bus. L. Sec. 91, subd. 2). Failure to mark cancelled on and reissuing an order, voucher, etc., for a commodity which has been delivered is a misdemeanor (Genl. Bus. L. Sec. 91, subd. 3).

PLAYS AND OPERAS: It is a misdemeanor to produce any play ("dramatic composition") or opera in a public performance or for profit without the consent of the owner or proprietor of the play or opera. It does not matter whether the play or opera was copyrighted or published. It is also a misdemeanor to knowingly aid or take part in such a production (Genl. Bus. L. Sec. 338).

PUBLIC CONTRACTS: It is a misdemeanor to wilfully, knowingly and with intent to defraud, make or enter into, or attempt the same, with any other person or corporation, a contract, agreement, arrangement or combination to submit a fraudulent or collusive bid, or to refrain from submitting a bona fide competitive bid, to any board, officer, agency, department, commission or other agency of the state or of a public corporation. Violations are punishable by fine not over $5000 ($20,000 if a corporation), imprisonment not more than 1 year, or both (Genl. Munic. L. Sec. 103-e, subd. 1).

A "public corporation" definition means any county, city, town, village, school district or other division of the state established by law with taking or assessment authority (Genl. Munic. L. Sec. 103-e, subd. 2).

RACING FRAUDS: Section 12-a Unconsolidated Laws, entitled "Fraudulent Entries and Practices in Contests of Speed," create several fraud-type misdemeanors in respect to horse racing:

1. Knowing entry, furnishing for entry or bringing into state for entry in competition for a purse, prize, etc., any horse, mare, etc., under an assumed name, out of its class or painted or disguised or represented to be another animal (Unconsol. L. Sec. 12-a, subd. 1).

2. Owner, trainer or person in control of a trotter, pacer or running animal allowing it to compete under an assumed name, out of its class, or as another animal than the one it actually is (Unconsol. L. Sec. 12-a, subd. 2).

3. Knowingly driving in a competition for a purse, prize, etc., any trotter or pacer entered under an assumed name, or out of its class,

or painted or disguised or represented to be another or different animal (Unconsol. L. Sec. 12-a, subd. 3).

The true name of an animal is that registered with the Jockey Club. Knowingly procuring or aiding a false registration is a misdemeanor. (Unconsol. L. Sec. 12-a, subd. 3).

An animal's "class" is determined by its public performances in prior races, as provided by the printed rules of the person or organization conducting the competition (Unconsol. L. Sec. 12-a, subd. 3).

RENT DEPOSITS: Any landlord who disposes of or loses his interest in property occupied by a tenant or licensee and has any deposit or advance from the tenant or licensee, commits a misdemeanor if he does not within five days either:

1. Turn the deposit or advance over to his successor in the property and notify the tenant or licensee, or

2. Return the deposit or advance to the tenant or licensee, or

3. Keep the deposit or advance and notify the tenant or licensee (Genl. Oblig. L. Sec. 7-105).

STOCKS, BONDS AND SECURITIES: The General Business Law creates a number of crimes in respect to dealing or claimed dealings in stocks, bonds and other securities. The major offenses of this kind, all misdemeanors, are:

1. Reporting or publishing fictitious transactions in securities, with intent to deceive (Genl. Bus. L. Sec. 339).

2. Knowing false statement or advertisement as to value of or as to facts affecting the value of securities, with intent to deceive (Genl. Bus. L. Sec. 339-a).

3. Manipulation of prices of securities by means of pretended purchases or sales or any other fictitious transactions or devices (Genl. Bus. L. Sec. 339-b).

4. Trading by brokers against customers orders (broker buys for his own account same kind of security customer orders sold, or sells for his own account same kind customer orders bought, with intent on broker's part to trade against the customer's order) (Genl. Bus. L. Sec. 339-c).

5. Broker, knowing he (or his firm) is insolvent, accepts or receives from customer ignorant of the insolvency any moneys or securities belonging to the customer (except in liquidation of an existing indebtnedness of the customer) (Genl. Bus. L. Sec. 339-d).

6. Hypothecation of customer's securities (Broker pledging or disposing of securities in his possession whch belong to a customer, withont any right to do so, including instances where the broker has a lien on the customer's securities and pledges or disposes of them for more than the amount due him) (Genl. Bus. L. Sec. 339-e).

7. Refusal to deliver memorandum or statement of purchase or sale to customer within 24 hours after written demand (Genl. Bus. L. Sec. 339-f).

TICKETS TO THEATERS AND AMUSEMENTS: The General Business Law creates several violations in respect to tickets of admission for theaters, concert halls, places of public amusement, etc., to protect the public from fraud (Genl. Bus. L. Sec. 167). Violations, all misdemeanors (Genl. Bus. L. Sec. 169-i) are:

1. Resale of tickets of admission by unlicensed persons or firms (Genl. Bus. L. Sec. 168).

2. Ticket speculating is forbidden. No one may sell tickets on the street or offer tickets for sale by word of mouth, calling out, or similar means from a building store, etc (Genl. Bus. L. Sec. 168-a).

3. If a price is charged for admission to any theater, place of amusement or entertainment or place where public exhibitions, games, contests or performances are held, there must be printed on every ticket (or other evidence of the right to entry) the price charged for entry and the maximum premium (not over $1.50 plus tax) at which it may be resold (Genl. Bus. L. Sec. 169-c).

4. Any owner, operator, manager, treasurer, assistant treasurer of a theater or their representatives who demands or receives a premium or price for tickets in excess of the established price printed on the ticket, is guilty of a misdemeanor (Genl. Bus. L. Sec. 169-k).

TRANSFERS AND TRANSPORTATION TICKETS: It is a misdemeanor to issue, sell or give away a transfer ticket of a street, elevated or underground railroad or omnibus line to a person not lawfully entitled to receive it, and for one not lawfully entitled to receive or use one (Genl. Bus. L. Sec. 120). Other violations in respect to railroad, steamer and passage tickets generally are set out in Article 9-A of the General Business Law, sections 115 through 127.

"VETERANS" SALES OF POPPIES, ETC.: Any person, whether or not a veteran soldier, sailor, marine, or army nurse, who in his own interests or to derive pecuniary benefit for himself or for anyone other than an organization expressly designated and authorized to administer veteran relief sells or offers to sell poppies, forget-me-nots, daisies, flags or other articles sold for patriotic purposes, while claiming that such sale or offer to sell is made as agent of, or for the benefit of such organization authorized to administrate veteran relief, is guilty of a misdemeanor, punishable by a fine of not more than fifty dollars or by imprisonment for not more than six months, or by both such fine and imprisonment (Genl. Bus. L. Sec. 396-g).

The authorized organizations are: Grand Army of the Republic; United Spanish War Veterans; American Legion; Disabled American Veterans; Veterans of Foreign Wars of the United States; Jewish War Veterans of the United States, Incorporated; Catholic War Veterans, Incorporated; Army and Navy Union of the United States; Italian American War Veterans of the United States, Incorporated; Polish Legion of American Veterans, Incorporated; The Marine Corps League; Military Order of the Purple Heart, Inc.; Amvets; Veterans of World War 1, U.S.A., Inc. (Soc. Welf. L. Sec. 168).

WAREHOUSE RECEIPTS: Any warehouseman, or any officer, agent or servant of a warehouseman who issues or aids in issuing a warehouse receipt knowing that the goods for which it was issued have not been received or are not under his control is guilty of a misdemeanor (Genl. Bus. L. Sec. 105). It is also a misdemeanor to issue a warehouse receipt fraudulently and knowing that it contains a false statement (Genl. Bus. L. Sec. 106). Additional misdemeanors in respect to warehouse receipts are set out in Article 9 of the General Business Law, including issuing duplicates not so marked (Genl. Bus. L. Sec. 107), issuing without statement of ownership by warehouseman (Genl. Bus. L. Sec. 108), delivery of goods without retrieving negotiable warehouse receipt (Genl. Bus. L. Sec. 109, negotiating a warehouse receipt for goods deposited which are subject to a security interest (Genl. Bus. L. Sec. 110) and issuing a non-negotiable receipt without marking it as such (Genl. Bus. L. Sec. 111).

INVESTIGATIONS

Where complainants want only to recoup their losses, officers should require them to sign the information, to support a warrant of arrest. Insofar as possible, officers should, in such cases, make arrests with warrants.

Where the crime was committed in the victim's presence, the victim can make a citizen's arrest and the officer may assist in such an arrest and thereafter take custody of the arrested person.

Frequently, in fraud cases, the direct physical evidence found in other cases is lacking. There will be no stolen loot in the offender's possession, no jimmy marks on window sills and no fingerprints of value, and so on. Proof will often depend solely on testimony as to the events constituting the crime, without physical evidence to support such testimony. Officers receiving complaints should thus take great pains to pin down specific facts (in signed statements, if possible) and should question complaining victims and witnesses in detail.

If any physical evidence does exist, it should be carefully preserved. Officers should in all pertinent cases make specific inquiry as to whether documentary proof of any kind and possible fingerprint or handwriting evidence may exist. They should of course endeavor to take possession of any such evidence the complainant may have, as a means of safeguarding the same.

Fraud in Insolvency cases require obtaining proof not only of the fact that there was a conveying, transferring, obtaining, etc., of an asset of the debtor, but also the fact that the offender knew of actual or pending proceedings for appointment of an administrator or other arrangement for the benefit of creditors. Officers should also be alert to information relating to assets other than the specific asset or assets which were the subject of complaint. It will frequently be found that other assets adapted to fraudulent transfer or fraudulent practices permit development of better proof than the one or ones which were the subject of the initial complaint.

It is of value to fully question complainants and complaining witnesses to extract all possible information they have in respect to the matter complained of. Alertness here will often permit the officer to identify facts and evidence which can be pinned down for prosecutive use if immediate action is taken but which may be well destroyed or otherwise become unavailable if action is delayed until subjects, suspects and others in the case become aware of police interest. A simple example would be a commodity available for loading on a motor truck which could be "sold" and loaded on an out-of-state trucker's vehicle and be on its way to the midwest or California in a matter of a couple of hours, and the trucker or vehicle never identified.

In security interest, mortgage or conditional sale fraud cases, officers must take care to fully identify the document or documents relied on as creating the security interest, mortgage, conditional sale, etc., which is a necessary element of the crime. The document itself or an authentic copy should be secured in the early stages of the investigation. Records of the county or town clerk will frequently be a logical source of documentary proof in such case, as will records of the Secretary of State, since under various former laws, all three offices were appropriate for filing under certain conditions. Generally, the current rule is to file with the county clerk (and also the Secretary of State in some instances).

In all Fraudulent Accosting cases testimony will be required that the type of "con" game involved is a "known" game and the details of statements common or usual to such games. This is essential to furnish the necessary proof establishing that statements of the defendant were the

same statements as are commonly used in such games. This does not mean that there are any set phrases which must be proved but that the statements of the defendant are the same kind of statement with the same tendency or tenor required for the "con" game. The testimony may be given by the arresting officer, if he is sufficiently knowledgable. It may be testimony of any other person who can be qualified on the type of "con" game involved, whether an officer who has made several successful arrests for such games in the past, or victims of the same type of "con".

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70. GAMBLING

GAMBLING DEFINED: A person engages in gambling who:

1. Stakes or risks something of value on:
   a. The outcome of a contest of chance, or
   b. A future contingent event not under his control or influence,
2. Upon an agreement or understanding that he will receive something of value,
3. In the event of a certain outcome (P.L. Sec. 225, subd. 2).

SOMETHING OF VALUE: "Something of value" is specifically defined by the Penal Law to include any of the following:

1. Money or property, or
2. Any token, object or article which can be exchanged for money or property, or
3. Any form of credit or promise, which:
   a. Directly or indirectly contemplates transfer of money or property, or any interests in money or property, or
   b. Involves
      (1) Extension of a service, or
      (2) Extension of entertainment, or
      (3) Extension of a privilege of playing at a game or scheme without charge (P.L. Sec. 225.00, subd. 6).

CONTEST OF CHANCE: A "contest of chance" is any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that the skill of the contestants may also be a factor therein (P.L. Sec. 225.00, subd. 1).

a. As an example, a poker game is a contest of chance, even though skillful players may expect to win from unskillful players, since there is an element of chance in the fall of the cards.

FUTURE CONTINGENT EVENT: A future event is one which has not yet occurred at the time of the staking or risking (even if it occurs only an instant later). A contingent event is one which depends upon the occurrence of something in the future, which something is itself uncertain or unknown.

CRIMES UNDER THE NEW PENAL LAW: The gambling crimes of the old Penal Law have been simplified and consolidated by the new law into three crimes: (1) Promoting Gambling, (2) Possession of Gambling Records (each in two degrees), and (3) Possession of Gambling Devices (no degrees).

PROMOTING GAMBLING IN THE SECOND DEGREE: A person is guilty of Promoting Gambling in the Second Degree who:

1. Knowingly,
2. Advances or profits from,
3. Unlawful gambling activity (P.L. Sec. 225.05).

Promoting Gambling in the Second Degree is a Class A misdemeanor.

ADVANCING GAMBLING ACTIVITY: A person "advances gambling activity" when, acting other than as a player, he engages in conduct which materially aids any form of gambling activity.

Such conduct includes (but is not limited to) conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation.

One advances gambling activity when, having substantial proprietary or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits such to occur or continue or makes no effort to prevent its occurrence or continuation (P.L. Sec. 225.00, subd. 4).

PROFITING FROM GAMBLING ACTIVITY: A person "profits from gambling activity" when, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity (P.L. Sec. 225.00, subd. 5).

PLAYERS: A "player" is any person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity.

A person who gambles at a social game of chance on equal terms with the other participants therein does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor and supplying cards or other equipment used therein.

A person who engages in "bookmaking", as defined later in this section is not a "player" (P.L. Sec. 225.00, subd. 3).

Under the old Penal Law, the courts had held that private, non-commercial gambling was not unlawful, where a person participated in a gambling game (or even a series of gambling games) on the same basis as other players, for amusement or recreation (Peo. vs. Bright, 203 NY 73). A similar principle has been established in the new Penal Law by definition of "player," and the exemption of "players" from the definitions of "advancing gambling activity" and "profiting from gambling activity."

WHAT IS UNLAWFUL: For the purposes of the gambling laws, "unlawful gambling activity" is any gambling not specifically authorized by law (P.L. Sec. 225.00, subd. 12).

PROMOTING GAMBLING IN THE FIRST DEGREE: A person is guilty of Promoting Gambling in the First Degree who:

1. Knowingly advances unlawful gambling activity or profits from unlawful gambling activity by:
   a. Engaging in bookmaking,
   b. To the extent that he receives or accepts in any one day:
      (1) More than five bets,
      (2) Totaling more than $5000 (P.L. Sec. 225.10, subd. 1); or

2. Knowingly advances unlawful gambling activity or profits from unlawful gambling activity by:
   a. Receiving, in connection with a lottery or policy scheme or enterprise:
      (1) Money or written records from a person other than a player whose chances or plays are represented by such money or records, or
      (2) In any one day more than $500 of money played in such scheme or enterprise (P.L. Sec. 225.10, subd. 2).

Promoting Gambling in the First Degree is a Class E felony.

BOOKMAKING: The word "bookmaking" in the Penal Law means advancing gambling activity by:

1. Unlawfully accepting bets,
2. Upon the outcome of future contingent events,
3. From members of the public,
4. As a business rather than in a casual or personal fashion (P.L. Sec. 225.00, subd. 9).

LOTTERY DEFINED: A "lottery" is any unlawful gambling scheme in which:

1. The players pay (or agree to pay),
2. Something of value,
3. For chances represented and differentiated by numbers or by combinations of numbers or by some other media,
4. One or more of which chances are to be designated the winning ones, and
5. The winning chances are to be determined by:
   a. A drawing, or
   b. Some other method based upon the element of chance, and
6. The holders of the winning chances are to receive something of value (P.L. Sec. 225.00, subd. 11).

STATE LOTTERY: Article 30, Sections 1300-1315, Tax Law, makes a State Lottery for Education, operated by the State Lottery Commission, entirely lawful. All other lottery is unlawful.

LOTTERY DRAWN OUT-OF-STATE: A gambling offense consisting of the commission of acts in New York relating to a lottery is no less criminal because the lottery itself is drawn or conducted outside New York and is legal in the jurisdiction where drawn or conducted (P.L. Sec. 225.40).

POLICY OR NUMBERS: "Policy" or "the numbers game" is any form of lottery in which the winning chances or plays are not determined on the basis of a drawing or other act on the part of those conducting or connected with the scheme but instead are determined on the basis of the outcome of a future contingent event (or events) not related to the particular scheme (P.L. Sec. 225.00, subd. 11).

POSSESSION OF GAMBLING RECORDS IN THE SECOND DEGREE: A person is guilty of Possession of Gambling Records in the Second Degree who:

1. Possesses,
2. With knowledge of the contents,
3. Any writing, paper, instrument or article of a kind commonly used in:
   a. The operation or promotion of a bookmaking scheme or enterprise (P.L. Sec. 225.15, subd. 1) or
   b. The operation, promotion or playing of a lottery or policy scheme or enterprise (P.L. Sec. 225.15, subd. 2).

In any prosecution for Possession of Gambling Records in the Second Degree based upon the operation, promotion or playing of a lottery or policy scheme or enterprise, it is a defense that the writing, paper, instrument or article possessed by the defendant constituted, reflected or represented plays, bets or chances of the defendant himself in a number not over 10 (P.L. Sec. 225.15, subd. 2). If any such defense is raised at trial, the prosecution has the burden of disproving it beyond a reasonable doubt (P.L. Sec. 25.00, subd. 1).

Possession of Gambling Records in the Second Degree is a Class A misdemeanor.

POSSESSION OF GAMBLING RECORDS IN THE FIRST DEGREE: A person is guilty of Possession of Gambling Records in the First Degree who:

1. Possesses,
2. With knowledge of the contents,
3. Any writing, paper, instrument or article of a kind commonly used in:
   a. The operation or promotion of a bookmaking scheme or enterprise and constituting, reflecting or representing more than:
      (1) Five bets
      (2) Totalling more than $5000 (P.L. Sec. 225.20, subd. 1); or
   b. The operation, promotion or playing of a lottery or policy scheme or enterprise and constituting, reflecting or representing more than:
      (1) 500 plays or chances therein (P.L. Sec. 225.20, subd. 2).

Possession of Gambling Records in the First Degree is a Class E felony.

PRESUMPTION IN POSSESSION-GAMBLING RECORDS: Proof of possession of any gambling record specified in the Possession of Gambling Records sections (P.L. Sec. 225.15 and 225.20) is presumptive evidence that it was possessed with knowledge of its character or contents (P.L. Sec. 225.35, subd. 1).

DEFENSE TO POSSESSION OF GAMBLING RECORDS: In any prosecution for Possession of Gambling Records, it is a defense that the writing, paper, instrument or article possessed by the defendant was neither used nor intended to be used in:

1. The operation or promotion of a bookkeeping scheme or enterprise, or
2. In the operation, promotion or playing of a lottery or policy scheme or enterprise (P.L. Sec. 225.25).

When a defendant puts in such a defense, the prosecution has the burden of disproving it beyond a reasonable doubt (P.L. Sec. 25.00, subd. 1).

POSSESSION OF A GAMBLING DEVICE: A person is guilty of Possession of a Gambling Device who:

1. With knowledge of its character,

2. Manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of;

a. Any slot machine (P.L. Sec. 225.30, subd. 1), or

b. Any other gambling device believing that the device is to be used in the advancement of unlawful gambling activity (P.L. Sec. 225.30, subd. 2).

Possession of a Gambling Device is a Class A misdemeanor.

WHAT IS A SLOT MACHINE: A "slot machine" is a gambling device which, as a result of the insertion of a coin or other object, operates, either completely automatically or with the aid of some physical act by the player, in such manner that, depending upon elements of chance, it may eject something of value (P.L. Sec. 225.00, subd. 8).

A device so constructed, or readily adaptable or convertible to such use, is no less a slot machine because it is not in working order or because some mechanical act of manipulation or repair is required to accomplish its adaption, conversion or workability. Nor is it any less a slot machine because, apart from its use or adaptability as such, it may also sell or deliver something of value on a basis other than chance (P.L. Sec. 225.00, subd. 8).

A machine which sells items of merchandise which are of equivalent value, is not a slot machine merely because such items differ from each other in composition, size, shape or color (P.L. Sec. 225.00, subd. 8).

GAMBLING DEVICE DEFINED: A gambling device is any device, machine, paraphernalia or equipment which is used or usable in the playing phases of any gambling activity, whether such activity consists of gambling between persons or gambling by a person involving the playing of a machine (P.L. Sec. 225.00, subd. 7).

Lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices (P.L. Sec. 225.00, subd. 7).

1. The term gambling device thus includes not only mechanical things like a roulette wheel or chuck-a-luck cage but also dice, cards, etc.

PRESUMPTION IN POSSESSION-GAMBLING DEVICE: Proof of possession of any gambling device is presumptive evidence of possession of it with knowledge of its character or contents (P.L. Sec. 225.35, subd. 1).

PROVING OCCURRENCE OF SPORTING EVENT: In any gambling prosecution in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine or other periodically printed publication of general circulation is admissible evidence and constitutes proof of the occurrence of the event. This proof creates a presumption only, and the defendant is permitted to prove that the event did not in fact occur, if he can (P.L. Sec. 225.35, subd. 2).

1. Thus, in a prosecution for gambling on a local football game, it is only necessary to properly introduce a copy of the local newspaper carrying a story on the game to establish that the game was played. A copy of "News Week," "Sports Illustrated," "The Sporting News" or any similar publication would be equally as admissible as a newspaper to prove the event, if they carried a story that it had occurred.

ILLEGAL WAGERS, BETS AND STAKES: All wagers, bets or stakes, made to depend upon any race, or upon any lot, chance, casualty, or unknown or contingent event whatever are unlawful (Genl. Oblig. L. Sec. 5-401).

CONTRACTS ON ACCOUNT OF MONEY OR PROPERTY WAGERED ARE VOID: All contracts for or on account of any money or property, or thing in action wagered, bet or staked, as provided in Section 5-401, are void (Genl. Oblig. L. sec. 5-411).

Every security, where the whole or any part of the consideration is any money or other valuable thing won by playing at any game whatsoever, or won by betting on the hands or sides of such as do play at any game, or where the same made for repaying any money knowingly lent or advanced for the purpose of gaming or betting is utterly void. (Genl. Oblig. L. sec. 413).

If the property involved is real estate, special rules apply under Section 413.

TRANSFERS OF PROPERTY IN PURSUANCE OF LOTTERY ARE VOID: Every grant, bargain, sale, conveyance, or transfer of any real estate, or of any goods, chattels, things in action, or any personal property, which shall hereafter be made in pursuance of any lottery, or for the purpose of aiding and assisting in such lottery, game or other device, to be determined by lot or chance is void and of no effect (Genl. Oblig. L Sec. 5-451).

AGREEMENTS ON ACCOUNT OF RAFFLING ARE VOID: All contracts, agreements and securities made on account of any raffle or distribution of money, goods or things in action, for the payment of any money or other valuable thing, in consideration of a chance in such raffle or distribution, or for the delivery of any money, goods or things in action, so raffled for, or agreed to be distributed are utterly void (Genl. Oblig. L. Sec. 5–417).

PROPERTY STAKED MAY BE RECOVERED: Any person who shall pay, deliver or deposit any money, property or thing in action, upon the event of any wager or bet prohibited, may sue for and recover the same of the winner or person to whom the same shall be paid or delivered, and of the stakeholder or other person in whose hands shall be deposited any such wager, bet or stake, or any part thereof, whether the same shall have been paid over by such stakeholder or not, and whether any such wager be lost or not (Genl. Oblig. L. Sec. 5-419).

LOSERS OF CERTAIN SUMS MAY RECOVER THEM: Every person who shall, by playing at any game, or by betting on the sides or hands of such as do play, lose at any time or sitting, the sum or value of twenty-five dollars or upwards, and shall pay or deliver the same or any part thereof, may within three calendar months after such payment or delivery, sue for and recover the money or value of the things so lost and paid or delivered, from the winner thereof (Genl. Oblig. L. Sec. 5-421).

MONEY PAID FOR LOTTERY TICKETS MAY BE RECOVERED: Any person who shall purchase any share, interest, ticket, certificate of any share or interest, or part of a ticket, or any paper or instrument purporting to be a certificate of any share or interest in any ticket, or in any portion of any illegal lottery, may sue for and recover double the sum of money, and double the value of goods or things in action, which he may have paid or delivered in consideration of such purchase, with double costs of suit.

Any person who shall have paid any money, or valuable thing, for a chance or interest in any lottery or distribution, prohibited by the Penal Law, may sue for and recover the same of the person to whom such payment or delivery was made (Genl. Oblig. L. Sec. 5-423).

FEDERAL VIOLATIONS: It is a Federal felony for anyone:

1. Engaged in the business of betting or wagering,

2. To knowingly use a wire communication facility (telegraph, telephone, TV, etc.),

3. For the transmission in interstate or foreign commerce (from or to New York State),

4. Of bets or wagers, or information assisting in the placing of bets or wagers on any sporting event or contest, or

5. Of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or

6. For information assisting in the placing of bets or wagers.

The Federal law permits any law enforcement agency to notify in writing the communications company whose facilities are unlawfully used and the company must then discontinue service to the offender (Title 18 U.S. Code, Sec. 1084).

Violations of this Federal law are handled by the FBI, which should be notified of any violations known. Violations are punishable by fine up to $10,000, imprisonment up to 2 years, or both.

It is also a Federal felony for anyone except a common carrier in the usual course of business to:

1. Knowingly carry or send in interstate or foreign commerce (from or to New York State)

2. Any record, paraphernalia, ticket, certificate, bill, slip, token, paper, writing or other device

3. Used or to be used or adapted, devised or designated for use in bookmaking, wagering pools with respect to a sporting event, or in a numbers, policy, bolita or similar game (Title 18 U.S. Code, Sec. 1953).

This Federal law excepts legal pari-mutuel paraphernalia, bingo, paraphernalia (when legal in New York) when brought into New York and transporting any newspaper or similar publication (Title 18 U.S. Code, Sec. 1953, subd. b). The FBI handles violations.

FEDERAL LOTTERY LAWS: It is a Federal felony, punishable by fine up to $1,000, imprisonment up to 2 years or both to:

1. Bring into the United States, for the purpose of disposing of the same, or

2. Knowingly deposit with any express company or

3. Carry in interstate or foreign commerce, or

4. Knowingly take or receive (when so carried)

5. Any paper, certificate or instrument

a. Purporting to be or to represent a ticket, chance, share or interest in or dependent upon the event of

b. A lottery, gift enterprise or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or

6. Any advertisement of or list of prizes drawn or awarded by means of such a lottery, etc. (Title 18 U.S. Code, Sec. 1301).

Federal law also prohibits the use of the mails to send any offer, ticket, money, money orders, etc., for tickets or any newspaper or publication advertising lotteries or containing any list of any part or all of the prizes

(Title 18 U.S. Code, Sec. 1302, a felony). Radio station broadcasting of any advertisement of or information concerning a lottery or lottery prizes is also forbidden (Title 18 U.S. Code, Sec. 1304, a misdemeanor).

Bona fide fishing contests, where prizes are awarded for specie, size, weight or quality of fish caught by contestants do not come under these Federal prohibitions (Title 18 U.S. Code, Sec. 1305).

The FBI handles interstate transportation of lottery ticket violations and other violations under Section 1301. U. S. Postal Inspectors handle violations relating to the mails. Furnish any complaints on radio broadcasts in violation of section 1304 to the FBI.

FEDERAL LAW ON SLOT MACHINES AND GAMBLING DEVICES: Federal law forbids knowingly transporting "gambling devices" into any state where they are not specifically made lawful by a state statute (Title 15 U.S. Code, Sec. 1172). Violations are felonies, punishable by fine up to $5,000, imprisonment up to 2 years or both (Title 15 U. S. Code, Sec. 1176).

"Gambling Devices" are defined in Federal Law as

1. Any slot machine, or
2. Any machine or mechanical device an essential part of which is a drum or reel with insignia thereon, or
3. Any other machine or mechanical device, including roulette wheels and similar devices designed and manufactured primarily for gambling
4. Which when operated may deliver as result of chance any money or property, or
5. By the operation of which a person may be entitled, as a result of chance, to receive any money or property (Title 15 U.S. Code, Sec. 1171, subd. a 1, 2).

The Federal Law includes in the definition of gambling device any subassembly or essential part of any described machine or mechanical device not attached to the machine or device (Title 15 U.S. Code, Sec. 1171, subd. a-3). Excluded from the definition are machines or devices primarily for use at a racetrack in connection with pari-mutuel betting, machines not designed primarily for gambling, such as coin-operated bowling alleys, shuffleboards, pinball machines, if the machines do not deliver or entitle one to receive money or property when operated, and claw, crane or digger machines and similar devices not coin-operated and designed primarily for use at carnivals or county or state fairs (Title 15 U.S. Code, Sec. 1178).

Investigations under this Federal law are handled by the FBI. Under the law, FBI Special Agents may seize as forfeited to the United States any gambling device transported in violation of the law (or otherwise in violation) (Title 15 U.S. Code, Sec. 1177).

Other provisions of Federal law require registration with the Attorney General of the United States of all manufacturers of gambling devices if their business in any way affects interstate or foreign commerce. They must number all devices manufactured and maintain certain records which are open to FBI inspection (Title 15 U.S. Code, Sec. 1173).

All gambling devices and the packages containing them, when shipped or transported, must be clearly labeled to show nature of article and name and address of shipper and consignee (Title 15 U.S. Code, Sec. 1174).

SPECIAL NEW YORK GAMBLING LAWS

AGRICULTURAL FAIRS: No gambling device or devices, instrument or contrivance in the operation of which bets are laid, no wheel of for-

tune and no games of chance are permitted on the grounds during the annual meeting, fair or exposition of any county, town or other agricultural society. It is the duty of the State Police to enforce this law (Agr. & Mkts. L. Sec. 288).

EMPLOYMENT AGENCIES: It is a misdemeanor for any employment agency to knowingly permit gamblers to frequent the agency (Genl. Bus. L. Sec. 187, subd. 6; Sec. 190).

MILITIA: The Commanding Officer of any unit of the organized militia (national guard, naval militia and state guard) may prohibit all gambling on any facility of the militia or at any place where the unit is performing military duty and may abate any such gambling as a common nuisance (Mil. L. Sec. 239, subd. 2).

HORSE RACING AND PARI-MUTUEL BETTING

Title 21 of the Unconsolidated Laws contains provisions for forming corporations "for the purpose of raising and breeding and improving the breed of horses" (Section 7901) and permits such a corporation to hold race meetings and conduct running races at such meetings (Section 7904). The State Racing Commission, a division of the Department of State, has the power to supervise running race meetings (Sections 7907, 7908, and licenses the same (Section 7909).

All racing or trials of speed between horses or other animals for any bet, stake, or reward, except as allowed by Title 21 or special laws, is a public nuisance; and every person acting or aiding therein, or making or being interested in such bet, stake or reward is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the County Jail or Penitentiary for a period of not more than one year; and in addition to this penalty he forfeits to the state all title or interest in any animal used with his privity in the race or trial of speed, and in any sum of money or other property bet or staked (Unconsol. L. Sec. 7918).

PARI-MUTUEL BETTING ON HORSE RACES: Section 7952 of the Unconsolidated Laws specifically makes it lawful to have pari-mutuel betting on horse races, notwithstanding the provisions of any other law prohibiting or restricting bookmaking or any other kind of gambling. However, such pari-mutuel betting, under the statute, can only be conducted within the grounds or enclosures of a race track on races at such tracks and on such dates as authorized under the Pari-mutuel Revenue Law (Unconsol. L. Secs. 7951-8052).

BINGO

It is a Class A misdemeanor for anyone except an organization duly licensed by the State Bingo Control Commission to hold, operate or conduct bingo (P.L. Sec. 225.05). Bingo is a game of chance, commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random (Genl. Munic. L. Sec. 476).

Article 14-h, General Municipal Law, sections 475-499, controls legal bingo. Bingo is only permitted where a municipal legislative body has provided that it shall be legal within the territorial limits of the municipality (Genl. Munic. L. Sec. 478).

Authorized organizations may be licensed to conduct bingo generally or to conduct "limited period bingo" which is conducting bingo for a period of not more than seven of eight consecutive days in any one year, at a festival, bazaar, carnival or similar function held by the licensed organization (Genl. Munic. L. Sec. 476, subd. 4, 10).

The only organizations which may be approved to conduct bingo are bona fide religious, charitable, educational, fraternal, civic, service, veterans' or volunteer firemen's organizations which operate without profit to members and which have for one year engaged in one or more purposes approved by the law (Genl. Munic. L. Sec. 475, 476, subd. 4).

All persons, associations or corporations duly licensed, under Article 14-h of the General Municipal Law, to operate bingo games, are subject to certain controls, the violation of which are misdemeanors. These violations are set out in Sections 495 and 495-a, General Municipal Law and include false statement in applications, paying excess rentals, failing to keep proper books and records, diverting proceeds of Bingo or violating any provision of the Bingo laws.

Bingo licenses must be displayed at the place where bingo is played at all times while bingo is conducted (Genl. Munic. L. Sec. 483, subd. 1).

It is unlawful to conduct bingo on premises leased on the basis of a percentage of the receipts or net profits (Genl. Munic. L. Sec. 479, subd. 2). No person may receive any remuneration for participating in the management or operation of bingo (Genl. Munic. L. Sec. 479, subd. 8). The entire net proceeds of any bingo must be devoted exclusively to the lawful purposes of the authorized organization.

No bingo prize may exceed the value of $250 and no series of prizes on any one bingo occasion may exceed more than an aggregate $1000 (Genl. Munic. L. Sec. 479, subd. 5, 6).

No bingo games can be held on Sunday unless specifically authorized in the license (Genl. Munic. L. Sec. 485). No bingo except limited period bingo may be conducted more often than six days in any one calendar month (Genl. Munic. L. Sec. 487).

No bingo can be conducted in any room or outdoor area where alcoholic beverages are sold, served or consumed during the progress of the game or games (Genl. Munic. L. Sec. 487).

No admission fee over a dollar can be charged for regular bingo and only a fee of 15 cents a game can be charged for limited period bingo (Genl. Munic. L. Sec. 489).

Officers requiring additional data on bingo should inquire of the State Bingo Control Commission at Albany for details.

All officers should determine the bingo ordinances, if any pertaining to their municipality. Such ordinances may be more restrictive than the state law (Genl. Munic. L. Sec. 479).

INVESTIGATIONS

Illegal gambling is a mainstay of organized crime. Officers' investigations should therefore be directed to developing cases against the responsible operators as well as against the sellers, runners, pickup men and such minor figures.

Informant coverage and careful observation by the officer on patrol are the basics of proper enforcement of the gambling laws.

Effective informants and sources who can and will furnish information on gambling activity must be developed.

In addition, officers on patrol must be continually alert for indications of bookmaking, numbers or policy sales. Certain types of business establishments, lend themselves most readily to gambling action. Bars, newsrooms, smoke shops, cigar stores, barber shops and shoe-shine stands are usual kinds of establishments where gambling customers are accomodated. And many offenders, of course, take bets or sell numbers or policy right on the street. Careful and continued observation will normally detect signs of such activity.

Uniformed officers are at a disadvantage in personal observation of sufficient facts as to acts of illegal gambling to permit summary arrests of violators. Effective action will ordinarily require the uniformed officer to report his observations so that prompt and discreet plainclothes investigation may be initiated.

Telephone bookmaking, where the bookmaker receives calls on private premises from various known customers cannot be detected by normal observation on patrol. Informant coverage is essential to developing information that such activity exists.

Gambling investigations, other than those involving possession of slot machines and other gambling devices, are basically the same, whether the gambling is bookmaking, numbers, policy or other kinds of lottery. The basic steps are (1) initial complaint (or observation), (2) surveillance, (3) eavesdropping if of value, and (4) warrant and raid.

The initial complaint, whether from an informant or other person, should be developed as fully as possible for facts which will identify the offender and any associates known, together with details as to times and locations of violations. Do not overlook customer identities. Customers may make useful witnesses. Players are not violators, under the law, and may be required to testify.

Frequently initial information does not definitely identify the offender or offenders and this is one prime objective of the next step: surveillance.

All surveillances must be planned in detail before being initiated. Always consider duration (brief periods of surveillance may avoid inviting attention of violators or their sympathizers). Consider possibilities in surveillance from a fixed location, from vehicles and on foot. Consider the need for and kind of disguise. It is frequently not required. Consider manpower required. Ordinarily at least two automobiles will be minimum for vehicle surveillance, preferably two men in each. A single officer in one car can, of course, do a creditable job but must exercise more discretion and probably more periods of surveillance.

All officers on a surveillance should maintain a surveillance log, which will include, in chronological order, a brief account of every pertinent occurrence, showing exact time and date. Such logs will be of value in testifying and should be maintained with care, as they will be open to inspection of defense counsel in court when used in testifying.

Eavesdropping is a usual and frequently essential next step in gambling investigations. Care must be taken as to determining the location of the offender in telephone bookmaking cases since varied pieces of electronic equipment have been used by offenders to redirect calls from the apparent locations of their phones. Such equipment includes installations which permit the bookmaker to dial his phone from outside and get incoming calls through it, so that he is never physically in or near the place where his phone or phones are located. It may be necessary to conduct additional surveillances to determine the facts in such instances.

A major problem in eavesdropping cases is identification of the voices of subjects heard on the line. A basic step to assist in this problem is careful surveillance to establish the identity of each person at the bookmaking phone. This problem should be borne in mind throughout the course of the eavesdropping and all facts, including officer recognition by sound, tending to identify the voices on the line, should be developed. The officer's basis for recognition by sound should have as much factual support as possible, including participation in interview of the subject or subjects following arrest.

Arrest warrants and, when indicated, search warrants should always be secured where time permits. Ordinarily, the most appealing and con-

vincing physical evidence is obtained as a result of search following and incident to the planned arrests of the subjects.

In all gambling arrest planning, speed of entry and arrest is an essential, since the evidence to be found may usually be readily destroyed if the offenders to be arrested have sufficient warning. Gamblers, for example, may burn records or use "flash paper" for maintaining records (flash paper is a chemical impregnated paper which will burn instantaneously when lit or touched with the end of a lit cigar or cigarette). Do not overlook burned documents in securing evidence. If the burned paper is reasonably intact, laboratory examination techniques will often be able to develop the writing or printing thereon.

In handling slot machine and other gambling device cases, the officer must ensure that accurate facts are developed as to ownership and/or responsibility. The actual operation of the machine or device must be established. Use of a plainclothes officer who will play the machine or device is usual.

Crap games are a special type of gambling investigation. They ordinarily require informant coverage sufficiently good so that the officer is informed when a game will operate and its location. The "raid" or planned arrests require police manpower. An undercover man who can enter the game and verify the offense or a physical situation permitting the officers to surreptitiously observe the game in progress are necessary. After the arrests immediate questioning of the apparent operators should always be undertaken in efforts to obtain waiver of rights to be silent and subsequent unguarded admissions.

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71. HIGHWAYS

The following laws relate to the use of public highways by any animal, person or vehicle and are not restricted to motor vehicles.

Certain highways are designated as "State Thruways." The State Thruway routes are specified in Section 349-a, Highway Law. By statute, the Superintendent of State Police exercises jurisdiction and control over user and vehicular *traffic* on any State Thruway, immediately upon its being opened to the public by issuance of an official opening order by the Superintendent of Public Works (Highway Law, Sec. 346).

The crimes and violations set out in this Manual section are in the enforcement jurisdiction of the municipal law enforcement agency as to any highways in a municipality.

MALICIOUS MISCHIEF AND INJURIES TO HIGHWAYS: Under the old Penal Law, the felony of wilful or malicious injury to highways, bridges, and other properties, (Injuring Highway Boundary, Pier, Sea-wall, Dock, etc.) was set out in Section 1423, subdivisions 1 and 9. This specific section was omitted from the current law. Similar types of violations, involving intended, malicious or careless injury to or destruction of highways, their bridges or appurtenances must now be prosecuted under various sections of the Penal Law, including Reckless Endangerment, Reckless Endangerment of Property, Criminal Mischief and Criminal Tampering. Officers should consult those sections in this Manual (Sections 27, 49 and 52). The most usual charge will be Criminal Mischief, which is intentional or reckless damage to the property of another (P.L. Secs. 145.00, 145.05, 145.10).

INJURIES TO HIGHWAYS: Whoever injures any highway or bridge maintained at the public expense by dragging logs or timber on its surface, or by drawing or propelling over it a load of such weight as to

injure or destroy the culverts or bridges or destroy, break or injure the surface of any improved state highway, county road or town highway, shall for every such offense forfeit triple damages (Highway Law Sec. 320).

DAMAGING BRIDGES AND CULVERTS: Anyone who drives on a bridge or culvert on a highway with loads in excess of the posted maximum is responsible (in a civil action) for the costs of repairing any damage (Highway Law Sec. 230, subd. 13).

CONDEMNED BRIDGES AND CULVERTS: When any bridge or culvert on the State system of highways or any bridge not on the system has been condemned (by the Superintendent of Public Works or the Town Superintendent of Highways) and posted, and barricaded closed to traffic, it is a misdemeanor to use it whether afoot or in a vehicle (Highway Law Sec. 230, subd. 1, par. 2; 231, subd. 2).

OBSTRUCTING STREET OR HIGHWAY: Under Sections 1530 and 1532 of the old Penal Law, it was a public nuisance and a misdemeanor to interfere with or obstruct or render dangerous any highway, or public street, square, etc. These laws were not specifically included in the current Penal Law.

The usual charge in such cases, under current law, would be Criminal Nuisance, which involves conduct unlawful in itself (or unreasonable) which endangers the safety or health of a considerable number of persons (P.L. Sec. 240.45; see also section 50, "Criminal Nuisance," this Manual). To be "considerable" the number of persons affected need not be very great, but only enough so that the wrong may not unreasonably be classified as a wrong to the community (Peo. vs. Rubenfeld, 254 NY 245). In case of a street or highway, proof of this element should require no more than testimony that it is a highway or street, that it is not disused and that it does carry traffic.

A highway may be obstructed by the removal of buildings or other temporary obstruction if a permit is obtained from the County Superintendent of Highways on the written request of the Town Superintendent of Highways (other than state highways) or from the Superintendent of Public Works (state highways) (Highway Law Sec. 103).

OCCUPYING HIGHWAY: No person may lawfully occupy any part of a state highway, except in a city or village, in any manner, for the purpose of selling or soliciting (V & T Sec. 1157, subd. c). Failure to comply with this law is a traffic infraction. In a city or village, of course, local ordinance would control (if any).

It is equally a traffic infraction to stand in any roadway for the purpose of soliciting a ride ("hitchhike"), or to solicit from or sell to any occupant of a vehicle (V & T Sec. 1157, subd. a).

No person may lawfully stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle parked or about to be parked on a street or highway. To do so is a traffic infraction (V & T Sec. 1157, subd. b).

RAILROAD TRAINS: It is a violation for any officer or employee of a corporation in charge of a locomotive, car or train to wilfully obstruct or cause to be obstructed any farm or highway crossing with any locomotive, car or train for a period longer than five consecutive minutes (unless they cannot control the situation causing the obstruction or cannot move the train without danger) (Railroad L. Sec. 53-b).

It is also a violation for the engineer driving any locomotive (except in cities) to fail to ring the bell or sound the whistle at least eighty rods

from a travelled road or street crossing and to continue ringing or sounding at intervals until the locomotive and its train have completely crossed the street or road (Railroad L. Sec. 53-b).

MATERIAL ON HIGHWAYS: It is an Unclassified misdemeanor to wilfully throw, drop, place or cause to be thrown, dropped or placed, on any road, highway, street or public place, any glass, nails, pieces of metal or other substance which might wound, disable or injure any animal (Agr. & Mkts. L. Sec. 362).

ASHES, SNOW, ICE, STONES, STICKS, ETC. ON THE HIGHWAY: Any person who deposits or throws loose stones in the gutter or grass adjoining a town highway, or deposits or throws upon a highway, ashes, papers, snow, ice, stones, sticks, or other rubbish, is liable to a penalty of ten dollars to be sued for and recovered by the Town Superintendent. No stone or other rubbish can be drawn to and deposited within the limits of any highway (except for the purpose of filling in a depression or otherwise improving the highway) without the consent and under the direction of the Town Superintendent (Highway Law Sec. 214).

TRASH OR OFFENSIVE MATTER ON HIGHWAYS: It is an infraction to throw, dump, deposit, place or cause to be thrown, dumped, deposited or placed upon any highway or within the limits of the right of way of a highway or private lands adjacent thereto, any refuse, trash, garbage, rubbish, litter or any nauseous or offensive matter (V & T Sec. 1220).

It is also an infraction to throw or deposit on any highway any glass bottle, glass, nails, tacks, wire, cans, snow or any other substance likely to injure any person, animal or vehicle on the highway (V & T Sec. 1219).

The Vehicle and Traffic Law specifically excepts reasonable use of ashes, sand, salt or other material used to reduce hazard or provide traction (V & T Sec. 1220, subd. b).

NOISOME OR UNWHOLESOME SUBSTANCES OR BUSINESSES: It is an Unclassified misdemeanor for any person to deposit, leave or keep on or near a highway or route of public travel (on land or water) any noisome or unwholesome substance.

It is a similar crime to establish, maintain, or carry on, upon or near a public highway or route of public travel (on land or water) any business, trade or manufacture which is noisome or detrimental to public health (Publ. H. L. Sec. 1330-a).

Violations are punishable by fine not less than $100, imprisonment 3 to 6 months, or both. The word "noisome" may be taken to mean noxious, harmful and destructive of health.

LOITERING: Officers should be familiar with the provisions of Penal Law Section 240.35, "Loitering", which concerns a variety of conduct which is unlawful in a public place. A highway is clearly a public place (see "Disorderly Conduct, Harassment and Loitering", Section 54, this Manual).

VEHICLE LIGHTS: Every vehicle upon any public street, avenue, highway or bridge and whether stationary or in motion, must have attached a light or lights clearly visible from front and rear, from one half hour after sunset to one half hour before sunrise. Exceptions may be granted, in writing, by the Department of Public Works. The law does not apply in New York City (Highway Law Sec. 318).

LUGS ON WHEELS: The Superintendent of Public Works may make rules and regulations for the protection of any state highway. He may prohibit the use of chains or armored tires by motor vehicles. Violations

are punishable by fines of not less than $10 and not more than $100, to be prosecuted for by the Superintendent of Public Works (Highway Law Sec. 14).

Title 17 (Public Works) New York Code of Rules and Regulations, Sec. 37.2, prohibits from State highways any vehicle or equipment which has any chains (except emergency on ice conditions) on the tires or rims of wheels in contract with the pavement. Driving wheels may be fitted with flat lugs not less than an inch in width and so spaced that not less than two lugs are in contact with the pavement at all times.

Angle iron lugs are prohibited on the highway unless covered. Ice lugs, sand lugs and mud lugs of any kind are prohibited.

Pneumatic tires containing metal studs not over 3/8 inches in diameter and protruding not more than 7/64 inches are permitted if the contact area of the studs does not exceed three per cent of the total contact area of the tire.

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72. HINDERING PROSECUTION

Hindering Prosecution is a crime new to the Penal Law. It consists of rendering criminal assistance to a person who has committed a felony. Experienced officers will recognize that Hindering Prosecution is thus very much like being an accessory under the old Penal Law (old P.L. Sec. 2).

One could be an accessory only to a felony under the old law. If the crime was a misdemeanor, anyone who committed acts which would have made him an accessory if the crime had been a felony was a principal. There was no such thing as an accessory to a misdemeanor (old P.L. Sec. 27). This philosophy still holds under the new Penal Law, where one can be guilty of Hindering Prosecution only in respect to felonies. In respect to misdemeanors one may only be a principal, under the new Penal Law section on "Criminal Liability for Conduct of Another." This section makes a person criminally liable (like a principal under the old law) for criminal conduct of another when, acting with the mental culpability required for the commission of the crime, he solicits, requests, commands, importunes, or intentionally aids such other to engage in such criminal conduct (P.L. Sec 20.00).

HINDERING PROSECUTION IN THE THIRD DEGREE: A person is guilty of Hindering Prosecution in the Third Degree when he renders criminal assistance to a person who has committed a felony (P.L. Sec. 205.55).

Hindering Prosecution in the Third Degree is a Class A misdemeanor.

HINDERING PROSECUTION IN THE SECOND DEGREE: A person is guilty of Hindering Prosecution in the Second Degree when he renders criminal assistance to a person who has committed a class B or class C felony (P.L. Sec. 205.60).

Hindering Prosecution in the Second Degree is a class E felony.

HINDERING PROSECUTION IN THE FIRST DEGREE: A person is guilty of Hindering Prosecution in the First Degree when he renders criminal assistance to a person who has committed murder or kidnapping in the first degree, knowing or believing that such person has engaged in the conduct constituting such murder or kidnapping in the first degree (P.L. Sec. 205.65).

Hindering Prosecution in the First Degree is a class D felony.

RENDERING CRIMINAL ASSISTANCE: Any one (or more) of an almost unlimited variety of activities could constitute rendering criminal

assistance, as shown by the following: A person renders criminal assistance who:

1. With intent to:
   a. Prevent, or
   b. Hinder, or
   c. Delay,

2. Either:
   a. The discovery of, or
   b. The apprehension of, or
   c. The lodging of a criminal charge against.

3. A person whom the offender knows or believes:
   a. Has committed a crime, or
   b. Is being sought by law enforcement officials for the commission of a crime,

OR:

4. With intent to
   a. Assist a person in profiting or benefiting,
   b. From the Commission of a crime,

DOES ANY OF THE FOLLOWING:

1. Harbors or conceals such person (P.L. Sec. 205.50, subd. 1); or

2. Warns such person of impending discovery or apprehension (P.L. Sec 205.50, subd. 2); or

3. Provides such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension (P.L. Sec. 205.50, subd. 3); or

4. Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him (P.L. Sec. 205.50, subd. 4); or

5. Suppresses, by any act of concealment, alteration or destruction, any physical evidence which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him; or (P.L. Sec. 205.50, subd. 5); or

6. Aids such person to protect or expeditiously profit from an advantage derived from such crime (P.L. Sec. 205.50, subd. 6).

INVESTIGATIONS

In any Hindering Prosecution case it will be essential to establish that the one assisted, the prime offender, in fact committed a felony of the class required for the degree of Hindering Prosecution charged. The law does not require that the prime offender be first convicted of the crime but only that he should in fact have committed a felony.

One form of prohibited assistance is suppressing evidence. This means of committing Hindering Prosecution is similar to the crime of Tampering with Evidence (see Section 78 "Investigations," this Manual, under heading "Tampering with Evidence"). In considering whether to charge "Hindering" or "Tampering" in cases of suppressing evidence, the rule would generally be that where there is proof of an "accessory" type situation the charge should be Hindering Prosecution and where there is not, Tampering with Evidence. The advice of the District Attorney should be promptly sought, where doubt arises as to which charge should be laid, in any particular case.

In cases involving harboring or concealing a wanted person, officers should establish, early in the investigation, the relationship of the prime offender to the one harboring or concealing. In this type of case it is important not to rely upon confessions. Every effort should be made to obtain eye-witness testimony from third parties, and physical evidence, to establish the harboring or concealing.

In all Hindering Prosecution cases, a logical source of information is the prime offender to whom the culprit furnished assistance. It should be kept in mind that questioning such an offender solely as to the assistance furnished by the Hindering Prosecution subject need not involve any confession of the prime offender or even the guilt or innocence of the prime offender. Officers should be prompt to so question the prime offender in this type of case.

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73. HOMICIDES

Homicide means conduct which causes the death of a person or an unborn child with which a female has been pregnant for more than 24 weeks, under circumstances constituting:

1. Murder, or
2. Manslaughter in the First Degree , or
3. Manslaughter in the Second Degree, or
4. Abortion in the First Degree, or
5. Self-abortion in the First Degree.

MURDER: There are no longer any degrees of murder. All murder is a Class A felony. Under the current Penal Law, a person can be guilty of t' e crime of Murder as follows:

1. INTENDED MURDER — A person is guilty of Murder when:
   a. With intent to cause the death of another person,
   b. He causes the death of such person or of a third person (P.L. Sec. 125.25, subd. 1).

   (1) It is an affirmative defense to murder under this subdivision that the defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse (reasonableness is determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be). Nothing contained in this paragraph constitutes a defense to a prosecution for, or precludes a conviction of, Manslaughter in the First Degree or any other crime (P.L. Sec. 125.25, subd. 1a).

   (2) It is also an affirmative defense that the defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide (See Section 117, "Suicide", this Manual). This does not preclude a prosecution for Manslaughter Second or any other crime (P.L. Sec. 125.05, subd. 1b).

2. DEPRAVED INDIFFERENCE MURDER — A person is guilty of murder when:
   a. Under circumstances evincing a depraved indifference to human life,
   b. He recklessly engages in conduct which creates a grave risk of death to another person, and
   c. Thereby causes the death of another person (P.L. Sec. 125.25, subd. 2).

3. MURDER WHILE ATTEMPTING (OR COMMITTING) CRIME — A person is guilty of murder when:

a. Acting either alone or with one or more other persons,

b. He commits or attempts to commit:

(1) Robbery, or
(2) Burglary, or
(3) Kidnapping, or
(4) Arson, or
(5) Rape in the First Degree, or
(6) Sodomy in the First Degree, or
(7) Sexual Abuse in the First Degree, or
(8) Escape in the First or Second Degree

c. And:

(1) In the course of such crime, and in the furtherance of such crime, or

(2) In the course of immediate flight from such crime,

d. He or another participant in the crime, if there is any,

e. Causes the death of a person other than one of the participants in the crime (P.L. Sec. 125.05, subd. 3).

AFFIRMATIVE DEFENSE — MURDER WHILE ATTEMPTING (OR COMMITTING) CRIME: It is an affirmative defense to a prosecution for murder while attempting or committing crime, under subdivision 3 of Section 125.25 of the Penal Law, if the defendant was not the only participant, that he:

1. Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

2. Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and

3. Had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and

4. Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury (P.L. Sec. 125.25, subd. a, b, c).

5. An affirmative defense is one which the defendant has the burden of establishing by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

PENALTY FOR MURDER: Murder is punishable as a Class A felony unless the death sentence is imposed.

1. When a defendant has been convicted by a jury of murder the court conducts a further proceeding, to determine whether the defendant is to be sentenced to death (in lieu of life imprisonment for a class A felony) if:

a. The victim was a peace officer killed in the course of his official duties, or

b. At the time of the crime the defendant was confined in state prison or was otherwise in custody upon a sentence for the term of his natural life, or upon a sentence commuted to one of natural life, or upon a sentence for an indeterminate term the minimum of which was at least fifteen years and the maximum of which was natural life, or having escaped from such confinement or custody the defendant was in immediate flight therefrom; and

c. The defendant was more than eighteen years old at the time of the commission of the crime; and

d. There are no substantial mitigating circumstances which render sentence of death unwarranted.

e. If the court conducts such a further proceeding with respect to a sentence, the jury verdict of murder is not subject to reconsideration therein (P.L. Sec. 125.30).

MANSLAUGHTER IN THE FIRST DEGREE: Manslaughter First is a Class B felony. It may be committed in any of the following ways:

1. INTENT TO INJURE — A person is guilty of Manslaughter First when:

a. With intent to cause serious physical injury to another person,

b. He causes the death of such person or of a third person (P.L. Sec. 125.20, subd. 1).

2. INTENT TO KILL, EMOTIONAL DISTURBANCE — A person is guilty of Manslaughter First when:

a. With intent to cause the death of another person,

b. He causes the death of such person or of a third person,

c. Under circumstances which do not constitute murder because he acts under the influence of extreme emotional disturbance (P.L. Sec. 125.20, subd. 2).

(1) The fact that a homicide was committed under the influence of extreme emotional disturbance constitutes only a mitigating circumstance reducing Murder to Manslaughter First. It does not have to be proved in any prosecution for Manslaughter First (P.L. Sec. 125.20, subd. 2).

(2) The severe emotional disturbance must be one having a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under circumstances as the defendant believed them to be (P.L. Sec. 125.20, subd. 2, 125.25, subd. 1a).

3. BY ABORTION: (P.L. Sec. 125.20, subd. 3) — A person is guilty of Manslaughter First when:

a. He commits upon a female,

b. Pregnant for more than 24 weeks,

c. An abortional act,

d. Which causes her death,

e. Unless the abortional act is a justifiable abortional act. (P.L. Sec. 125.20, subd. 3) (See Section 19, "Abortion", this Manual).

MANSLAUGHTER IN THE SECOND DEGREE: Manslaughter Second can be committed in any of the following ways:

1. RECKLESSLY — A person is guilty of Manslaughter Second when:

a. He recklessly causes,

b. The death of another person (P.L. Sec. 125.15, subd. 1).

2. BY ABORTION: (P.L. Sec. 125.15, subd. 2) — A person is guilty of Manslaughter Second when:

a. He commits upon a female,

b. An abortional act,

c. Which causes her death,

d. Unless the abortional act is a justifiable abortional act. (P.L. Sec. 125.15, subd. 2) (See Section 19, "Abortion", this Manual).

3. AIDING SUICIDE — A person is guilty of Manslaughter Second when:

a. He intentionally,

b. Causes or aid another,

c. To commit suicide (P.L. Sec. 125.15, subd. 3) (in respect to suicide, see also "Promoting Suicide Attempt," Section 117, this Manual)

Manslaughter Second is a Class C felony.

EXCUSABLE AND JUSTIFIABLE HOMICIDES: The old Penal Law contained definitions of "excusable" and "justifiable" homicides, covering cases where a killing was not manslaughter or murder, (such as when committed by accident, or misfortune, by a public officer retaking a prisoner, in self defense, etc.). Under the current Penal Law there are no such homicides. Section 11, "Defenses and Use of Force," this Manual, sets out provisions of the current Penal Law relating to killing in self defense, killing by officers, and other kinds of what used to be excusable or justifiable homicides.

CRIMINALLY NEGLIGENT HOMICIDE: A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person. Criminally negligent homicide is a Class E felony (P.L. Sec. 125.10).

1. A person acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation (P.L. Sec. 15.05, subd. 4).

Criminally negligent homicide covers those sections of the old Penal Law which formerly dealt with criminal negligence in the operation of a vehicle, criminal negligence while engaged in hunting and criminal negligence in the operation of a vessel.

INVESTIGATIONS

JURISDICTION: When an offense or the acts constituting it occur in two or more counties, jurisdiction is in either (CCP Sec. 134). In addition, in homicide cases, jurisdiction is in the county where the killing took place and in the county where the victim's body or any part of it is found (CCP Sec. 134-a).

PRELIMINARY CONSIDERATIONS: National crime statistics indicate that approximately 80 per cent of murders and manslaughters are in the family or largely among acquaintances.

A primary problem in all homicides is establishing the precise facts of the killing. The officer's investigation must determine whether there was a depraved indifference, a commission of, or the attempted commission of, one of the felonies specified in Penal Law Section 125.25, subdivision 3, for murder, or an intent to kill or no intent to kill, an abortion, or even criminal negligence alone. This requires the most careful and detailed handling of every homicide investigation, from the beginning. Proper handling of the investigation ensures that all that is possible to do is done to identify the killer, in those cases where the killer is unknown at the beginning of the investigation.

Police officers should realize that the police will shoulder the burden of criticism for any improperly handled homicide case. In proper instances there must be sufficiently painstaking investigation to pinpoint and clearly establish the facts of the death.

"CORPUS DELICTI": In law the phrase "corpus delicti" means the "body of the crime," and also the body or material substance upon which a crime was committed (such as the corpse of a murdered person or the charred remains of a burned house).

In homicide cases the phrase "corpus delicti" may be understood to mean (1) the fact of a death and (2) that the death was by criminal means, since these two facts make up the body of the crime of homicide.

STATUTE OF LIMITATIONS: There is no limitation of time within which a prosecution for murder must be commenced (CCP Sec. 141). Manslaughter prosecutions must be commenced within five years (CCP Sec. 142, subd. 1).

FIRST AT SCENE: Officers should treat investigation of all unattended deaths as homicide until proof to the contrary is established.

The first officer to arrive at the scene should immediately note and record the date and exact time of his arrival, the address or location and the weather conditions.

Determination of whether the victim is living or dead is the first consideration. The officer is not expected to exercise the function of a physician in this regard, but if the victim may be alive necessary first aid should be rendered, and medical assistance summoned at once.

NOTICE TO HEADQUARTERS: Police Headquarters must be promptly notified in homicide cases in view of the importance of such cases and the usual need for additional police personnel at the scene as soon as possible.

OFFICER'S AND CORONER'S DUTIES: Where a death occurs without medical attendance, the officer responding to the complaint should immediately inform or cause to be informed the county coroner or medical examiner (in Erie County the medical director) who will investigate and certify to the cause of death (Publ. H. L. Sec. 4143).

The coroner or medical examiner has authority to investigate any death which is or appears to be:

1. Violent, by criminal violence, suicide or casualty.
2. Caused by unlawful act or criminal neglect.
3. A death occurring in a suspicious, unusual or unexplained manner.
4. Caused by suspected criminal abortion.
5. Unattended by a physician or where no physician able to certify cause of death can be found.
6. Death of a person confined in a public institution (except hospitals, infirmaries or nursing homes).

If the coroner is not a licensed physician he must exercise his duties jointly with a coroner's physician (County L. Sec. 673).

The coroner, or medical examiner (and coroner's physician where required) must make such examinations, including an autopsy, as in their opinion are necessary to establish the cause of death or to determine the means or manner of death. They may subpoena and examine witnesses under oath in the same manner as a magistrate holding a court of Special Sessions (County L. Sec. 674).

The District Attorney, Sheriff, Chief of a police department of a city or county or the Superintendent of State Police may request in writing that the coroner or medical examiner ascertain pertinent facts and he must do so (County L. Sec. 674, subd. 3).

Decisions as to autopsies or examination of organs must be made by the coroner's physician if the coroner is not licensed to practice medicine (County L. Sec. 674, subd. 3).

The coroner or medical examiner must fully investigate the essential facts of the death and must take possession of any portable object which in their opinion may be useful in establishing the cause or means of death (County L. Sec. 674, subd. 2).

Money and other property found on the body, if not required for the purposes of the investigation, must be delivered to the County Treasurer (County L. Sec. 678, subd. 1).

AUTOPSY AND EXHUMATION: An autopsy is the dissection of a corpse to determine the cause of death. The Public Health Law authorizes such dissection whenever a coroner or medical examiner is authorized to conduct an investigation of a death (Publ. H. L. Sec. 4210, subd. 2).

An autopsy is also permitted at the written request of a district attorney, sheriff, chief of police of a police department of a city or county, the Superintendent of State Police or the Commissioner of Correction (Publ. H. L. Sec. 4210, subd. 2).

Any district attorney may exhume a body when he deems it necessary in the discharge of official duty to submit it to physical or chemical analysis or examination to determine the cause of death. Exhuming requires an order of a Supreme Court Justice or County Court Judge, on application by the district attorney, and with or without notice to relatives of the deceased (Publ. H. L. Sec. 4210, subd. 4).

An officer should always be present at the autopsy. It is best if the comments and findings of the autopsy surgeon, are recorded verbatim as he works. Either stenographic or mechanical recording may be used.

A pathologist is a specialist in the branch of medicine which deals with the nature of disease, especially the structural and functional changes caused by disease. The term "pathologist" is sometimes loosely applied to any physician or surgeon who performs an autopsy. Where possible, an experienced pathologist should be employed to perform an autopsy and only in instances where it is not possible to obtain a pathologist's services should an autopsy be entrusted to the non-specialist physician or surgeon.

Before a cut is made by the autopsy surgeon a very careful physical examination of the corpse should be made. The presence of any external wounds, their location, size, penetration, should be determined, photographed, measured and sketched.

In each possible murder or manslaughter case and in every other case where the cause of death is not positively apparent, a very careful and thorough autopsy should be made. The autopsy should never be skimped. It is a simple matter for a broken skull to conceal the fact that there is a bullet in the skull. It has happened that where a bullet wound was known and described it was not positively determined whether it was the cause of death. And bullet or other small wounds have been completely overlooked in autopsies.

In cases involving known or possible gunshot wounds, the autopsy surgeon must be informed that an X-ray is essential to locate the bullet so that no damage will be done by blind probing and because blind probing may not even locate the bullet. It has happened that autopsy surgeons unfamiliar with gunshot wounds mistakenly concluded that actual contact wounds were wounds from guns fired from a distance, making an apparent homicide out of an actual suicide. Therefore, good photographs and samples of tissues must be obtained in such cases.

The police officer must insure that adequate samples are obtained at all autopsies, even though there initially appears to be a perfectly acceptable cause of death. Samples should be large and include enough blood, stomach contents, tissue, organs, hair, etc., for more than one analysis if required. Particular attention must always be paid to the need of specimens for

adequate toxicological examination, including stomach contents, colons, liver, blood and other parts.

Autopsy surgeons should always be reminded to check the cervical section of the spinal column, the larynx and other throat organs for a broken neck, etc.

The possibility that a death apparently from a wound, blow, poison, etc., was actually caused by coronary disease must always be explored in the autopsy. Equally important, when an abnormal heart condition is found, is determining whether death was actually caused by criminal means, including poison or obscure wounds.

The police officer is not expected to know the details and procedures required in dissecting and examining a corpse during an autopsy. However, the police officer should be in a position to inform the person doing the autopsy of the objectives, particularly to ensure that the autopsy will not be unduly limited if a possible cause of death is found.

For example, even if a fractured skull appears to have caused death, it may be of importance to determine the alcohol content of the blood, whether there is poison in the body, whether there is evidence of internal injury from blows, massive hemorrhages, etc. Careful consideration of all possible prosecutive aspects and defense claims is required for a good autopsy.

In cases of gunshot and cutting wounds, exact descriptions, tracing of direction and extent of penetration, sketches, photographs and samples of tissue should all be carefully obtained and preserved.

In cases of drowning, separate samples of blood must be obtained from each side of the heart, and must be accurately identified.

The officer should remember that he, rather than the pathologist, is usually best trained in the techniques of marking and maintaining evidence for later introduction at trial. He must therefore ensure that all specimens obtained whether of the body, or bullets, broken pieces of weapons or other evidence, are properly marked and/or otherwise identified by the autopsy surgeon, who is the person who will identify them at any trial.

The marks and other identification must be so clear and distinct that there will be no difficulty in recognizing them at once even after the lapse of several years. Adequate notes must also be preserved.

INVESTIGATIVE SUGGESTIONS: At the homicide scene, the officer must (1) protect the scene from contamination, (2) identify witnesses who should be questioned (3) collect and preserve physical evidence (4) conduct interviews of witnesses or possible witnesses (5) interview the offender or offenders if known or suspected. These tasks are obviously more than can be accomplished by one officer, in the usual case. Assistance should be secured.

In view of the varied things necessary to be done, one officer must assume or be given complete authority for the investigation, to plan, assign and oversee the investigation concerning physical evidence, to determine who shall be interviewed, when and in what order, to make assignments and follow the assignments. He must also supervise taking of photographs of evidence found, protecting the scene by excluding unnecessary persons, etc.

PHYSICAL EVIDENCE: The basic rule is that all matter at the scene must be treated as evidence until investigation and study have determined what is not evidence.

The clothing and person of the victim should be carefully searched in the presence of the coroner or medical examiner and all items found marked for identification and proper notes made.

THE ORIGINAL SCENE: It is of first importance that the scene of a homicide be maintained exactly as left by the murderer or killer until it and the body have been examined in detail by the investigating police officers. Once the body is moved the scene is forever changed and any mistake made in doing this may not be recoverable. Officers should never be stampeded into permitting too early removal of the body under urging of outside officials. The police officer must dominate the scene at any homicide.

DYING DECLARATIONS: A dying declaration is admissible in evidence after the death of the declarer, contrary to the usual rules of evidence. A dying declaration is a statement made by the victim of a homicide when death is imminent and the declarer has abandoned hope of recovery. If he or she has hope of recovery the declaration is not admissible evidence.

A dying declaration may be entirely oral. It is better if the police officer writes it down, with a witness or witnesses.

Officers should ask the victim:

1. What is your name?
2. Where do you live?
3. Do you now believe that you are about to die?
4. Do you have any hope of recovery?
5. Who injured you?
6. How did it happen?

Only in those instances where the answer to question 3 is "yes" and to question 4 "no" (or the equivalent) will the declaration be admissible.

If the victim is able, he or she may sign the declaration, if it was written down. Any witness should also sign.

The officer should always obtain such a dying declaration promptly where the victim is able to furnish one. The statement may be taken while administering first aid, awaiting medical attention, in an ambulance enroute to a hospital, in the hospital or elsewhere, and at any time there is expectation of death on the part of the victim.

PROTECTION OF EVIDENCE: The crime scene must be protected from the beginning. All persons must be rigidly excluded and only persons with specific official duties permitted on the scene. Relatives, neighbors, members of the press, officials and other police with no official duties to perform must all be excluded by posting guards, locking doors, roping off or other necessary steps. This requires constant attention, firm and tactful handling and complete domination by police of the scene of every homicide.

HANDLING THE BODY: Good sense dictates that a corpse should always receive respectful and dignified treatment and handling. Callous remarks or rough handling are reprehensible. Also, careless handling risks losing evidence. No officer should attempt to display his familiarity with violent death by irreverence or callousness at the scene of a death.

The body must be photographed by a competent police photographer from several angles before being moved.

It is of importance that the body be carefully wrapped in a large sheet of waterproof material or be placed in a proper body bag to prevent loss of evidence while the body is being moved to the morgue, mortuary, etc.

The body should always be accompanied by an officer and he should ensure that when the body is unwrapped, the wrapping (or bag) is carefully searched to ensure that no possible evidence is lost.

Special care is required to search the area of the body at a crime scene and, after the body has been removed, to again search the area where it lay.

Clothing must be removed from the body intact, even if this is difficult. Under no circumstances should clothing be cut off if there is any way to avoid cutting. The officer must closely supervise handling of the body, to ensure that this rule is followed. Its purpose is to avoid destroying valuable evidence such as bullet holes, knife cuts and stains.

The officer should ensure that the corpse is carefully photographed full length, both clothed and nude. Photographs should be front and back of the whole body and must include clear facial photographs, full face and in profile.

DEFENSE AND HESITATION WOUNDS: In cases possibly involving death by a cutting or stabbing instrument the body should be carefully examined for signs of hesitation wounds, which are the slight injuries inflicted by a suicide upon himself while hesitating to make the fatal stroke. Defense wounds may be found on the hands or outer parts of the forearms and are wounds sustained in efforts to ward off the fatal stroke or strokes of a cutting or stabbing weapon or a club or other blunt instrument.

IDENTIFICATION: In every homicide case and in any case involving unknown dead, fingerprints must be obtained from the body.

Identification may be accomplished through search of the fingerprints through FBI or New York State Identification and Intelligence System files, visual identification by family or friends (directly or from photographs), through dry cleaning and laundry marks, etc. Moulage casts of upper and lower jaws, showing dental work, supplemented by a detailed description of extractions, fillings and other dental work, must also be considered.

Serial numbers and scratch-marks on jewelry or eyeglass frames should not be overlooked.

The presence of old fractures, lung lesions or similar conditions may be revealed by X-ray or fluoroscopic examinations in cases of unknown dead.

Documents and personal items in the clothing or on the body should be carefully examined and ordinarily provide the main leads to identification.

It is important that the weight of the nude body and its length ("height") from top of skull to bottom of heels be noted. A detailed personal description must be prepared. It should include clothing, age, sex, color, race, hair, eyes, teeth, stature, muscular development, nutrition, skin color, skin diseases, scars, marks, tatoos, deformities and any other identifiable characteristics.

CRIME SCENE SEARCHING: Sections on "Investigations" and "Laboratory Examinations" in this manual should be reviewed.

A key thing to remember is that all possible evidence should be photographed in place, and in proper cases measured and added to the scene sketch, before being moved for fingerprint processing (where appropriate) and identification.

Under no circumstances should any weapon or other possible piece of evidence be taken up and examined before proper photographing and other processing, whether by the coroner, a ranking official or anyone else. The police officer must dominate and stay in firm command to avoid such improprieties, which are in fact quite a natural thing for the untrained or unfamiliar person to do.

FINGERPRINT PROCESSING: The possibility of latent fingerprints must be considered in respect to all items at the scene, including its normal furniture or equipment.

NOTES, MARKS AND SKETCHES: In searching the crime scene of a homicide officers must ensure that they make clear and careful notes

for permanent retention and use at trial, as to each act of search and each item found during search.

Each piece of evidence must be marked for later identification. It must be borne in mind that the required identification could be years later, in a homicide case, instead of next week or next month. Therefore, evidence must be so marked that the marking and identification are clear enough and distinct enough to permit the officer years later to promptly recognize and identify them. Adequate notes, made at the same time, are of course a necessary aid. Obviously, merely marking an "X" on something is completely inadequate identification.

It is well to prepare a sketch of the crime scene at every criminal homicide. On it should be noted all major details of the scene or premises, including normal furnishings, equipment or features. All pertinent or possibly pertinent items of evidence found should be marked thereon. This requires careful measurement of their position before they are touched.

Measurements must always include distance and direction. Indoors, it is usually satisfactory to measure distances perpendicular to two adjacent walls. Outdoors, points of reference must be established and noted in the sketch and measurements and directions taken from them, by tape and an accurate compass.

WITNESSES: The officer first on the scene must, as soon as possible after giving first aid and summoning medical assistance, identify all possible witnesses.

It may or may not be practical for him to interview such persons at the time but they should be definitely identified for detailed interview later or by officers arriving later.

In some instances, immediate brief interviews may be needed, to be supplemented by detailed interviews as additional facts are learned. The key point is to ensure that no possible witness with information of value is unidentified or leaves unnoticed.

WEAPONS: In any case of death by means of a weapon (a major number of deaths involve guns, with knives or other cutting instruments next in number) special effort must be made to locate the weapon. The officer must be absolutely certain that the weapon is not at, or in the vicinity of, the crime scene, before abandoning this part of the investigation.

The utmost care must be taken to avoid injuring possible latent fingerprints. If the weapon is a pistol, it must be carefully marked as to fired and unfired cartridges, their location (in revolvers) and similar matters.

In gun-shot cases it is of importance to carefully search to locate spent cartridge cases possibly ejected by the firearm, since these can often be positively identified with a particular gun.

TIME FACTOR: Where there are no witnesses to a death the time of death may be established by laboratory examination of stomach contents (obtain at autopsy) to determine the stage of digestion of foods eaten by the victim.

Post mortem lividity is a purplish blue or purplish red discoloration which appears under the skin of a dead body (due to the action of gravity on stagnant blood). It is on the low side (if found on top it means the body was moved sometime after death). Post mortem lividity begins about two hours after death and is complete in about three or four, although the period is not a very precise one.

Rigor mortis is the stiffness which develops in the muscles of a dead body. It begins about three to five hours after death. It starts in the face and jaw and moves toward the feet. The process is complete in about two hours and after forty-eight hours the stiffness gradually passes away.

Temperature of surroundings, physical condition and other things may affect the timing of rigor mortis.

Body temperature gradually falls after death. It takes about ten hours for a body to chill or lose all its natural heat in moderate temperatures. The time involved in body chilling will depend on season, location, and other variables.

Full details of conditions at the crime scene and of the events occurring to the body from death are very important in reaching sound conclusions as to the elapsed time since death.

TRAFFIC DEATHS: In traffic deaths, especially in hit-and-run cases, (see "Accidents" previously in this manual) it is of importance to locate all evidence left at the scene by the vehicle, whether on the body of the victim or otherwise, including head-light lens and other glass fragments, paint particles, mud or other debris, motor oil, skidmarks, etc.

The vehicle, of course, may have blood, tissue, hair, fibres from or parts of clothing left on it. Suspect vehicles should be carefully examined, not only in front and side but underneath (place on a hydraulic lift, if practicable, for best examination).

ADDITIONAL INVESTIGATION: Where the facts of a homicide are not sufficiently developed by the investigation heretofore discussed, the officer must conduct a neighborhood survey for persons who may have information of value. Never overlook persons regularly but only temporarily in the area, such as postmen, milkmen, bakery truck operators, and other routemen, as they may be valuable sources.

Further investigation should include detailed interviews of the victim's immediate family and relatives, business associates, friends and acquaintances.

Attempts should always be made to establish clearly the motive for a killing, since this will be of value in pointing to, and as an element to consider in deciding the guilt of the killer. Usual motives are:

1. Profit.
2. Revenge.
3. Jealousy.
4. To conceal a crime.
5. The commission of a felony.
6. To avoid humiliation and disgrace.
7. Homicidal mania.

These motives, in all their aspects, should be considered until the investigation has been successfully concluded. To obtain a conviction for a killing, however, it is not necessary to prove the motive.

In cases of murder while committing or attempting crime, careful consideration should be given to known criminals, including their alibis at the time of the homicide, if their past operations would fit the pattern of the crime under investigation.

Adequate information must be broadcast as promptly as possible, not only by teletype but also by police radio and other means to ensure that law enforcement officers in the reasonable vicinity are aware of the crime and alert for persons or incidents which might be connected with it.

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74. HOTELS, MOTELS, OTHER TEMPORARY RESIDENCES

The proprietor or manager of every hotel, motel, tourist cabins, camp, resort, tavern, inn, boarding house or lodging house must keep a register

showing the name, residence, date of arrival and date of departure of each guest. This register must be maintained for at least three years and may be on microfilm or other process which reproduces the original record (Genl. Bus. L. Sec. 204).

ADVERTISING SIGNS: No one in the business of furnishing public lodging in motels and motor courts may post or maintain on any outdoor or outside advertising which may be seen from a public highway or street any rates for accommodations unless the sign shows both minimum and maximum rates. It is not enough to show a rate and the legend "and up". The rates and descriptive information on the sign must be in type and material of the same size and prominence (Genl. Bus. L. Sec. 206-a, subd. a). No rate on such a sign may be shown unless there are available in the motel or motor court, when vacant, accommodations for immediate occupancy to meet the rates shown on the signs (Genl. Bus. L. Sec. 206-a, subd. b).

No such sign may have on it any untrue, false, fraudulent or misleading representations or statements (Genl. Bus L. Sec. 206-a, subd. c). Failure to comply is a violation punishable by fine not over $50 (Genl. Bus. L. Sec. 206-a).

SANITARY CODE: All hotels, motels, tourist camps, tourist homes, labor camps and similar temporary residences are bound by the requirements of the State Sanitary Code as to sanitary food handling, storage, etc., dishwashing and disinfecting and other sanitation matters.

When any person in such an establishment becomes affected with a disease presumably communicable and there is no physician in attendance, the Sanitary Code requires the person in charge of the establishment to immediately report the matter to the local health officer (State San. Code, Sec. 2.12).

Any failure to comply with the Sanitary Code is a Unclassified misdemeanor, punishable on first offense by fine not over $50, imprisonment not more than six months, or both, and on second or later offenses by fine not over $250, imprisonment not more than one year or both (Publ. H. L. Sec. 229).

KOSHER FOOD: It is an Unclassified misdemeanor for any person with intent to defraud, to sell or expose for sale in any hotel, restaurant, or other place where food products are sold for consumption, on or off premises, any meat or article of food and falsly represent it to be kosher and of a product sanctioned by orthodox Hebrew religious requirements. It is also an Unclassified misdemeanor to sell or expose for sale in the same place of business both kosher and non-kosher meat or food without indicating in all window signs and display advertising, in block letters at least four inches high the legend "kosher and non-kosher food sold here" (Agr. & Mkts. L. Sec. 201-b).

GAME: Carcasses or parts of carcasses of domestic or foreign game may be sold, without a Conservation Law dealer's license, by the keeper of a hotel, boarding house or restaurant (Conserv. L. Sec. 339). Game so sold must be game properly tagged under Section 340 of the Conservation Law, or must be duck, goose, brant or swan shot on shooting preserves and marked by a V-shaped notch in the web of one foot as provided in Section 350 of the Conservation Law (Conserv. L. Sec. 341).

Ruffed grouse may not be bought or sold for food at all and only foreign European or Hungarian gray-legged partridge imported from outside the United States may be sold for food (Conserv. L. Sec. 341, subd. 1-b).

FRAUDS RELATING TO HOTEL, INN, BOARDING-HOUSE, ROOMING-HOUSE AND LODGING-HOUSE KEEPERS: Under Section 925 of the old Penal Law, it was a misdemeanor to defraud proprietors of hotels, etc., of food, lodging or other accommodation. This specific violation was omitted from the current Penal Law. The same type of case now is prosecuted as either "Theft of Services," or "Larceny."

THEFT OF SERVICES: This is a crime new to the Penal Law. A person is guilty of Theft of Services who, with intent to defraud, obtains or attempts to obtain service with a stolen, forged, revoked, cancelled or otherwise invalid credit card. The crime also includes attempts to avoid payment for restaurant or hotel, motel, etc., services by stealth or false misrepresentation of fact (see Section 118, this Manual, "Theft of Services").

LARCENY: Larceny is an old-law crime, and its elements cover a variety of thefts from, or cheating of, hotels, motels, etc., where some taking or withholding of property is involved (see Section 82, this Manual, "Larceny").

Larceny involves stealing tangible things. The use of a hotel bed, a telephone call, etc., are not tangible things which can be stolen. Only a tangible thing can be the subject of a larceny. If the thing stolen is a service, the stealing becomes a theft of services and not a larceny.

If a credit card is used in a theft, the nature of the loss would determine the kind of case. If the offender receives gasoline it would be a Larceny. If he receives a tire repair or an adjustment of his car's carburetor, or some other service, it would be a Theft of Services.

DIVERTING TRADE: It is an Unclassified misdemeanor to divert or attempt to divert a traveler or other person from one hotel, boarding house, rooming house, or lodging house to another, for the purpose of gain, by means of any false statement. If a false statement is made coupled with a recommendation to patronize another such place, it is presumptive evidence that the act was done for gain (fine not over $500, imprisonment not more than 1 year, or both) (Genl Bus. L. Sec. 206-c).

It is a similar crime to pay anyone for diverting patrons in the manner, forbidden by the preceding paragraph (fine not over $500, imprisonment not more than 1 year, or both) (Genl. Bus. L. Sec. 206-c).

DISCRIMINATION: The laws pertinent to discrimination by hotels, motels and other temporary residences are set out in Section 39, "Civil Rights," this Manual.

ORDINANCES: Officers should familiarize themselves with their local ordinances relating to hotels and other temporary residences.

INVESTIGATIONS

Frauds and thefts relating to hotels, motels, and other temporary residences should be handled on a realistic basis. Officers have no particular authority to require customers to repay proprietors. As a matter of practice, complainants should be required to sign an information (or depositions, to be attached to an officer's information) and an arrest warrant should be secured, in those cases where an arrest appears practicable. If the offender is found in the vicinity, the complainant can make a citizen's arrest without warrant, assisted by the officer.

Under the former Penal Law attempts to require customers to repay proprietors could have been extortion (Peo. vs. Fichtner, 305 NY 864). Under the current law, it is an affirmative defense to extortion committed by instilling fear of a charge of crime that the defendant reasonably be-

lieved the threatened charge was true and his sole purpose was to induce the one threatened to take action to make good the wrong which was the subject of the threat (P.L. Sec. 155.15, subd. 2). In spite of this change in the law, it is suggested that officers leave "collection" to the civil courts and civil action. There are problems involved in any such action by officers, including possibility of charges of devoting public time to private purposes or benefit.

Upon receipt of a complaint, all facts reflected by the guests register should be noted by the officer. Employees and others who were in contact with the subject should be interviewed for information identifying the subject and of value in locating him (or her). Care should be taken to check with logical retail and other establishments in the vicinity (using subject's believed true name and any known aliases) for any other data, including use of a credit card or cards.

Motor Vehicle Department records should be checked for similar information, both under license number of the subject's vehicle (if known) and the subject's believed true name and any known aliases, and his address.

When information is available to identify the subject's occupation or calling, inquiry may be made of pertinent local businesses, employers, etc., for employment data of value in locating the subject.

In credit card cases, where a professional cheat or credit card thief may be involved, prompt checks should be made with surrounding and nearby law enforcement agencies, including the FBI, for possible identity and leads.

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75. IMPERSONATION

CRIMINAL IMPERSONATION: A person is guilty of criminal impersonation who:

1. Impersonates another and does an act in such assumed character with intent to obtain a benefit or to injure or defraud another (P.L. Sec. 190.25, subd. 1); or

2. Pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to obtain a benefit or to injure or defraud another (P.L. Sec. 190.25, subd. 2); or

3. Pretends to be a public servant, or wears or displays without authority any uniform or badge by which such public servant is lawfully distinguished, with intent to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense (P.L. Sec. 190.25, subd. 3).

Criminal impersonation is a Class A misdemeanor.

UNITED NATIONS: It is a misdemeanor to possess or use an identification card issued to another person by the United Nations, or to fail to forthwith surrender any such card coming into one's possession (surrender must be to a New York peace officer or the official in command at United Nations headquarters) (fine not more than $50, imprisonment not more than 10 days, or both) (Genl. Bus. L. Sec. 142).

FEDERAL VIOLATIONS: It is a Federal felony to falsely personate, an officer or employee of the United States and (1) to act as such, or (2) in such pretended character to demand or obtain any money, paper, document or thing of value (fine not over $1,000, imprisonment not more than 3 years, or both) (Title 18 U.S. Code Sec. 912).

It is a Federal crime to wear without authority the uniform of any of the armed forces of the United States or the U.S. Public Health Service (or

a distinctive part of such uniform or anything similar to a distinctive part) (fine not over $250, imprisonment not more than 6 months, or both) (Title 18 U.S. Code Sec. 702).

Officers should note that the Federal law requires no intent to obtain a benefit, etc., but only an intentional wearing and does not require the doing of any act other than simply wearing the uniform, to constitute a violation.

It is also a Federal crime to wear (with intent to deceive) any naval, military, police or other official uniform, decoration or regalia of any foreign state, nation or government with which the United States is at peace (or anything so nearly resembling such as to be calculated to deceive) (fine not over $250, imprisonment not more than 6 months, or both) (Title 18 U.S. Code Sec. 703). The FBI handles these violations.

UNLAWFUL WEARING, ORGANIZED MILITIA UNIFORM OR MILITARY INSIGNIA: Any person not a member of the organized militia, except members of organizations specially authorized to do so by the military law, who shall wear any uniform or designation of grade similar to those in use by the organized militia, issued or authorized under the provisions of the military law, or any person who fraudulently wears any badge, insignia, clasp, rosette or button issued by the government of the United States or the state of New York or any foreign government to which the United States was allied in any war, is guilty of a class A misdemeanor (Mil. L. Sec. 238, subd. 2, 4).

UNLAWFUL USE OF NAME OF MILITARY OR NAVAL ORGANIZATION OR UNIT: Any person, society or corporation who, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assumes, adopts or in any manner uses the name of a regiment, battalion, battery, squad, troop, division, company or other unit of any military or naval organization constituting a part of the organized militia of the state of New York, or of any society, association or other organization, or a part thereof, whether incorporated or unincorporated, that has been recognized by the commanding officer of such military or naval organization as a society or association of its veterans or ex-members, or who assumes or adopts a name so nearly resembling it as to be calculated to deceive the public with respect to any such military or naval organization, or any such society, association or other organization, or a part thereof, of its veterans or ex-members, without first having obtained the written consent of the commanding officer of such military or naval organization is guilty of a Class A misdemeanor (Mil. L. Sec. 238, subd. 3).

INJUNCTIONS: Whenever there is an actual or a threatened violation of any of the preceding parts of section 238 of the Military Law an application may be made to a court or justice having jurisdiction to issue an injunction, upon notice to the defendant of not less than five days, for an injunction to enjoin and restrain the violation. If it appears to the satisfaction of the court or justice that the defendant is in fact violating any part of section 238 or is threatening to do so, an injunction may be issued enjoining and restraining such action or threatened violation, without requiring proof that any person was in fact misled or deceived or otherwise injured (Mil. L. Sec. 238).

STATE, POLICE, FIRE, OTHER INSIGNIA ON VEHICLES: It is a misdemeanor to use any seal, device of arms, sign, lettering or insignia of the United States or of the State of New York, or any political subdivision of the state on any vehicle not owned or used by the government or subdivision which the seal, device, etc., represents (V. & T. Sec. 396, subd. 1).

It is a misdemeanor to use or display the words "Police Department," "Police," "PD," or any other matter indicating ownership, possession or use by a police department on any motor vehicle or motorcycle not used by a duly organized police department in New York State and not actually used by a member or employee of such a department on a public highway (V. & T. Sec. 396, subd. 2).

It is a similar crime to so use or display the words "Fire Department," "Fire," "F.D.N.Y.," or any other matter indicating ownership, possession or use by a fire department, on any motor vehicle or motorcycle not used by a duly organized Fire Department in New York State and not actually used by a member or employee of such a department on a public highway (V. & T. Sec. 396, subd. 3).

LABOR ORGANIZATIONS: It is a misdemeanor for any person to represent himself as a member of or claim to represent a labor organization which does not exist within the state, or who has in his possession a credential, of a labor organization which has ceased to exist, and attempts to gain admission by the use of the credential as a member of any convention, or meeting of representatives of labor organizations of the state (fine not less than twenty nor more than fifty dollars, imprisonment not less than ten nor more than thirty days or both) (Labor L. Sec. 209-a).

EMPLOYEE BADGES AND OTHER INSIGNIA: An employer of labor may adopt a badge, or other insignia of identification to be worn or displayed by the employees for the purpose of identification on the premises of the employer and post a notice of the adoption of such badge, or insignia, near the main entrance of such premises.

Employers must deposit a replica with the Industrial Commission who will issue a certificate authorizing the use thereof.

Any person who, after approval and adoption of such insignia, and posting of notice, without authority or permission of the employer adopting the same, wilfully wears such badge or displays such insignia, or any facsimile or any imitation thereof, or uses the same to obtain admittance to or remain upon the premises of the employer, is guilty of a misdemeanor (Genl. Bus. L. Sec. 140).

BADGES, ETC., ORDERS AND SOCIETIES: It is a misdemeanor for any person to wilfully wear, or attach to any motor vehicle, the badge, insignia, rosette or the button of the Grand Army of the Republic, the insignia, badge or rosette of the Military Order of the Loyal Legion of the United States or Military Order of Foreign Wars of the United States, or the badge or button of the United Spanish War Veterans, the Veterans of Foreign Wars of the United States, the American Legion, the Disabled American Veterans, the Military Order of the World War, the Army and Navy Union, U.S.A., or the Order of Patrons of Husbandry, or the Benevolent and Protective Order of Elks of the United States of America, or the Steuben Society of America, or the Jewish War Veterans of the United States, Inc., or the Catholic War Veterans, Inc., or the insignia or emblem of the Italian American War Veterans of the United States, incorporated, the insignia or emblem of the Polish Legion of American Veterans, Inc., or the insignia or emblem of the Military Order of the Purple Heart, Inc., or the insignia or emblem of any lodge, society or organization subordinate to or recognized as Masonic by the Grand Lodge of Free and Accepted Masons of the State of New York, or the insignia or emblem of the Masonic War Veterans of the State of New York, Inc., or the insignia or emblem of the Order of the Eastern Star of the State of New York, or the badge, banner, insignia, button or emblem of any lodge, society or organization subordinate to or recognized as Pythian by the

Grand Lodge, Knights of Pythias of the State of New York, or the badge, insignia, button, tab, or chapeaux of La Societe des Forty Homes et Eight Chavaux or the Marine Corps League, or AMVETS, American Veterans of World War II, Air Force Association, or the insignia or emblem of the Knights of Columbus, or the badge, shield, emblem or name of the Police Conference of New York, Inc., or the badge, shield, emblem or name of the New York State Association of Chiefs of Police, or the badge, shield, emblem or name of the New York State Fire Fighters Association, or the insignia, emblem, badge, banner, button of Grand Lodge of the State of New York, Order Sons of Italy in America, incorporated, or any subordinate Lodge or Grand Lodge of the State of New York, Order Sons of Italy in America, Incorporated, or insignia, emblem, badge, banner, button of Ladies' Lodges, Grand Lodge of the State of New York, Order Sons of Italy in America, Incorporated, or the insignia, emblem, badge, banner or button of The Ladies Auxiliary, Italian American War Veterans of the U.S., Incorporated, or the Civil Air Patrol Inc., American Hellenic Educational Progressive Association, Polish Legion of American Veterans or Ladies Auxiliary of Polish Legion of American Veterans, *or the badge, insignia, rosette or button of any society, order or organization, of ten years standing in the state of New York,* or use the same, or the name of any such society, order or organization by falsely representing himself to be a member thereof in good standing, to obtain, or in attempting to obtain, aid or assistance within the state, or wilfully use the names of any such society, order or organization, or the titles of its officers, or use its insignia or emblems, or the forms or designs threof, or its ritual or ceremonies unless entitled to use or wear the same under the constitution and by-laws, rules and regulations of such order or of such society, order or organization (Genl. Bus. L. Sec. 137, subd. 1).

This law does not supersede any provision of law prohibiting use and display on private vehicles of state and other seals and insignia and of specified signs, lettering or devices (Genl. Bus. L. Sec. 137, subd. 2).

NAMES-MISDEMEANORS IN USE OF: See section "Frauds" in this Manual, under sub-heading "Names-Misdemeanors in Use of" for additional offenses like impersonation.

EXHIBITION, DISPLAY OR USE OF FLAG: (Class A misdemeanor). The words flag, standard, color, shield or ensign, include any flag, standard, color, shield or ensign, or any picture or representation, of either thereof, made of any substances, or represented on any substance, and of any size, evidently purporting to be, either of, said flag, standard, color, shield or ensign, of the United States of America, or of the state of New York, or a picture or a representation, of either thereof, upon which shall be shown the colors, the stars, and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation may believe the same to represent the flag, colors, standard, shield or ensign of the United States of America or of the state of New York.

1. This section does not apply to any act expressly permitted by the statutes of the United States of America, or by the United States army and navy regulations, nor to a certificate, diploma, warrant, or commission of appointment to office, ornamental picture, article of jewelry, stationery for use in private correspondence, or newspaper or periodical, on any of which shall be printed, painted or placed, said flag, standard, color, shield or ensign disconnected and apart from any advertisement.

2. It is a misdemeanor for any person to:

a. in any manner, for exhibition or display, place or cause to be placed, any word, figure, mark, picture, design, drawing, or any

advertisement, of any nature upon any flag, standard, color, shield or ensign of the United States of America, or the state of New York, expose or cause to be exposed to public view any such flag, standard, color, shield or ensign, upon which shall have been printed, painted, placed, attached, any word, figure, mark, picture, design, or drawing, or any advertisement of any nature, or

b. expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article, or substance, being an article of merchandise, or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached, or otherwise placed, a representation of any such flag, standard, color, shield or ensign, to advertise, call attention to, decorate, mark, or distinguish, the article or substance on which so placed, or

c. print, engrave, or otherwise place or cause to be printed, engraved or otherwise placed on any blank check, bill head, letter head, envelope or other business stationery, a representation of any such flag, standard, color, shield or ensign, or shall use any such blank check, bill head, letter head, envelope or other stationery for business purposes or correspondence, or

d. publicly mutilate, deface, defile, or defy, trample upon, or cast contempt upon either by words or act, or

e. raffle or place in pawn any such flag, standard, color, shield or ensign, or

f. publicly carry or display any emblem, placard or flag which casts contempt, either by word or act, upon the flag of the United States of America, or

g. publicly use or cause any such flag, standard, color, shield or ensign, to be publicly used as a receptacle for the placing, depositing or collecting of money or any other article or thing (Genl. Bus. L. Sec. 136).

INVESTIGATIONS

The new Criminal Impersonation statute under the Penal Law covers four classes of impersonations: (1) of an individual, (2) of a representative of another person or of an organization, (3) of a public servant, or (4) by means of a uniform or badge of a public servant.

When the impersonation is of an individual or a representative, there must be an act done in the pretended character, with an intent to either obtain a benefit or injure or defraud someone.

Where the impersonation is of a public servant (either direct impersonation or wearing of uniform or badge) there must be an intent to induce someone to submit to the pretended authority of such public servant or to otherwise act in reliance on such authority.

Complainants should always be interviewed in detail to determine:

1. Who the offender pretended to be (or what he claimed to represent) or what uniform or badge he wore or displayed;
2. What specific words the offender used;
3. What was obtained or attempted by the offender.

Where the complaint is impersonation by acting as, or by illegal wearing of badge or uniform of, a public servant, the complaint may actually concern a genuine public servant. The alleged offender's status, in appropriate

instances, should be checked with the pertinent public agency early in the investigation, to avoid possible embarrassment in connection with a legitimate public servant who is not guilty of an impersonation.

A "public servant" is any public officer or employee of the state or of a county, town, city, village or governmental instrumentality within the state. The term also includes any one exercising the functions of such a person and anyone who has been elected as or designated to be such a person (P.L. Sec. 10.00, subd. 15).

In all cases it is important to pin down as soon as possible the exact means of impersonation or the exact uniform, insignia, badge, etc., involved in the case. Photographs should be obtained where of probable value, particularly of offending signs on vehicles or of offending uniforms and insignia. The photographs must, of course, be handled as evidence.

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76. INCEST

INCEST: A person is guilty of Incest who:

1. Marries, or
2. Engages in sexual intercourse with,
3. A person whom he (or she) knows to be related to him (or her):
   a. Either legitimately or illegitimately as:
      (1) An ancestor, or
      (2) A descendant, or
      (3) Brother or sister of either the whole blood or the half blood, or
      (4) Uncle or aunt, or
      (5) Nephew or niece (P.L. Sec. 255.25).

Incest is a Class E felony.

CORROBORATION REQUIRED FOR INCEST PROSECUTIONS: A person cannot be convicted of incest or of an attempt to commit incest on the uncorroborated testimony of the other party to the incestuous or attempted incestuous act (P.L. Sec. 255.30).

CONTRACTING OR SOLEMNIZING INCESTUOUS MARRIAGE: If an incestuous marriage is solemnized it is void, and the parties thereto may each be fined not less than $50 nor more than $100, and may also be imprisoned for not over 6 months (Dom. Rel. L. Sec. 5). This is an Unclassified misdemeanor (P.L. Sec. 55.10, subd. 2-c).

Any person who knowingly and wilfully solemnizes such a marriage, or any person who procures or aids in the solemnization of such a marriage is also guilty of an Unclassified misdemeanor, with like penalty (Dom. Rel. L. Sec. 5). Other violations in respect to solemnization of marriage generally are set out in Section 84, "Marriage Violations," in this Manual.

WHEN INTERCOURSE NOT REQUIRED: The offenses of Incest or Contracting or Solemnizing Incestuous Marriage become complete upon marriage and it is not necessary, when a marriage is proved, to also prove that any sexual intercourse occurred. It is, however, necessary to establish sexual intercourse to prove any case of incest without marriage (Peo. vs. Bord, 243 NY 595).

WHICH CRIME MAY BE PROSECUTED: The provisions of Section 5 of the Domestic Relations Law (Contracting or Solemnizing Incestuous Marriage) making the parties to an incestuous marriage punishable for only a misdemeanor merely create another crime in addition to

the crime of Incest. The District Attorney may prosecute for the felony of Incest or the Domestic Relations Law misdemeanor, as he chooses, if the facts permit either charge (Peo. vs. Bord, 243 NY 595).

INVESTIGATIONS

Under the old Penal Law, corroboration was required to prove Incest and it could not be established solely on the testimony of a party to it, as he or she would have been an accomplice, except when a female under 18 (the age of consent). In addition, under Section 392 of the Code of Criminal Procedure, if a child under 12 was the partner, corroboration was required. The new Penal Law has done away with these distinctions and has established an overall requirement that for any Incest conviction there must be corroboration.

When officers receive a complaint of either Incest or Contracting or Solemnizing Incestuous Marriage, they should secure signed statements, if possible. Immediate investigation should be directed to obtaining proof of the marriage and/or the incestuous sexual intercourse, as the case may be.

Proof of the forbidden degree of consanguinity must be obtained. This should be done early in the investigation. Documentary proof of the relationship of the subject and his or her partner in the offense should always be sought, ordinarily in public documents including birth records, marriage records and immigration records insofar as is realistically possible. Certified records from other countries may be obtained through police agencies of those countries or through their consuls in the United States, or the United States State Department in Washington (its New York City office may be called for advice and assistance).

In cases involving young females, officers should take steps to ensure that all pertinent medical testimony possible is preserved by prompt medical examination of the female.

Consideration should always be given to the possibilities inherent in laboratory examinations of clothing and evidence from the scene of intercourse, as in other sex cases, if the events complained of are of sufficiently recent occurrence.

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77. INTOXICATION

The former rule on intoxication, familiar to the experienced officer, was that "intoxication" concerned only a condition arrived at from drinking alcoholic beverages (Peo. vs. Weaver, 188 App. Div. 395). This has been changed by the new Penal Law, which now provides that "public intoxication" includes being under the influence of not only liquor but also of narcotics or any other drug (P.L. Sec. 240.40).

PUBLIC INTOXICATION: A person is guilty of Public Intoxication who:

1. Appears in a public place,
2. Under the influence of:
   a. Alcohol, or
   b. Narcotic drugs, or
   c. Any other drugs,
3. To the degree that he may:
   a. Endanger himself, or
   b. Endanger other persons, or
   c. Endanger property, or
   d. Annoys persons in his vicinity (P.L. Sec. 240.40).

Public intoxication is a violation.

PUBLIC PLACE: A basic element of Public Intoxication is that the subject appear in a public place. The intoxication forbidden by this law is no Public Intoxication violation if it is in a private place.

A public place is a place to which the public or a substantial group of persons has access and includes, but is not limited to, highways, transportation facilities, schools, places of amusement, parks, playgrounds, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence (P.L. Sec. 240.00, subd. 1).

ARREST: There is no longer a special arrest statute dealing with intoxicated persons, like former Section 1221 of the Penal Law. This should not change police practice, however, since under the old law and under current law (CCP Sec. 177, In What Cases Arrest Without Warrant Allowed) it was and is necessary for the officer to make a judgment that the individual arrested is under the influence and annoying or endangering. If he is, he is committing the offense in the officer's presence and is thus subject to summary arrest.

The usual arrest under the new Public Intoxication law will continue to be for alcoholic intoxication. Proof of being under the influence of alcohol will be limited, in the usual case, to the actions and appearance of the subject. It will not be usual to seek added proof of the quantity of alcohol imbibed, the kind, the period of intake, and similar matters, or to take blood tests (except in Vehicle and Traffic cases).

However, arrests will not be that simple where the subject is under the influence of a narcotic or other drug. Such influence will not be clearly evident from the actions and appearance of the subject as it would be in the case of alcohol. Officers will thus be forced to seek all possible proof of the intake of drug, the amount, the time taken, etc., to support Public Intoxication arrests involving drugs. Advice of the District Attorney as to handling such cases should be obtained and closely followed.

CAUTION: Officers must use caution at all times in dealing with apparently intoxicated persons, since persons with certain hidden medical problems such as diabetes, severe allergies, muscular disorders, etc., may display symptoms which appear similar to those of intoxication. To reduce the possibility of depriving such persons of prompt necessary medical attention, officers should look for "Medic. Alert" bracelets, emblems and medallions which many such persons wear.

Officers should be alert at all times to obtain medical attention for arrestees when the arrestees are apparently ill or complain of illness. In cases of doubt, the officer should resolve the doubt by having the prisoner examined by a medical doctor.

AIRPLANES: Penal Law Section 1222, which made it a crime to fly a plane while intoxicated, has been omitted from the new Penal Law. In its place, such offenders may be prosecuted for Reckless Endangerment (See "Assaults, Menacing, Reckless Endangerment," this Manual). This would also apply to operating any other kind of public vehicle.

BOATS: It is an offense to operate any vessel in an intoxicated condition on the navigable waters of the state (Navig. L. Sec. 70, subd. 5). The navigable waters of the state include all lakes, rivers, streams and waters within New York and not privately owned, except Long Island Sound within Westchester County and tidewaters in Nassau and Suffolk Counties (Navig. L. Sec. 2, subd. 4). This could, of course, also be Reckless Endangerment.

MOTOR VEHICLES AND MOTORCYCLES:

1. It is a traffic infraction to operate a motor vehicle or motorcycle while ability is impaired by the consumption of alcohol (V & T L. Sec. 1192, subd. 1).

2. It is a misdemeanor, punishable by fine not over $500, imprisonment not more than 1 year, or both, to operate such vehicles while in an intoxicated condition or while ability is impaired by use of a drug.

3. It is a felony to operate such vehicles in an intoxicated condition or while ability is impaired by use of a drug, after having been convicted within the previous 10 years of operating a motor vehicle or motorcycle in an intoxicated condition. Punishment is by fine not over $2000 nor less than $200, imprisonment not more than 2 years nor less than 60 days, or both (V & T L. Sec. 1192, subd. 2).

A police officer may, without a warrant, arrest a person for driving while intoxicated or driving while ability impaired by alcohol or a drug, if such violation is coupled with an accident or collision in which the person is involved when the violation has in fact been committed, though not in the police officer's presence and the police officer has reasonable cause to believe that the violation was committed by such person (V & T L. Sec. 1193).

Operating a vehicle or cycle while ability is impaired or while intoxicated can also be Reckless Endangerment (see "Assaults, Menacing, Reckless Endangerment,") this Manual.

PROOF OF ALCOHOL INTOXICATION OR IMPAIRMENT: Intoxication may be proved by testimony of witnesses who observed the drunk person, usually the officer arresting and other officers. It may also be proved by evidence as to chemical tests of specimens of blood, urine, saliva or breath taken from the subject within 2 hours of his arrest, under provisions of Section 1194, Vehicle and Traffic Law.

CHEMICAL TESTS, LOSS OF LICENSE: Section 1194 provides that anyone who operates a motor vehicle or motorcycle "in this state" (not just on a public highway) is deemed to have given consent to a chemical test for the purpose of determining alcoholic or drug content of his blood. If an operator has been placed under arrest and is thereafter requested to submit to a chemical test and refuses, his license must be revoked (V & T L. Sec. 1194, subd. 1). If he is a non-resident, his privilege to operate must be revoked or suspended as provided by Section 510, Vehicle and Traffic Law. The specimen must be taken within 2 hours of the arrest. The officer must have "reasonable grounds to believe such person to have been driving in an intoxicated condition or, while his ability to operate such motor vehicle or motorcycle was impaired by the consumption of alcohol or the use of a drug." The request must also be "in accordance with the rules and regulations established by" the officer's department (V & T L. Sec. 1194, subd. 1). If blood is used for the test, only a physician or registered professional nurse may withdraw it. Any physician or nurse so doing is immune from suit by the subject (V & T L. Sec. 1194, subd. 3-a, b, c).

In addition to physicians and nurses, commissioned medical officers of the Armed Forces or the U.S. Public Health Service, medical officers employed in the U.S. Veteran's Administration, internes in an incorporated hospital or state hospital or institution, internes in a hospital of a municipal corporation and physicians acting by virtue of temporary certificates may be used by the police officer (Opinion Attorney General, 6/13/57). The officer should witness the blood being withdrawn and must take care

to preserve the chain of evidence as to the specimen. At least 10 cubic centimeters (1/3 oz.) should be obtained, for alcohol examination.

The percent of alcohol in urine is not constant except for very short periods and in using urine for analysis, it is necessary to take 2 samples, a half hour or more apart. If urine is to be used for analysis, a specimen should be obtained immediately after arrest and a second specimen one half to one hour later and not later than 2 hours after arrest. At least 4 ounces should be in each specimen.

It is recommended that urine tests not be obtained from female offenders (unless entire detention and sample proceedings are supervised by female officers or matrons who would be in a position to testify as to obtaining the samples and to identify them). This is solely a matter of propriety. There is no legal prohibition against male officers taking specimens from female offenders.

Breath may be used for chemical analysis for alcohol, in any of various commercially manufactured measuring devices, bearing trade names such as "Alcometer," "Breathalyzer," "Drunkometer," "Drinkotestor," "Intoximeter" and "Photo-Electric Intoximeter". Officers using such equipment should carefully study up on the scientific basis of the analysis and exact method of calibrating and operating the particular equipment which he has available. Severe cross examination at the trial must be anticipated. Only by study will the officer be sufficiently prepared to give accurate answers.

The results of chemical tests must be made available to the subject at his request (V & T L. Sec. 1194, subd. 2). The subject also must be permitted to have a physician of his own choosing administer a chemical test, in addition to the one administered at the direction of the officer, if the subject desires such additional test (V & T L. Sec. 1194, subd. 4).

PERCENTS OF ALCOHOL IN BLOOD: The percentage by weight of alcohol in the blood has evidentiary effect as follows, in any case involving driving while intoxicated or driving while ability is impaired:

ADULTS

.05 of 1% or less	prima facie evidence that not intoxicated (V & T L. Sec. 1192, subd. 3-a).
over .05 of 1% and less than .15 of 1%	relevant evidence only, as to question of intoxication (V & T L. Sec. 1192, subd. 3-b).
.10 of 1% or more	prima facie evidence that ability impaired (V & T L. Sec. 1192, subd. 3-c).
.15 of 1% or more	prima facie evidence that intoxicated (V & T L. Sec. 1192, subd. 3-d).

PERSONS UNDER AGE 21

more than .05 of 1%	prima facie evidence that ability impaired (V & T L. Sec. 1192, subd. 4-a).
.15 of 1% or more	prima facie evidence that intoxicated (V & T L. Sec. 1192, subd. 4-b).

ABILITY IMPAIRED, NOT GUILTY PLEA: Where a plea of not guilty has been entered, no adult may be convicted of driving while ability is impaired unless a chemical test shows .10 of 1% or more alcohol in the

blood, and no person under 21 may be convicted unless a chemical test shows .05 of 1% of alcohol in the blood (V & T L. Sec. 1192, subd. 1).

PROOF WITHOUT CHEMICAL TEST: Proof of alcohol intoxication without chemical tests requires careful note of offender's response to inquiries, particularly questions as to current status (where are you now, where are you going, where did you start from, etc.), the answers to which may establish mental confusion, and questions as to drinking, where answers may establish amount of alcohol imbibed.

Note should also be made of any odor of alcohol, alcohol in possession, physical appearance, speech and coordination.

Coordination tests of balance (stand at attention, head back, eyes closed), movement (standing, eyes closed, touch nose with one hand, than the other beginning with arms horizontal to sides) and bending (picking up coins from floor) will all give physical facts as to the offender's condition and loss of control. Careful notes should be made of all actions, for testimonial use.

PROOF OF IMPAIRMENT BY DRUGS: The law does not specify what amount of a drug or what blood level, nor urine content of drug may violate this section of the Vehicle and Traffic Law. There is thus no clear-cut, statutory exposition of the offense by drugs as is set in the law for the offense by alcohol.

In the absence of admissions and clear physical evidence of a substantial impairment, officers should seek and be closely guided by the advice of the District Attorney as to the amount and kind of proof required in drugged driving cases.

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78. INVESTIGATIONS

Effective criminal investigation requires orderly procedure. At the beginning of an investigation, the officer will often have no clear idea of what happened, who are witnesses, what may be or may become evidence, or whom the offender may be. An orderly procedure will permit the investigating officer to function usefully even though he has, at the beginning, no clear idea of the case.

BASIC PROCEDURE: Investigating a case is like doing a jig-saw puzzle. Items are fitted together piece by piece and may not be obtained by the officer in any particular order. The investigating officer's procedure must therefore insure that he collects all available "pieces" of the case. As knowledge and understanding of the case are gained, the pieces may be sorted out for further steps to a successful solution.

BEGINNING A CASE: Cases investigated by the police officer fall into two general classes: (1) receipt of a complaint not relating to a particular crime scene and (2) receipt of a complaint involving a crime scene (and usually an occurrence involving injury or violence to persons or property).

In the type of case not related to a crime scene (lost child, bad check, marriage violation, bribery, larceny by false pretenses, etc.) the officer may initially devote complete attention to obtaining a fully detailed statement from the complainant as accurately as is possible. The officer can properly devote any reasonable amount of time to so doing.

In the type of case related to a crime scene (accidents, holdups, sex crimes, homicides, burglaries, etc.) the officer has a different problem. He must obtain necessary facts immediately from the complainant and as quickly as possible proceed or secure instructions for another or other

officers to proceed to the scene. If other officers can be obtained to assist the officer interviewing the complainant can then continue the initial interview in as detailed a manner as the facts require. Speed is essential to protect the scene against intruders, disturbance or damage from rain, wind, a housewife or storekeeper cleaning up, curious passer-by, semi-official persons who are not investigators, (ambulance personnel, firemen, power line crews) and so on.

Each law enforcement agency should have standing instructions on procedure in any type of case involving a crime scene, whether bank hold-up, lover's lane mugging, or any other. Instructions should include the following points:

1. The officer taking the complaint must secure necessary basic facts as promptly as possible, including what incident took place, the exact scene, its known address (or instructions for locating), data on victim and offender, and medical aid required (if any).

2. A method of informing other officers, properly arming them (if required) with shot guns, rifles, sub-machine guns, tear gas etc., and starting them toward the scene.

a. It must always be borne in mind that if the event is of very recent occurrence, officers proceeding to the scene may well pass a subject fleeing from the scene. Standing instructions should therefore be explicit as to furnishing description of the subject or subjects and pertinent vehicles to officers who are assigned to the case, and the manner in which such information shall be furnished.

3. Manner of proceeding as emergency vehicle.

a. Instructions should make clear the routine qualifications for proceeding as an emergency vehicle (lights, siren, etc.) (V&T Sec. 101, 1104, subd. c) and that officers so proceeding are not relieved of liability to and responsibility for the safety of other persons (V&T Sec. 1104, subd. d).

4. Action to take when scene is reached.

a. Instructions should be explicit as to what person or persons shall initially be contacted, and what action must be taken by the officer or officers first arriving, to protect the scene and to locate and identify possible witnesses.

b. Instructions should include steps to take to insure that the initial interviews shall be with actual victims or other persons who have first-hand knowledge and accurate information. It could be fatal to successful handling or to making an apprehension for an officer to spend his first minutes at the scene talking to a "witness" who actually saw nothing and is only a high official of the establishment involved, or a bystander with little actual information but a large desire to seem important. Such persons can be interviewed later, after the important initial securing of the scene and obtaining information from the actual victim and/or witness have been handled.

5. Use of information — advice to "headquarters".

a. Keeping "headquarters" informed of all material developments, particularly in cases where there is an identifiable subject still at large, is an absolute essential so that appropriate action may be taken as to searches, roadblocks, teletype and radio alarms and other pertinent activity aimed at apprehension.

FIRST STEP: The first step in any kind of investigation is to make sure that no available piece is lost. Witnesses must be promptly identified and located for interview. The crime scene and physical evidence must be protected.

Where more than one officer can be assigned, separate assignments should be made at the beginning for interviews and the collection of physical evidence. In those instances where there is only one officer, it is usually most practical to (1) take the necessary immediate steps to protect the scene, (2) conduct necessary initial interviews, (3) collect physical evidence and (4) analyze results and plan further investigation.

PROOF

OBJECTIVE OF INVESTIGATIONS: The objective of a criminal investigation is to answer the questions "what happened?" and "who did it?", and to obtain proof of the answers in the form of admissible evidence.

PROOF REQUIRED: In every criminal prosecution it is necessary to prove not only that there was an injurious, harmful or unlawful occurrence, but also that it had a criminal cause. This is referred to as proof of the "corpus delicti". Corpus delicti is Latin for "the body of the crime".

As an example, in a homicide, proof that a human died of a bullet wound that could not have been self inflicted is insufficient to establish a crime. The remainder of the "corpus delicti" must also be proved — that it was a criminal killing.

It is, of course, also essential to prove the identity of the offender. Thus, for a successful prosecution, admissible evidence of (1) the occurrence of the event, (2) a criminal cause of the event and (3) the identity of the offender, must be secured.

AMOUNT OF PROOF REQUIRED: The defendant in any prosecution is presumed innocent and he must be proved guilty beyond a reasonable doubt (CCP Sec. 389).

CONFESSIONS: A confession is not sufficient proof to warrant conviction without additional proof that the crime charged was committed (CCP Sec. 395).

A confession by itself is never sufficient to establish both the corpus delicti and the identity of the offender. If a ragged, known thief is found in possession of a $5,000 mink coat and confesses that he stole it, no conviction can be had without additional proof from the owner of the coat or other source that the coat is in fact stolen.

EVIDENCE

Evidence is anything which furnishes or tends to furnish proof or to make a fact clear to a court. A fact is what is true. Evidence may be an assertion of fact, or of opinion, or of knowledge.

KINDS OF EVIDENCE: Evidence may be either testimonial or real ("physical") evidence. Either testimonial or real evidence may be direct or they may be circumstantial.

Direct evidence is evidence which establishes an element of the crime or a fact in issue directly, without evidence of any other fact or any inference, such as testimony of an eyewitness to a murder by gunshot.

Circumstantial evidence (often called "indirect") is evidence of facts not in issue but from which the facts in issue may be inferred, evidence which requires an inference (such as testimony of a gun dealer that he sold the murder defendant a pistol).

Testimonial evidence is the most usual kind of evidence. It is any oral or verbal evidence offered by a witness.

Real or physical evidence is evidence furnished by objects or persons themselves, something tangible that can be seen, heard or otherwise ob-

served by court and jury, such as the victim's wounds in an assault case or the bullet from a murder victim's body.

Evidence solely in the form of writing, typing, printing, etc. is generally referred to as "documentary evidence."

There is little practical difference for the police officer in whether evidence is direct or circumstantial. The law does not specifically prefer direct over circumstantial evidence. In practice, the value of evidence as proof does not lie particularly in whether it is direct or circumstantial but rather in the character of the evidence itself and of the person who offers it in testimony.

WHEN EVIDENCE IS NOT REQUIRED (JUDICIAL NOTICE): It is not necessary that every fact be proved by evidence. In certain obvious areas, courts will take "judicial notice" that a fact is true, without the necessity of any proof being offered by the prosecution or the defense. Judicial notice may be taken at the request of either the prosecution or the defense, or on the court's own initiative.

Courts are required to take judicial notice of the laws of New York, of the United States and of other states.

Courts may, in their discretion, take judicial notice of a fact when "sufficient notoriety attaches to the fact to make it proper to assume its existence without proof. If there is any doubt either as to the fact itself or as to its being a matter of common knowledge, evidence will be required" (Ecco High Frequency Corp. vs. Amtorg Trading Corp. 274 App. Div. 982).

The courts have taken judicial notice of the general reliability of certain instruments and scientific procedures, so that it is no longer necessary to prove their reliability by expert testimony. Judicial notice of the general reliability of radar speedmeters, speedometer readings, ballistic evidence, X-ray pictures and identity from fingerprints are examples (Peo. vs. Magri, 3 NY 2d. 562).

Judicial notice will be taken of the identity and authority of public officers in this state, the time of holding elections and officials to be elected in New York, natural events such as the seasons, the time of rising and setting of the sun and the moon, natural laws, some agricultural facts such as time for planting crops, the general qualities of matter (such as that a wet tree will conduct electricity, that dynamite is intrinsically dangerous, that tobacco is not a drug), the computation of time, the correspondence of dates with days of the week, scientific facts (such as the use of telephones and ice cream freezers), standard weights and measures and well known facts relating to human life, such as the ordinary length of life, curiosity in children, the period of human gestation and "the normal things of life. Anything out of the ordinary must be proved" (Erie County Board of Social Welfare vs. Holiday, 14 App. Div. 2d 832).

RULES OF EVIDENCE

The law does not permit the use of every kind of evidence. "The rules of evidence" determine whether any particular bit of evidence is admissible.

The rules of evidence do not say what can be admitted, they say what cannot be admitted. Whatever logically offers proof may be used in evidence unless some rule of evidence excludes it.

In New York the general rule is that if evidence is material, relevant and otherwise competent, it is admissible even though obtained by unethical or illegal means (Richardson on Evidence, 9th Edit., pg. 112; Peo. vs. Dinan, 11 NY 2d. 350; Peo. vs. Everett, 10 NY 2d. 500).

There are 3 specific exceptions to this rule:

1. Evidence obtained by an unreasonable search and seizure *by officers* is inadmissible (Mapp vs. Ohio, 367, US 643) and evidence obtained by such an unlawful search and seizure may be suppressed (CCP Sec. 813-c). A search is reasonable and lawful if conducted pursuant to a legal search warrant, by consent, or incident to a lawful arrest (Peo. vs. Loria, 10 NY 2d. 368). The law on this point makes inadmissible not only what was obtained by the unreasonable search and seizure but also any evidence which stems from the use of what was so obtained (Peo. vs. Rodriguez, 11 NY 2d. 279). See Section "Search and Seizure" in this Manual.

2. Evidence in the form of a confession illegally obtained is inadmissible in any criminal case, against the confessor.

3. Any evidence obtained by illegal eavesdropping or wiretapping, by officers or others, is inadmissible (CPLR Sec. 4506). Eavesdropping or wiretapping is prohibited by Section 605 of the Federal Communications Act of 1934 (Title 47 U.S. Code Sec. 605). However, evidence obtained by eavesdropping or wiretaps in accordance with New York law is admissible in New York courts (Schwartz vs. Texas, 344 US 199, Peo. vs. Dinan, 10 NY 2d. 350).

BASIC RULES OF ADMISSIBILITY: To be admissible, evidence must always be (1) relevant, (2) material and (3) competent.

Evidence is relevant when it has a direct bearing on a fact in issue, when it is pertinent, when it demonstrates enough concerning a fact to be worth consideration by the jury.

Evidence is material when it is of sufficient importance or influence as to a fact, when it is not too trivial or unimportant.

Evidence is competent when it is not subject to exclusion by any of the rules of evidence, when it is legally adequate and sufficient.

HEARSAY RULE: Hearsay is evidence not from personal knowledge of the witness but from mere repetition of what the witness heard others say. It is testimony as to something said outside the court, by another than the witness, which the witness offers as true. Hearsay evidence is never admissible, unless it comes under one of the exceptions to the hearsay rule.

Major reasons for hearsay not being admissible are that the source of the testimony is not under oath and cannot be cross-examined, since the witness who is under oath and who can be cross-examined is merely repeating words of another.

HEARSAY RULE EXCEPTIONS: When hearsay is offered not for the purpose of proving the truth of the words of another but merely to show that the words were said, it is admissible. An example would be in an obscene telephone call case—testimony as to the words of the caller would be admissible to prove the obscenity of the call and the exact words said, without any view to proving that the words said were true. Another example would be where the words accompany an act and give it legal significance, such as where a person gives another money and says: "Here is the ten dollars I borrowed." Hearsay evidence as to this statement would be admissible, since it only seeks to prove that the giver said the words, not that they were true.

Where hearsay is offered to prove a particular circumstances, rather than the truth of the words, it is admissible. Testimony that a customer had shouted "you burglar" at a storekeeper would be inadmissible to help prove that he was a burglar, but could be admitted if offered to establish that the customer had a conversation with and made a complaint to the storekeeper.

ON JUNE 12, 1967, IN THE CASE OF BERGER VS. NEW YORK, THE SUPREME COURT OF THE UNITED STATES HELD THAT SECTION 813-a OF THE CODE OF CRIMINAL PROCEDURE PERMITTING EX PARTE ORDERS FOR EAVESDROPPING WAS TOO BROAD, RESULTING IN TRESPASSORY INTRUSION, AND WAS UNCONSTITUTIONAL.

The following kinds of hearsay evidence are admissible, as specific exceptions to the hearsay rule:

1. **Confession of defendant**

2. **Admission:** an admission of fact by the defendant which is against his interest but does not amount to admission of guilt.

3. **Dying Declaration:** a statement made by the victim of a homicide who later dies, made when death is imminent and the declarer has abandoned hope of recovery.

4. **Res gestae:** "res gestae" is latin for "things done". Under the rule of "res gestae," utterances which might be considered part of the thing done, the crime, may be admitted even if hearsay, such as a rapist telling his victim "I need a woman." Declarations of states of mind, excited declarations, declarations contemporaneous with the act and expressions of physical condition are classes of utterances coming within the "res gestae" rule.

5. **Failure to Deny** (Adoptive Admission): where an individual is accused by any person of an offense, in his presence and hearing and he remains silent when it would be proper for him to speak, testimony as to the accusation and his silence is admissible. This rule does not apply to persons under arrest on a criminal charge (Peo. vs. Rutigliano, 261 NY 103).

6. **Business Records:** any writing or record made in the regular course of any business at the time of the transaction or within a reasonable time thereafter is admissible. Business means a business, profession, occupation or calling of any kind. The rule includes hospital bills, which are prima facie evidence of the facts in them when they are certified by the head of the hospital or a responsible employee in the controller's or accounting office (CPLR Rule 4518 a, b).

7. **Certificate or Affidavit of Public Officer:** where a public officer is required or authorized by special provision of law, to make a certificate or an affidavit to a fact ascertained, or an act performed by him in the course of his official duty and to file or deposit it in a public office of the state, the certificate or affidavit is prima facie evidence of the facts stated (CPLR Rule 4520).

8. **Prior testimony:** when a witness is unavailable by reason of his death, insanity, sickness or infirmity or cannot "with due diligence" be found in the state, his testimony at a prior trial may be read into evidence by either the prosecution or the defense (CCP Sec. 8, subd. 3-d). Testimony at an examination before a magistrate, if reduced to a deposition and if the defendant had an opportunity to, or did cross-examine at the time (CCP Sec. 8, subd. 3-a), and testimony of witnesses conditionally examined for the people, before trial, under Section 219, Code of Criminal Procedure (CCP Sec. 8, subd. 3-b), are admissible under the same circumstances.

9. **Pedigree:** hearsay is admissible to prove pedigree (the lineage, descent and succession of families or the line of ancestors from which a person descended) whenever pedigree is an issue in a case.

10. **Reputation:** testimony as to a person's reputation is of necessity hearsay, but is admissible in proper cases as a specific exception to the hearsay rule. A defendant in a criminal case may introduce evidence of his character by proof of a good reputation (Peo. vs. Fay, 270 App. Div. 261). The prosecution in a criminal case cannot introduce evidence as to the defendant's reputation unless and until the defendant or a witness he calls affirmatively presents evidence of his good character (Peo. vs. Kinsman 192 NY 421). When he does so, the prosecu-

tion may then also offer evidence of defendant's previous conviction of a crime (CCP Sec. 393-c).

BEST EVIDENCE RULE: The best evidence rule relates to documents or writings. The rule is that whenever it is desired to prove the contents of a writing or document, the original must be introduced or an adequate explanation of why it cannot be produced must be made before a copy can be used. Loss or destruction, possession by an adverse party and being outside the jurisdiction of the court may be adequate explanations. A specific exception to the best evidence rule is the rule on certificates or affidavits of a public officer set out previously under "Hearsay Rule Exceptions." Rule 4539 of the Civil Practice Law and Rules makes another exception: any copy or reproduction made in the regular course of business by any business, institution, member of a profession or calling, which is an accurate reproduction, is as admissible as the original.

PRIVILEGED COMMUNICATIONS RULES: The law gives certain confidential communications a special status in that they are not admissible in evidence unless the communicator holding the privilege consents. The confidential communications having this status are:

1. **Client to attorney:** the client holds the privilege (CPLR Sec. 4503).

2. **Husband to wife or wife to husband, during marriage:** neither can disclose such a communication without the consent of the other, if living (CPLR Sec. 4502).

3. **Confessing penitent to clergyman:** the one confessing holds the privilege (CPLR Sec. 4505).

4. **Physician, dentist, nurse and patient:** any information obtained by a physician, dentist or nurse while attending a patient in a professional capacity is privileged. The patient holds the privilege. The law includes either a registered nurse or a licensed practical nurse (CPLR Sec. 4504).

The Commissioner of Health or any representative he authorizes may require a physician to testify in respect to narcotics matters and the patient has no privilege in this instance (Publ. H. L. Sec. 3304). In addition, information communicated to a physician or dentist in an effort to unlawfully procure a narcotic drug is not privileged (Publ. H. L. Sec. 3334, subd. 3).

5. **Client to registered psychologist:** the client holds the privilege (Educ. L. Sec. 7611).

HOW EVIDENCE IS OBTAINED

There are three basic processes by which the criminal investigator develops evidence: interviewing people, seeking physical (real) evidence and the use of surveillances.

The term interviewing as used herein means police questioning of anyone in an investigation, whether subject, suspect, witness, source of information or informant of any kind.

INTERVIEWING

The basic ingredient in an interview is to get the person interviewed talking. The officer obtains no information when he himself is talking. Strokes of brilliance and clever questions which "pay off" are rare. What does the job is a good, basic technique, combined with persistence.

PERSONAL CHARACTERISTICS OF INTERVIEWER: For best results, the interviewer and his clothing (or uniform) must be clean and neat and officers must avoid anything which would be personally offensive or annoying to the one interviewed (gum chewing, cigar smoking, sweat, loudness, etc).

GENERAL APPROACH OR ATTITUDE: The most generally satisfactory approach to an interview is one of frankness and openness. The impression to convey is that the officer is outspoken, candid and free of any guile or cleverness. This does not mean that an officer should in fact be frank and open or disclose anything at all. It merely means that he should convey such an attitude.

A planned and careful courtesy is required in all interviews. The detective who stalks into a neighborhood lady's home with his hat on is in a less advantageous position than the one who initially impresses her with his courtesy by removing his hat.

A reasonable degree of cordiality should generally be used, not so much that dignity is lost, but enough to ease the opening of the interview, no matter what the subject matter may be.

The officer must continually show an interest in the person being interviewed and in the information being developed. This requires continual attention and some degree of patience in any interview.

Personal feelings or attitudes of the officer must be rigidly controlled and concealed, unless a specific advantage is gained in the interview by a planned display of the officer's feeling or view (whether real or assumed).

PREPARATION FOR INTERVIEW: Every interview requires preparation. The officer must be sure of his facts, not only the facts of the matter under investigation but also any pertinent facts concerning the person interviewed. This often requires detailed review of prior investigation in the matter and even independent investigation of the person to be interviewed, in a proper case.

The officer should be certain he is fully informed on the professional aspects of the interview—what rights the individual to be interviewed may have, what information may be usable in the case, whether information developed should be reduced to writing and similar matters.

It is essential that the officer make a list of the specific information desired from an interview. This may be done mentally in simple cases and in writing in more involved matters. The officer must approach each interview having clear in mind (or in notes) exactly what he wants from it.

NOTE TAKING: It is expectable that when police ask questions, they will write down notes of answers. In most cases, note taking will have no ill effect on the interviewee and will assist in making a detailed and orderly record of the investigation. In interviews of hostile witnesses, suspects and subjects, the officer must make a judgment as to whether note taking is essential or not. He should usually decide to take no notes at all until the full story has been developed. Beginning note taking in the middle or at a point where damaging information begins to come forth will deter the person being interviewed.

PHYSICAL ASPECTS OF AN INTERVIEW: The time of an interview should be carefully considered, where possible, endeavoring to select a time when the one to be interviewed will be least busy and most able to give full attention to the interview. Don't interview housewives at dinner time, for example, or storekeepers on check-cashing nights, if a better time can be selected.

The place of interview depends on who is to be interviewed. Ordinarily subjects and suspects should be interviewed in police quarters.

Privacy and lack of interruptions must be arranged. In police quarters, efforts must be made to keep people out of the interview room being used and in other places as much privacy as is possible should be sought. Always request a private interview where possible. This may merely involve a businessman closing his office door or a garage owner walking to the back of the garage away from customers and mechanics.

When interviewing subjects or suspects in police quarters, make certain that there is nothing available in the room or on the desk which could be used as a weapon, such as a heavy ash tray, billy club, etc.

Women require special considerations, due to the possibility of false charges of improper conduct. The best protection is another officer as a witness or to interview the woman in quarters open to view of other officers, when she is other than a known respectable housewife, businesswoman, etc.

PARTS OF AN INTERVIEW: It will assist the officer in proper interviewing techniques if he considers an interview as consisting of 3 parts: (1) the introduction, (2) the body and (3) the closing.

THE INTRODUCTION: An interview should begin with a clear identification of the officer, including exhibition of credential card or badge when not in uniform. Sufficient time should be taken to ensure the officer's identity is clear to the interviewee. The main purpose of the introduction is to get the person used to the officer and to get him talking. It is a "warm-up." After the initial identification, the officer should induce the interviewee to talk (the new rug on the office floor, baseball, a fresh tree stump on the housewife's lawn, the weather, any reasonable topic of personal interest to the interviewee except controversial ones, such as religion, politics or jokes). The officer learns nothing while he is talking. The introduction should be devoted to getting the interviewee talking.

Officers should note that the "introduction" is equally applicable to bank presidents, housewives and criminal subjects, or any subject.

The introduction should continue as long as required to ensure that the interviewee is "warmed up" and somewhat used to talking to the officer. The actual length of time, of course, will vary depending on the importance of the interview and the personality of the person interviewed. The introduction can be extremely brief in many instances.

BODY OF THE INTERVIEW: The body of the interview is the fact-finding part. The correct basic procedure is: (1) let him tell the story and (2) then ask direct questions.

The fewer words said by the officer and the less digression, the better the results to be expected. The officer should restrict his comments at the beginning to "uh-huh," "I see," "then what?" and similar short utterances, guiding or questioning only as absolutely necessary. With a majority of persons, it will only be necessary to warm them up in the introduction, ask one or two key questions and then let them tell the story.

Direct questions are asked when the interviewee has finished volunteering information or when he fails to do so. Direct questions are clear, short and specific questions. All questions should be phrased to require an answer other than "yes" or "no." In other words, ask "Who was there?" not "Did you see anyone?" Such affirmative phrasing helps keep control of the interview and puts some pressure on each question.

For accuracy, the officer should keep influence or direction out of his questions. The officer should not ask: "Did you see a blue Chevrolet" but instead "What car did you see?" If an officer does not train himself to intentionally avoid conditioning questions (such as with "blue Chevrolet"), he will often obtain inaccurate or misleading information.

In some instances, it is necessary to intentionally condition questions, to block evasive replies by uncooperative interviewees. For example, it may be necessary to ask: "What time did Jones get to your apartment last night?" instead of "When did you last see Jones?" Such conditioning should enter questions only with deliberation on the officer's part, not inadvertently.

BASIC PLAN, BODY OF INTERVIEW: When a line of questioning ceases to produce information, it should be temporarily abandoned and questions should be directed to another phase of the matter under inquiry. The basic technique is to keep the interview going with active participation by the interviewee. As questions are answered, more and more possibilities open themselves to the officer. It is well to avoid "pumping a dry well" and to move on to other things when a line of questioning "drys up" the interviewee. To handle this successfully, the officer must be continually alert and remember all pertinent detail so that as new answers are given, he can plan new attacks on the previous lines of questioning, armed with the new information.

It is necessary that officers maintain an air of complete confidence during an interview. This is a matter of self control and should never be overlooked, no matter how poorly the interview seems to be going. It is a major psychological advantage.

The interviewing officer, during the body of an interview, must be persistent. This is more important than brilliance. He must also be thorough, not stopping when favorable data are obtained but exploring them in detail. For example, in exhibiting photographs for an identification, it is improper to merely accept interviewee's statement that one of the men pictured is the subject. The identification should be explored in great detail. It will help the officer to ask himself "what will this witness be asked on cross examination?" and to explore the information with this thought in mind.

The officer must continually be alert for information he did not expect to get when he began the interview. He should be continuously aware that his view of the case may be partly or entirely incorrect.

Officers must be careful to get accurate answers by questioning in depth. For example, if the answer is "it was early," the officer should pin-point what is meant, to the exact clock time if possible, by further questioning. This is often time-consuming but should not be short-cut.

CLOSING THE INTERVIEW: Every interview should be promptly closed when a mental check by the officer determines that its purpose has been achieved.

Closing an interview requires only saying "thank you for your time" and leaving as promptly as possible. Officers should not stay to chat. It is at this point that the interviewee becomes the questioner and officer the interviewee.

SPECIAL CONSIDERATIONS: Persons interviewed in criminal investigations fall into 4 general classes, each of which requires individual considerations: (1) complainants, (2) general sources not directly connected with the event, (3) witnesses who may give testimony and (4) subjects and suspects.

1. **Complainants:** It should be borne in mind that a complainant is initially a willing volunteer. The officer should do nothing to change this. A key factor is that the officer show interest and give the complainant recognition for volunteering ("We're certainly glad you took the trouble to let us know"). Be aware that many complainants coming to police quarters in person are nervous or apprehensive. It might be their first contact with the police. Their confidence should be

bolstered. They should be given as much privacy in respect to the place of interview as the premises permit.

2. General Sources: By general sources is meant the people who make up the bulk of persons interviewed but never called to court—the public keepers of records of birth, vehicles, licenses, etc., the hotel manager, neighbor, and all the others who have information of use in a case but are never or almost never witnesses. There are 2 basics with such people:

a. Try to suit their convenience and see their problems.

b. Use cordiality and careful courtesy at all times.

If such people are not cooperative, the officer will often never even even know it and can thus miss obtaining useful or necessary or even vital information without realizing he has done so.

3. Witnesses: A main problem with most witnesses is to get over the "I don't want to be involved" attitude. It is best to merely gloss over the difficulties to be anticipated and to explain that whether or not they are witnesses is beyond their control or the officer's.

4. Subjects and suspects: (see "Confessions" later in this section of the Manual). A basic thing with subjects and suspects is to delay interviews with them until something has been developed to talk to them about, until there is at least some evidence to go on, if this is at all possible. Generally, a calm, quiet approach is best.

In most cases, it is best to calm the subject, and in cases where shame is predominant, such as sex crimes or embezzlements, let them save face as much as possible. It is rarely of value to use plain words and exact truths in describing the acts of subjects. Much better results may be expected from using the most pleasant phrasing possible and minimizing the shameful aspects. The officer must avoid any appearance of distaste or disgust, no matter what his real feelings may be. The officer is interested in extracting information, and any showing of his real feelings will be a hindrance.

A step-by-step approach is frequently useful. Fear of punishment or consequences may block direct admissions by a subject. In such cases, if the officer concentrates on obtaining minor and specific admissions, he will eventually reach a position where the final admission is much easier. In other words, by proceeding little by little, the final bitter pill is smaller and easier to swallow. As an example, in a robbery suspect interview, the beginning might be entirely devoted only to whether he was in town the night of the robbery. When it is developed that he was, the next step would be entire concentration on whether or not he was out of the house that night, and so on.

It is often useful to seek emotional factors which may be of value—a sense of duty, jealousy, rivalry, etc. When such a factor is found, an appeal to the subject's better impulses or expression of understanding of his reasoning may be effective.

Physical evidence may be of use if any shock value can be capitalized on. The main consideration is that the officer must be certain of the relationship of the piece of physical evidence to the subject and to the case. The primary use of such things is an effort to surprise an admission from the subject.

Interviewers should carefully avoid sarcasm or criticism of the subject or suspect. Anything offensive will do nothing but "dry him up." Although it may frequently be tempting to be critical, it has no real value in extracting information.

CONFESSIONS

A confession of a defendant can be used in evidence against him unless made under the influence of fear produced by threats, or unless made upon a stipulation of the District Attorney that he would not be prosecuted therefor (CCP Sec. 395).

A confession alone is not sufficient to warrant a conviction and there must be additional proof that the crime charged was committed (CCP Sec. 395).

CONSTITUTIONAL PROTECTION: The Fifth Amendment to the U.S. Constitution provides, in part: "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ." This is often called the "privilege against self incrimination". On June 13, 1966, the United States Supreme Court, in "Miranda vs. Arizona" (and its companion cases, Vignera vs. New York, Westover vs. U.S. and California vs. Stewart) 16 L. Ed. 2d. 694, laid down, under the Fifth Amendment, a specific rule for police in respect to interviews of suspects and subjects and the taking of confessions or admissions.

The Supreme Court ruled that no one can use in a prosecution any statements (whether they incriminate or exculpate the defendant) which stem from "custodial interrogation" of a defendant, unless the prosecution can demonstrate the use of procedural safeguards effective to secure the Fifth Amendment privilege against self incrimination. The following safeguards are the minimum required, under the court's ruling:

1. Prior to any questioning,
2. The defendant must be warned:
   a. That he has a right to remain silent,
   b. That any statement he does make may be used as evidence against him, and
3. The defendant must be told:
   a. That he has a right to the presence of an attorney retained by himself, and
   b. That he has a right to the presence of an attorney who will be appointed for him if he wants one.

WAIVER REQUIRED TO PERMIT QUESTIONING SUBJECT: After the preceding warning and information on his rights have been given to a subject it is desired to question, it is essential that the subject waive these rights voluntarily, knowingly and intelligently. If he does not, any information obtained from him will be inadmissible.

If the subject at any time after making a waiver indicates in any manner that he wishes to consult with an attorney before speaking, he cannot be questioned and any information obtained from him thereafter will be inadmissible, until he consults with his attorney and then agrees to be questioned.

Also, if the subject is alone, without an attorney, and indicates in any manner that he does not wish to be questioned, the police may not question him further unless and until he has consulted with an attorney and thereafter submits himself to questioning (Miranda vs. Arizona, pgs. 706, 707, 16 L. Ed. 2d. 694).

ACTION AFTER ADVISING SUBJECT OF HIS RIGHTS: The fact that the subject was advised of his rights and his answers should be recorded in detail. Include the time he was advised and the times of his reply. This information should be set forth in any report of the interview and in any written statement which results from the interview, specifically showing the subject's waiver of his rights to not talk and to an attorney.

WHEN CUSTODIAL INTERROGATION TAKES PLACE: The Supreme court's "Miranda" rule deals solely with "custodial interrogation." It applies only to police questioning of persons who are "in custody." A person should be considered "in custody," when he is under arrest or is deprived by officers of his freedom of action in any significant way.

Officers should avoid interviewing witnesses or suspects who might later become defendants under circumstances which could reasonably be interpreted by the witness or suspect as indicating he is under arrest.

A police interview with a person who later becomes a defendant will probably be considered a "custodial interview" if it is conducted in a police dominated atmosphere, such as in a police station or police car, unless the person has been specifically told that he is not under arrest and is free to leave or to communicate with his attorney, relatives or friends.

A procedure of bringing a suspect "down to the station" to talk to him would likely be deemed by the courts to create a situation of "custodial interrogation." If so, and in the absence of appropriate warnings and waivers, the product of such interviews would not be admissible.

Interviews with subjects who have not been placed under arrest when conducted in the subject's home, place of business or employment or other similar place where the police are not in control and the subject is not being held "incommunicado" do not come within the Supreme Court's decision. Advice to subjects under such conditions would not be required.

INTENT OF RULE: In the Miranda case the Supreme Court said, in part: "Our decision is not intended to hamper the traditional function of police officers in investigating crime . . . When an individual is in custody on probable cause, the police may, of course, seek out evidence in the field to be used at trial against him. Such investigation may include inquiry of persons not under restraint."

"General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact finding process is not affected by our holding. It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present."

VOLUNTEERED CONFESSIONS: According to the Supreme Court, confessions remain a proper element in law enforcement. Any statement given by a subject freely and voluntarily, without any compelling influences, is admissible in evidence. The fundamental meaning of the privilege against self incrimination, when an individual is in custody, is not whether he is allowed to talk to the police without the benefit of warnings and counsel but whether he can be interrogated by the police. There is no requirement that police stop a person who enters a police station and states that he wished to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements *of any kind* are not barred by the Fifth Amendment and their admissibility is not affected by the Miranda case.

A subject may specifically waive his right to counsel. If this is done after he is explicitly informed of his right to counsel and he intelligently and knowingly waives the right, a confession made after he has been taken into police custody or after arraignment will be admissible (Escobedo vs. Illinois, 378 U.S. 478; Peo. vs. Meyer, 11 NY 2d. 162).

In January, 1966, the Court of Appeals held (Peo. vs. Bodie) that "the right to counsel also imports the right to refuse counsel," that "a defendant may effectively waive his right to an attorney" and that the police may make a waiver effective by advising the defendant of his right to counsel.

Any waiver must be made knowingly, voluntarily and explicitly. Mere silence after being advised of the right to counsel cannot be regarded as a waiver.

STOP AND FRISK: A police officer who stops a person under the authority of Section 180-a of the Code of Criminal Procedure (the "Stop-and-Frisk" law) does not create an "in custody" situation. People v. Rivera, 14 NY 2d 441, United States v. Vita, 294 F. 2d 524, People v. Peters, 18 NY 2d 238, Rios v. United States, 364 US 253. By the terms of Sections 180-a the police stopping must be "abroad in a public place." A public place is not in the usual case, "a police dominated atmosphere."

MOTORISTS AND TRAFFIC: When a motorist is stopped by an officer in connection with a V & T violation or a license-registration check under authority of the V & T Law it is common practice for the officer to make inquiries of the motorist. Some such inquiries result in incriminating statements being made by the motorist. Such a situation does not initially amount to an arrest, nor to a significant deprivation of freedom of action. Stopping a vehicle to check license and registration does not amount to an arrest (Wilson v. Porter, 361 F. 2d 412, Rogers v. United States, 362 F. 2d 358). The issuance of a Uniform Traffic Ticket is not an arrest. It is merely an invitation to appear in court. A public highway is not the "police dominated atmosphere" mentioned by the Supreme Court. The officer's inquiry relates to a privilege of operating a motor vehicle on the highway and not to a Constitutional right.

SUBJECT REFUSING INTERVIEW OR DESIRING AN ATTORNEY: If the subject at any time during "custodial interrogation" indicates in any manner that he does not wish to talk or that he wishes to consult an attorney, the interview cannot lawfully be conducted. If already in progress it must be stopped.

If the subject requests an attorney and indicates that he cannot afford to retain one, the interview cannot lawfully be started if the request is made prior the interview. The interview must be discontinued if in progress at the time of the request, until such time as an attorney is made available to him and he thereafter agrees to be interviewed. Section 165 of the Code of Criminal Procedure requires that a subject under arrest be arraigned "without unnecessary delay."

It is suggested that whenever a subject requests to talk to and/or have an attorney present, and cannot afford to hire or does not have an attorney, officers immediately cease any questioning and promptly arraign the subject. If the subject does have an attorney or can afford to retain one he may be permitted to have the attorney present if there is any reason to suppose he will submit to questioning after the attorney arrives and is consulted. Otherwise, it is suggested he be arraigned at once.

Under the provisions of Article 18B of the County Law, each county must provide defense counsel and pay for such counsel and necessary auxiliary services under any one of the several plans mentioned in the statute. The law applies to counsel for any persons ". . . charged with a crime, who are financially unable to obtain counsel. . . ."

In addition, Article 18A of the County law permits counties and cities to establish an office of Public Defender. The Public Defender would be required to represent, free of charge, at the request of a defendant or by court order with the consent of the defendant, any indigent defendant who is charged with a crime in the county.

The word "crime" in the preceding two paragraphs includes not only felonies and misdemeanors but any breach of law or ordinance except a traffic infraction (County L. Sec. 722-a).

All officers should be fully informed as to the plan for and manner of obtaining counsel (or services of the public defender) in their jurisdiction. There is no statute authorizing officers to secure attorneys for subjects. Officers must be wary of possible violation on their part of Section 481 of the Judiciary Law ("Aiding, Assisting or Abetting the Solicitation of Persons or the Procurement of a Retainer for or on Behalf of an Attorney"), a Class A misdemeanor (Judic. L. Sec. 485), in respect to counsel for defendants.

Section 481 provides that it is unlawful for any person in the employ of or in any capacity attached to any hospital, sanitarium, police department, prison or court, or for a person authorized to furnish bail bonds, to communicate directly or indirectly with any attorney or person acting on his behalf for the purpose of aiding, assisting or abetting such attorney in the solicitation of legal business or the procurement through solicitation of a retainer, written or oral, or any agreement authorizing the attorney to perform or render legal services.

It is most inadvisable for officers to attempt to determine a subject's financial status for the purpose of determining whether or not he can afford to hire an attorney.

CONFESSION AFTER ARRAIGNMENT: A confession made to police after arraignment is inadmissible if made in the absence of counsel, even if entirely voluntary (Peo. vs. Waterman, 9 NY 2d. 561; Peo. vs. Meyer, 11 NY 2d. 162; Peo. vs. Rodriguez, 11 NY 2d. 279).

SUGGESTED RULES FOR INTERROGATIONS: Officers conducting interviews of subjects should be fully instructed that subject's "in custody" must be adequately advised of their rights under the Fifth Amendment and must voluntarily, knowingly, intelligently and affirmatively waive such rights if subsequent statements are to be admissible.

Courts will be quick to resolve doubts in favor of the subject. It is thus required that good standard procedures be adopted by every department to assure that subjects are fully and adequately advised of their rights and may affirmatively and properly waive them.

Mere silence on the part of the subject after being advised of such rights followed by his furnishing information does not constitute an affirmative waiver.

The Supreme Court requires that the subject in custody be "informed in clear and unequivocal terms" of his rights. What is "clear and unequivocal" will vary of necessity, depending on such changing factors as age, mental condition, education, intelligence and emotional state of subjects.

The following rules are suggested as creating a good, standard, easily followed procedure meeting Supreme Court requirements.

SUGGESTED RULES FOR CUSTODIAL INTERROGATION

1. Procedure prior to interview.

a. Prior to any questioning of a person *who is in custody,* officers shall advise the person to be interviewed as follows:

(1) Advise him that he does not have to say anything and that anything he does say may be used against him in court.

(2) Ask him if he will talk.

(3) Advise him that he has the right to talk to an attorney prior to the interview and to have an attorney present during the interview and that, if he does wish to talk to and have an attorney present but cannot afford to hire an attorney, an attorney will be appointed for him.

(4) Ask him if he wants to talk to and/or have an attorney present.

b. The fact that the subject was so advised and his answer to (2) and (4) should be recorded in detail in pertinent reports and should be set forth in the preamble of any written statement resulting from the interview.

(1) If the subject indicates in any manner that he does not wish to talk or that he wishes to consult an attorney, the interview cannot be conducted. If already in progress, it shall be stopped.

(2) If the subject requests an attorney and indicates that he cannot afford to retain an attorney, the interview shall be discontinued. The subject must be promptly arraigned in order that the court may, if the subject is eligible, appoint an attorney to represent him.

2. Custody: The term "in custody" applies to a subject who is actually in police custody and does not apply to witnesses or suspects.

a. A person is deemed to be "in custody" (in respect to rules on interrogation), when he is under arrest or is deprived of his freedom of action in any significant way. Officers shall promptly advise subjects, when appropriate, that they are under arrest and the nature to the charge.

b. Officers shall avoid interviewing witnesses or suspects who might later become defendants under circumstances which could reasonably be interpreted by the witness or suspect as indicating that they are under arrest.

c. Courts will be prone to consider an interview with a person who later becomes a defendant a "custodial interview" if it is conducted in a police dominated atmosphere, such as in a police station, unless such person has been specifically advised that he is not under arrest and is free to leave or to communicate with his attorney, relatives of friends.

3. Waiver of Rights: Any waiver of the right to remain silent or right to counsel must be made voluntarily, knowingly and intelligently and must be affirmatively made.

a. Mere silence after being advised of one's rights, followed by the furnishing of information, does not constitute an affirmative waiver.

b. The burden of demonstrating that a proper waiver was made will be upon the prosecution; therefore, members should obtain affirmative waivers and record same in detail.

4. Interview with subject already in custody: Whenever it is necessary for an officer to interview a subject who has been held in custody for a period of time by other authorities and was interrogated by such authorities, the subject should be removed both in time and place from the original surroundings and then advised of his rights before beginning any interview.

5. Exceptions: The right to remain silent and the right to counsel do not apply to general on-the-scene questioning as to facts surrounding crime or other general questioning of citizens or inquiries of persons not under restraint.

a. There is no requirement that a police officer stop a person who enters a police station and states that he wishes to confess to a crime or a person who calls the police to offer a confession or any other statement he desires to make.

b. Volunteered statements of any kind are not within the scope of the Fifth Amendment to the Constitution.

SECURING CONFESSIONS

The normal procedure in securing a confession is to interview the individual until the fullest possible confession is obtained. When the facts are clear, he should then be asked if his statements are true. He will invariably reply that they are. He should then be requested in the interests of accuracy and to avoid possible misconstruction of what he has said, to sign a statement which will be prepared. If a confession has been obtained orally, the agreement to reduce it to writing will be found to offer little difficulty, particularly when it is pointed out that by so doing the subject ensures an accurate record which cannot be changed to his detriment.

It is best that a written confession be signed by the subject. It should be witnessed by the officer taking the confession and if possible by another person, either another officer or a responsible, respectable citizen. Confessions must not be sworn before a magistrate (Peo. vs. Foley, 8 NY 2d. 153). There is no requirement of law that a confession be sworn in any case and having a confession sworn does not make it more valid.

Confessions are most usually typed by the officer or a police stenographer. They may be handwritten. Having the subject write his own confession in his own hand is possible but unusual. It will ordinarily be difficult to manage well.

Confessions may be in question-and-answer form or in narrative form. In either case, the subject should be required to put his initials on each page. His signature at the end should be the way he usually writes his name. Officers should be certain that his usual signature is the name used in the beginning of the statement. If necessary, any other names can also be included in the beginning of the statement.

It is well to make several minor errors in typing or writing the statement so that they can be corrected and initialled by the subject, thus showing his close attention to the finished confession.

In all cases (except obvious instances such as professional persons or a person of evident education), the subject should be required to read at least some of the confession out loud, to make sure he can read English and thus understands what he is signing.

The following are suggested forms for each type of confession:

Narrative Form:

Southton, N.Y.
July 13, 1967

STATEMENT

I, John H. Doe, also known as J. Henry Coe, make the following statement freely and voluntarily to Detectives John R. Roe and Richard E. Poe of the Southton, New York Police Department. Detective Roe told me, after I was arrested and before I was asked any questions, that I did not have to say anything, that anything I said could be used against me in court, that I was entitled to talk to an attorney and have him present and that if I wanted to talk to an attorney and have him present but could not afford to hire an attorney, an attorney would be appointed for me. I told Detective Roe at that time I was willing to talk and that I did not want to talk to an attorney or have one present.

I am 30 years old, married and live with my wife and two children at 28 North Oak Street, Southton, N. Y. I am unemployed but have worked in the past as a house painter.

(Here set out, paragraph by paragraph, the information of pertinence furnished in the oral confession).

I have read this statement, consisting of 4 pages and it is all true. I have put my initials on each page and by each correction and I sign it below.

JOHN H. DOE

Witness:
Det. John Roe
Southton, N.Y. PD 7/13/67
Det. Richard E. Poe
Southton, N.Y. PD 7/13/67

Question-And-Answer-Form:

Southton, N.Y.
July 9, 1967

STATEMENT

The following statement was taken from John H. Doe at the Southton, New York, Police Department Headquarters Building on July 9, 1967. Questions were asked by Detective John R. Roe, in the presence of Detective Richard E. Poe.

Q. After you were arrested and before you were asked any questions, Detective Poe said to you that you had a right not to talk to us, and that if you said anything it could be used against you in court and you said you would talk to us. Is that right?

A. Yes, I agreed to talk to you.

Q. Detective Poe also told you at that time that the law gives you the right to talk to an attorney before you talk to us and to have the attorney present while you talk to us and that if you could not afford to hire an attorney and wanted to talk to one and have him present one would be appointed for you. Is that right?

A. Yes, he told me that and I said I didn't want a lawyer.

Q. Are you still willing to talk to us without a lawyer?

A. Yes.

Q. What is your full true name?

A. (Here, question by question, set out identity, residence, age, marital status, employment and then questions relevant to the actual commission of the crime. Do not restrict questions to the crime scene alone. Details of what occurred before and after the crime will establish intent and motive and will also serve to define the elements of the crime. Let the subject relate all details he can remember and do not provide him with facts or prompting to answer any questions).

I have read the foregoing statement, consisting of 8 pages and it is all true. I have put my initials on each page and by each correction and I sign it below.

JOHN H. DOE

Witness: (same as for narrative type)

WRITTEN STATEMENTS FROM WITNESSES: In any case where the testimony of a witness is or may be of importance, consideration should be given to reducing it to writing in the form of a signed statement or sworn affidavit.

In instances where no official is available to administer the oath for an affidavit, little is lost if the witness merely signs the statement. The officer should generally be guided by the views of the magistrates and District Attorney in his jurisdiction as to whether signed statements or sworn statements (affidavits) must be taken from witnesses in particular instances.

The written statements of witnesses may be either narrative or question-and-answer, as in the case of confessions. The form is the same as for a confession, except that the opening questions (in question-and-answer statements) or the opening paragraph (in narrative statements) must omit any reference to rights that the statement can be used against the person making it, etc. They should include information that the statement is given freely and voluntarily, without any consideration being given or promises made to induce the statement and with knowledge that it can be used in a criminal prosecution.

INFORMANTS

A key ingredient in any successful program of criminal investigation is development of informants—persons who are in a position to and who will furnish information concerning crimes and criminals. Development of adequate informant coverage is an essential part of criminal investigation.

Informants may be developed to suit the needs of a particular investigation or may be developed on the basis of their potential, without relation to a particular case. Every opportunity to develop an informant should be capitalized on.

Basically, anyone who commits crime or is in a position to know of crime or criminals is a prospective informant. The steps to development are simple: (1) establish contact, (2) establish a personal relationship, (3) when sufficiently acquainted, seek minor items of information, even if of no immediate value, to accustom the informant to furnishing information, and (4) continue contacts and development of personal relationship to the point where useful information is furnished on request.

Informants give police information because they want to, a state of mind developed by the police contact, either because of the relationship with the officer, for payment of money (if such funds are available to the police), for revenge, in self protection, to damage a competitor, to secure the esteem of the officer or just for personal satisfaction.

No officer should feel that only the immediately cooperative person can be made an informant. Some informants require long periods of cultivation and an officer should not be easily discouraged. Any information may be useful to the officer, even information which the prospect might feel is of no value and which he furnishes just to give the appearance of not being "anti-police." It should be borne in mind that informants can save hours or days of police work in seeking wanted persons, eliminating suspects and providing various kinds of information, as well as solve cases by identifying offenders.

In handling informants or potential informants, officers must continually bear in mind: (1) the absolute need for secrecy of contact, insofar as is realistically possible and (2) the need for fairness and being as good as one's word. The officer must always be alert to not agree to or to promise things which would compromise him or which he cannot deliver. It is better to be frank in the beginning than to be in a position of having to either "welsh" on a promise or reach an improper compromise.

It is important that the officer completely discard any negative view of an informant or an informant program. He should never refer to or think of "stool pigeon" or other derogatory words. He should recognize that the informer performs a vital civic duty. Anyone, citizen or not, who does not inform when he has information pertinent to the detection of crime or apprehension of a criminal is worthy of censure and/or prosecution rather than one to be praised for not "ratting." In other words, the informant is a basic part of society. Officers must never "lowrate" informing and particularly never when an informant or prospective informant could become aware of it.

In any case of payment of public moneys for information, it should be either on a C.O.D. basis or specifically for expenses incurred in seeking and/or securing information. Receipts in writing should be obtained for every payment, if at all possible.

Records as to informant matters must be maintained under lock and key. The identity of an informant should not be known to any officer who does not specifically require such knowledge in order to perform his duties.

Informant identities should never be disclosed outside the department except with the informant's prior knowledge and consent and after careful consideration of the reasons for disclosure. In addition, they should never be disclosed to prosecuting officials unless and until it becomes clear that their testimony must and will be used. Officers should bear in mind that in some instances it may be necessary to either disclose an informant for testimony or give up the prosecution. A major consideration should be whether the officer's relationship with the informant has been such that the disclosure can be made without violating the trust of the informant. Any bad faith in this regard on the part of an officer does great harm. For this reason, as previously indicated, care and caution should be exercised in initiating the informant relationship and in defining its terms to the informant.

PHYSICAL (REAL) EVIDENCE

Physical evidence in criminal cases is of value in prosecution for one of the following purposes:

1. It is unique and can be proved to have a connection with the subject (forged check, firearm with a serial number, match torn from a book of paper matches).

2. It has characteristics which identify it as part of a thing connected with or in possession of the subject (broken piece of headlight lens fitting subject's car, safe insulation in subject's trouser cuff, paint scraping matching paint on subject's car).

3. It has identifiable characteristics making it similar to things connected with the subject (blood which matches subject's blood type, hair with characteristics same as subject's hair).

4. It is a recognizable substance whose presence alone constitutes proof (seminal stains on clothing).

Physical evidence can be anything. Much of the physical evidence used in criminal cases requires the services of a laboratory expert or scientist to be of value. Officers should bear in mind that laboratory examination of evidence is of value not only in furnishing proof for prosecution but also in eliminating suspects from consideration and in furnishing leads for investigation.

WHEN TO COLLECT POSSIBLE EVIDENCE: Anything which is obviously evidence presents no problem; it is collected as a matter of course. However, it is frequently impossible to make a positive determination in the field as to whether or not a thing is connected with a case or offers possibility of any proof or of any leads. The proper procedure is to collect anything which could be of value. If there is any doubt at all, the item should be collected and considered as evidence until the contrary is determined.

WHAT TO COLLECT: Since physical evidence could be literally anything, only general guide lines can be given. All officers should study and become familiar with the science of criminal evidence and police laboratory examinations. There are set out hereinafter guide lines concerning the collection and handling of the more common kinds of physical evidence encountered by officers.

KNOWN STANDARDS OR "CONTROLS": A major part of the physical evidence collected in criminal cases requires expert comparison with a known standard or control. Hair on a rape victim's clothing is compared with hair from a suspect, a typed forgery is compared with typing specimens from a suspect's typewriter, soil samples on a suspect's clothes are compared with soil samples from the scene of the crime, etc.

Some known standards or controls may be collected at the scene like any other evidence or may be obtained from cooperative sources. Even where they are under control of a suspect or subject, controls are in most instances obtained by merely requesting them. Where they are refused, or a refusal must be reasonably anticipated, ingenuity must be exercised. Perhaps a jail barber can cut the subject's hair in line with jail rules, where he has refused to cooperate by permitting clipping specifically for a specimen, or school records, correspondents or business firms may be checked for samples of typewriting from the subject, etc.

IDENTIFICATION OF EVIDENCE: Evidence (including known standards or controls) must be properly identified by the investigator in every instance. Proper identification ensures that at a future time, perhaps after several years or more, the officer will be able to positively identify the evidence while under oath. In addition, the "chain of possession" or "continuity of evidence" must be provable in cases where laboratory examination is required. Proper identification will permit this.

The general rule is that objects large enough are identified by writing or scratching appropriate marks on them. Objects too small to mark are identified by being sealed in containers and marking the containers. In all instances, evidence not in containers should also have evidence tags attached which will contain full identifying data.

It is poor practice to mark an "X" or any similar ambiguous notation for identification. The minimum identifying mark should be the investigator's full initials. If the object is too small to permit this, it should be sealed in a container and the container should be marked.

Some evidence, by its nature, (blood, human organs, fluids, etc.) cannot be marked and can only be sealed in containers which are then appropriately marked.

The initials of the officer are an absolute minimum marking and additional marks should be made, when possible, to include the officer's full name and the date.

In all instances, the tag attached to the evidence and all containers should be identified with the department's case number, a description of the evidence, the name of the victim or complainant, the kind of crime or incident, the date recovered, where recovered and the name of the officer recovering.

CONTAINERS: Sturdy plastic or glass containers should be used for liquid or organic specimens. Small items such as hairs, fibres, fingernail or paint scrapings and similar things should be enclosed in pill boxes which can be tightly sealed, or a "druggist's fold" should be used to enclose them in a clean sheet of paper.

The "druggist's fold" is as follows: fold a sheet of clean paper in the middle, place the bits of evidence in the fold. Then fold the ends opposite the middle crease over three times, after which fold the sides over an equal number of times and scotch-tape or clip the folded sides together. This makes a tight container with little chance of any bit of evidence falling out. It should then be sealed in an envelope.

Envelopes alone should never be used to enclose small bits of evidence, as the evidence may be lost out of the corners of the envelope.

Cylindrical cardboard boxes such as ice-cream is packed in are good for soil samples and other dry materials in sizable quantities.

NOTES: In addition to fully identifying evidence as previously described, the investigator should make complete notes concerning the evidence including its description, location where found, its position, any pertinent measurements and the identification marked on it. These notes must be permanently retained, preferably in the department's case file, for use in testifying.

SEARCHES FOR PHYSICAL EVIDENCE: In any search which is large scale compared to the object or objects sought, one of three specific plans should be adopted, to ensure that every item of evidence is found, and that there is no failure to search any part of the area.

The simplest plan is a strip search, lining out narrow strips of the scene and searching each in turn. The grid system is similar and involves search ing strips first one way, then re-searching strips at right angles to the first way. The circle system, where a line of searchers proceeds around a pivotman, like the hand on a clock, will also give good results. In all searches, the searchers should proceed together, in as uniform a line as possible, stopping the line for each individual find.

The same principles apply to searching small areas, such as a room. Specific areas or strips must be assigned, with searching done uniformly.

In large-scale investigations where several officers may search for evidence, it is preferable to assign 2 officers who will collect and make notes on all evidence, the searchers merely directing the attention of these officers to the evidence as they find it. This permits better handling and administration of the case and the evidence. It also avoids the need for a long parade of police witnesses to introduce various items in evidence at the grand jury and the trial.

BASIC PROCEDURE: The basic procedure in seeking physical evidence is (1) locate item, (2) photograph it in place, (3) make adequate notes, (4) pick it up, remembering to take precautions against marring either latent fingerprints or microscopic markings or bits of evidence on it, (5) properly mark and identify it and/or its container and (6) wrap or package it.

The key thing to remember is "don't grab." The officer must pause a moment and think out proper handling procedure.

All evidence must be preserved by the officer in the original state in which it is found. No alterations of any kind should be made to any kind of evidence or anything which may be in evidence.

SKETCHES: In cases of importance, a sketch of the crime scene should be made, entering on it exact measurements, directions and all pertinent evidence and physical objects at the scene.

The sketch requires accuracy rather than draftsmanship. Simple drawing tools should be used—straight edge, compass, protractor for measuring degrees.

The basic problems are to set up a base line and points of reference from which distance and direction may be determined, and to decide on the scale to use. Indoors, the longest wall should be selected as the base line. Outdoors a road, lane or building side can be used. The scale should be as large as is convenient, ordinarily as large as can be fitted on a convenient sized drawing paper. Select a scale, such as ¾ inch equals 1 foot, which will just get the longest measurement to be recorded on the paper. An accurate compass may be used to get directions outdoors.

FINGERPRINT EVIDENCE: Where fingerprint evidence may exist, collecting it should be done before collection of other items of evidence, as a general rule (unless vacuuming for dust and microscopic evidence is to be done; latent fingerprint examination should be done after vacuuming). See the section "Fingerprints and Identification," this manual.

PHOTOGRAPHS: In cases of any importance, a necessary part of the investigation is photography of the crime scene. Several long shots of the scene should be made from different angles. Close-ups of individual items of evidence should be made before the evidence found is touched by the investigator.

A foot rule or yardstick in clear focus should be included in closeups of evidence.

Notes must be made and preserved to fully document each photograph and the evidence shown in it. Such notes should be keyed to the photographs by numbering the rolls or film packs and using the number of the negative. The photo prints should later be matched with their negatives and permanently preserved as part of the case file with the notes.

CARE AND PRESERVATION OF EVIDENCE: Every item of evidence collected must be preserved for later use (at times up to several years after the event) and must be protected against loss or damage. The primary means of so doing is careful handling and packaging. All outer packaging should have complete identification on it.

For example, bolt cutters may not only leave identifiable microscopic markings on a piece of metal cut in gaining entry for a burglary but may have bits of the metal adhering to the cutting edges. The bolt cutters, therefore, must be so packaged as to not shake loose any such evidence or mar the cutting edges.

Blood or other body fluids may be on clothing, cloth, etc. Arrangements must be made to promptly dry the items, always at normal room temperature, before final packaging, to prevent the identifiable characteristics being ruined by putrefaction and other changes.

Plaster casts must be protected from breakage at all times as they are subject to cracking and chipping if not carefully handled and packed.

GUIDE LINES FOR COLLECTING EVIDENCE

The following guide lines for collecting evidence concern the kinds of evidence most usually associated with criminal investigations:

ALCOHOL: Specimens of liquid held as evidence, whose nature as alcohol or whose alcoholic content are pertinent, should be held in the original containers or in a clean glass container which can be tightly sealed. Do not use discarded whiskey bottles or similar things but only clean containers which did not previously contain alcohol.

Blood withdrawn from persons to determine blood-alcohol percent, under Vehicle and Traffic Law (Secs. 1192-1194) or otherwise, must be taken in accordance with the rules set out in the section "Intoxication" in this manual. Officers should always caution physicians or nurses withdrawing blood not to use phenol, alcohol or alcoholic disinfectants to sterilize equipment or subject's skin. Bichloride of mercury may be used.

Urine specimens taken for determination of blood-alcohol percent should also be taken in accordance with the rules set out in the section "Intoxication" in this manual.

ARSON: Residues found at the scene, if liquid, must be placed in dry, clean glass containers with tight covers. If the material is a dry solid, it may be packed in clean individual wrappings but if oily or not thoroughly dry, should be placed in a glass container. A maximum of about one quart is sufficient for laboratory analysis. Paper "streamers" and similar things should be packed in a glass container if saturated with liquid; otherwise, they may be packaged.

BLOOD: Submission of blood for alcohol analysis is treated under "Alcohol." Submission of suspect stains, whether scrapings or on ma-

terials or clothing, for determination of whether in fact it is blood or for grouping or other purposes, should be handled as follows:

1. In case of suspect stains on materials, the stained material should be collected and separately packaged. A sample of the same material without stains should always be collected, separately packaged and submitted for control tests.

2. If stains are on rock, concrete, etc. and the stained material cannot be submitted, the suspect blood should be scraped off and preserved like any microscopic material (pill box or druggist's fold). If scraping is impracticable, a clean piece of blotting paper or a clean soft cloth may be used to absorb the stain by moistening with an 0.9 solution of sodium chloride (common salt) then pressing the wet absorbing material on the stain for several minutes. A glass plate and weight will be of assistance. The absorbent material is then dried without artificial heat and enclosed in a clean glass container. An 0.9 solution may be prepared by disolving 1¾ ounces of salt in one quart of water. Use distilled water if available.

3. Where liquid blood is found in pools, or when removed from a body, 8 ounces should be taken if available and enclosed in a clean glass container, to which should be added an anti-coagulant. Potassium oxalate, sodium oxalate, sodium fluoride, sodium citrate or heparin, procurable from drug stores or hospitals, should be used as anti-coagulants.

CLOTHING: In collecting clothing, care must be taken that the items connected with a suspect are never packaged with or in any way touch items connected with the victim or scene, since any contact could completely destroy validity of evidence found on suspect's clothes.

Clothing may yield stains, including blood and semen, hair, fibres from other clothing, or other material, and microscopic evidence of various kinds. It probably catches more evidence than any other single kind of thing the officer will deal with.

Clothing is also important in shooting cases as showing powder burns and distribution, primarily for distance estimates.

If damp, clothing must be allowed to dry naturally and should be packed with each individual item fully identified in a clear, strong cellophane or plastic bag, packing each item in a separate bag so that no evidence on one can get on another. It should be borne in mind that much evidence on clothing is not observable with the naked eye.

DOCUMENTS: Police Scientific laboratories undoubtedly handle more document examinations than any other kind.

Documents must always be handled by officers with due regard for the fact they may contain useful latent fingerprints, even though they have been handled by many persons previously. It is a cardinal sin for an officer's fingerprints to appear on a piece of documentary evidence he collected. Where a document has possible latent fingerprints which could be evidence, it should be gently handled with a clean piece of folded paper, tweezers or gloves and inserted in a cellophane or paper envelope, without bending or change. Documents are ordinarily identified by writing on them, where it will not interfere with viewing or examining them. In case of possible latent fingerprints, the document may be identified by placing appropriate identification on a slip of paper and sealing it and the document in a cellophane envelope, which is also identified, preferably on the seal.

In document examination, it is very often necessary to have standards of comparison or controls with which to compare the suspect document. Any item can be used for a control if its origin can be proved as genuine to the satisfaction of the court. Usually, known standards are obtained by just asking for them, as previously stated.

HANDWRITING AND TYPING SPECIMENTS: In taking handwriting specimens from a suspect, always dictate. Never let the suspect see the questioned writing. Remove each sample from view as it is executed. Never spell anything for the suspect or tell him how to write something. Specimens should be taken in sufficient quantity to overcome efforts to disguise writing. The same kind of writing instrument and the kind and size of paper used in the original should be used for the known specimens.

In taking specimens from a typewriter, the ribbon should be removed or the stencil position should be used. Each character should strike directly on the back of a sheet of clean, new carbon paper, placed over the specimen paper in the typewriter. A full list of the characters on the machine should be typed, using varying pressure to obtain several samples of each. At least one copy of the exact text and arrangement of the suspect document should also be made, with the ribbon in place, typing directly on the specimen paper.

Officers should always obtain, if possible, the ribbon or ribbons used on suspect typewriters, since laboratory examination of the ribbon may be able to detect the message or other typing in question on the ribbon itself.

Where the document examination involves comparison of signatures, at least 10 copies of the signature should be obtained, on separate pieces of paper. In fraudulent check cases, also obtain at least 5 specimens of all writing in dispute.

DROWNINGS: In drowning cases, it is necessary to have separate samples from the right and left chambers of the heart, together with a sample of the water in which drowned or found. Specimens may be placed in 3 clean glass containers, securely capped, each appropriately identified. The blood should be recovered by the autopsy surgeon and the officer must be certain that the identification of each sample is clear-cut as to exact source.

FIBERS: Individual fibers may be found in such places as edges of windows or doors through which burglars gained entrance, on clothing of victims, on weapons and in innumerable other places. Individual fibers should be enclosed and sealed in pill boxes or druggist's folds, with the sealed container fully identified. Investigation must of course also be directed to locating the clothing or material from which the fibers came.

FIREARMS: Care should be taken to avoid spoiling any latent fingerprints on either firearms, ammunition, smooth leather rifle slings or magazines. Individual cartridges or bullets should be wrapped securely in cotton and sealed in pill boxes, one to a box, each box bearing complete identification.

The firearms should be packed in rigid containers, preferably wired or carefully tied to a piece of plywood or wood.

Firearms may be sent for laboratory examination by parcel post if clearly labelled as "Firearms For Scientific Laboratory" (see section "Firearms and Weapons", this manual) or by parcel service or express. All firearms must be unloaded before shipping and all ammunition must be removed from them. Loaded ammunition cannot be sent parcel post and must be forwarded by parcel service or express.

FOOTPRINTS: Footprints are collected by first photographing them, including closeups taken with the film plane parallel to the surface of the print. Side lighting of early or late sun, or flash held to the side should be used for best detail in photographs. A foot rule in clear focus should be in all closeups. After obtaining photographs, the prints should be permanently preserved by a plaster cast. Plaster of Paris mixed to a creamy

consistency is poured gently into the mark and is reinforced with steel wire, rod, dowels or other stiff, hard material and more plaster added over the reinforcement. The plaster should be removed only after well hardened. It may be necessary to erect small dams of clay, wood or other material to enclose a sufficient thickness of plaster. No attempt should be made to clean dirt, mud, etc. off the face of the casting until it is thoroughly hard and dry, at which time loose material may be gently blown or shaken off, never brushed off. All casts should be identified by the officer who should write on the partially hardened back of the casting with a stylus, nail, twig or other implement. Great care should be used in packaging casts and transporting them to avoid abrading their surface or cracking them.

GLASS: Glass in sizable pieces must be packed carefully with cotton and other soft material and should be held rigidly in its container to avoid breakage. Taping between rigid supports (wood, then honeycomb cardboard, then soft packing material next to glass) is recommended. Officers must bear in mind the need for obtaining standards for comparison in most cases.

Small pieces, such as headlight fragments at the scene of a hit-and-run, or glass particles of any kind may be packed in cotton in pill boxes or larger similar containers, if packed tightly to avoid movement and chipping during transportation. The container must bear complete identification.

HAIRS: Hairs are collected and packed like fibers. Samples of subject's hair may be obtained from comb, clothing, prison barber or other sources, as well as on request from the subject.

HUMAN ORGANS: In homicides and other cases, examination of human tissue or organs in the scientific laboratory may be necessary. In all such cases, the autopsy surgeon should collect the specimen. The specimens may be placed in waxed paper tubs or clear glass jars or containers, free of contact with any metal. The containers must be sealed and marked with full identification. No preservatives should be used in the containers, but they must be refrigerated at all times.

Where any medications or antidotes were known to have been imbibed by the victim when alive, samples of these things should also be obtained.

MICROSCOPIC EVIDENCE: All officers must recognize the possibility of the existence of microscopic bits of evidence at any crime, none of which will be visible to the naked eye. In major cases, it may be desirable to take vacuum sweepings of the entire room or indoor scene (using clean bag and equipment) before any latent fingerprint or other work is done. The resultant material may be packaged in clean glass containers, in pill boxes or druggist's folds, depending on amount. All containers should be fully identified.

PAINT: Paint stains should be collected by taking the object bearing the stain, if feasible, or by scraping the paint from the object into a pill box or druggist's fold if not. Care must be taken to conduct necessary investigation to locate source for comparison.

SEMINAL STAINS: Seminal stains or suspected such stains may be found on the clothing of victims or subjects or on car seats, furniture or bed coverings, etc. The material involved should be air dried and carefully packed with clean paper over the stain to protect it. No standards or controls are needed. Vaginal or anal smears from victims must be taken by a physician.

SKID MARKS: Skid marks should be collected in major cases, using photographs and measurements (steel tape should be used) and both closeup and long view photographs. Flat lighting for photographs is best rather than side lighting.

SOIL SAMPLES: In outdoor scenes, soil samples, samples of grasses, plants and other things on the immediate scene may be of value under microscopic examination, particularly in such cases as assault, rape and homicide. The laboratory technician may be able to find hair, fibres, semen, blood and other identifiable things which were completely invisible to the naked eye at the scene.

Due to the fact that soil has very special characteristics which are identifiable in the laboratory, any specimens of dirt or other debris possibly knocked loose from a vehicle in a hit-and-run or serious traffic accident may be vital evidence and should be collected and identified. Small cylindrical cardboard boxes with lids make good containers for such evidence.

TIRE TREAD MARKS: Tire tread marks are collected in the same way as footprints. Where marks are in dust or are otherwise fragile, the dust may be coated with a spray of shellac or clear acrylic resin, which should be sprayed indirectly so that the force of the spray does not injure the pattern. When the spray has dried, a plaster cast may be carefully made.

TOOLS AND TOOL MARKS: Tools should be wrapped carefully in cotton and packed rigidly to avoid damage to cutting edges and to avoid losing microscopic bits of evidence. The standard for comparison is the material showing tool marking or clear, exact photographs of the tool marks. "Moulage" casts of the tool mark are also desirable. The proper casting material, generally called "moulage," is composed of agar jel, resins or other materials and may be obtained from police supply houses. It will record microscopic detail.

If the tool-marked material can be submitted, it must be carefully protected with cotton and padding to avoid damage to the microscopic detail.

POISONS

In cases of poisoning or where poisoning may be suspected, removal of organs or parts from a human body or stomach pumping, withdrawal of blood, etc., must be accomplished by a physician and in case of cadavers, with the authority of the coroner or medical examiner.

If the case involves animals, the removal of organs or parts should be by a veterinarian. The following guides should be followed, depending upon the type of case or suspected poison:

Suspected Poison	*Required Evidence*	*Manner of Submission to Scientific Laboratory*
Alkaloids: Morphine Strychnine Codeine, etc.	1 to 4 ounces of blood, liver, kidneys, stomach (intact).	Use plastic containers, or clean dry glass containers. Secure cover. Container must be packed in dry ice, ice in plastic bags or commercial refrigerants. Individual specimens must be placed in separate containers. Submit specimen as quickly as possible.

Suspected Poison	*Required Evidence*	*Manner of Submission to Scientific Laboratory*
Animal Poisoning:	Liver, kidneys and at least 1 quart portion of stomach contents. Sample of any water to which the animal had access. Sample of feed and/or suspected vegetation.	"
Barbiturates: Seconal Amytal Nembutal	1 to 4 ounces of blood, liver, kidney or urine, stomach (intact).	"
Carbon Monoxide	1 ounce of blood	Clean dry glass containers.
Corrosives: Acids-Sulphuric, Nitric, etc. Alkali-Lye, etc.	Liver, stomach (intact), vomitus.	Use plastic containers or clean dry glass containers. Secure cover. Container must be packed in dry ice, ice in plastic bags or commercial refrigerants. Individual specimens must be placed in separate containers. Submit specimen as quickly as possible.
Gases: Sulphur Dioxide Hydrogen Sulphide, etc.	1 ounce of blood	Clean dry glass containers.
Glucosides: Digitalis Oleander, etc.	1 to 4 ounces of blood, liver, kidneys, stomach (intact).	Use plastic containers or clean dry glass containers. Secure cover. Containers must be packed in dry ice, ice in plastic bags or commercial refrigerants. Individual specimens must be placed in separate containers. Submit specimen as quickly as possible.
Metals: Arsenic Lead Mercury Barium, etc.	Liver, kidneys, stomach (intact) and urine.	"
Volatile Poisons: Ether Chloroform Cyanides, etc. Alcohol-ethyl methyl	1 to 4 ounces of blood, brain, liver and stomach (intact).	"
Nature of poison not known.	Entire brain, liver, both kidneys, 8 ounces of blood.	"

RETENTION AND DISPOSITION OF EVIDENCE

The security and proper safeguarding of valuable evidence such as money, jewelry, bearer bonds and other things is a serious responsibility, requiring exactitude in identification and note-taking and the maintenance of proper records and safeguards.

If valuable evidence is obtained by officers, efforts should be made to turn it over to the District Attorney and to obtain a full and accurate signed receipt. If this cannot be done, valuable evidence is best maintained in a safe deposit box in a bank, with access restricted to the Chief of Police and a deputy (or other officer as the work of the department dictates).

Obscene material has embarrassing potential and should be carefully accounted for and maintained under lock and key, with no general access permitted. Upon completion of a case, such evidence may be destroyed by a responsible officer. One of each item should be forwarded to the New York State Police Scientific Laboratory, with identifying information as to source, printer, etc., for evaluation and transmission to the FBI Laboratory for consideration of inclusion in national files for use in future cases.

DISPOSITION OF EVIDENCE: When evidence is no longer required upon completion of trial or otherwise, it should be immediately returned to its owner and an accurate signed receipt obtained and placed in the case file.

STOLEN OR EMBEZZLED PROPERTY: Stolen or embezzled property, the ownership of which is unknown, if not claimed within 6 months after the conviction of a person for stealing or embezzling it, must be delivered to the county superintendent of the poor to be applied for the benefit of the poor of the county (CCP Sec. 689).

SURVEILLANCES

Evidence is frequently obtained in police work by surveillance. A surveillance is keeping a watch on someone, or something, or some place. The watch may be visual (a "physical" surveillance), or by sound or electronically (lawful eavesdropping, a "technical" surveillance).

Surveillances may also be divided into those from a fixed location (a plant or stakeout) or those which move with the subject or object being surveilled (moving surveillance).

All surveillances must be carefully planned before being initiated, when there is any time in which to do so. The main factors to consider are:

(1) Value — surveillances are expensive in manpower and time.

(2) Duration — brief periods of surveillance may avoid inviting attention of those being surveilled.

(3) Personnel (officers with surveillance training and/or experience are best).

(4) Equipment required.

(5) Kind of surveillance required (fixed, moving on foot, moving in vehicles, combination).

(6) Disguise requirements, if any (persons and/or vehicles).

LOGS: Since the object of a surveillance is ordinarily to obtain evidence, all officers conducting a surveillance should maintain a surveillance "log", or notebook. The log should include, in chronological order, a brief account (with facts necessary for later testimony) of every pertinent occurrence. The log should also show the exact time of each occurrence and the date.

It should be kept neatly and with care, as it will be open to inspection in court when used for testimony.

EAVESDROPPING: Eavesdropping in accordance with the permission granted under statute is a very valuable form of surveillance in criminal cases. Officers should refer to the section "Eavesdropping," in this Manual for lawful procedure and rules on eavesdropping by court order.

In conducting eavesdropping surveillances, a recorder should always be used, if at all possible, so that the material recorded can be permanently preserved as well as played back as necessary, for accuracy.

A major problem for officers in eavesdropping situations is identification of the voices heard. A basic step to assist in this problem is careful physical surveillance to establish the identity of persons on the premises surveilled at the time the eavesdropping is carried out.

In all eavesdropping surveillances, the problem of identification of voices should be continually considered and physical surveillances undertaken, informants used or interviews had with subjects of interest to assist in making such identification for testimonial use at a later date.

CONDUCTING SURVEILLANCES: In the usual case, no actual disguise or attempts to alter an officer's features need be considered. The disguise afforded by merely wearing civilian clothes suited to the time and place will ordinarily be sufficient. In all cases, surveilling officers should be personally unknown to the subjects of the surveillance, if the surveillance is such that the subjects may see the surveilling officers.

Where moving surveillance is conducted the vehicles used should not be marked police cars or black unmarked police cars. Other than this, vehicle make, model and color are of little importance, except where the surveillance is to be into an area where large numbers of sports type cars may be anticipated. In such cases mature men in a sports car may look less like police than mature men in a dark, four-door sedan.

Officers inexperienced in surveillances will find that a major problem when on a surveillance is feeling conspicuous. This leads to a feeling that the subject or subjects under surveillance, if within eyeshot, are carefully observing the officer. This is a normal reaction. However, a few careful observations will soon convince the officer on surveillance that he is merely suffering from self-consciousness and is not "made" by the subject.

Whenever possible, the officer should stay remote from the subjects, using binoculars and other seeing aids. Where the surveillance is a moving one, in a city or crowded area or on small roads, staying remote involves serious risk of losing sight of or contact with the subjects. Sound judgment must thus be continually exercised, staying close enough so that foot or vehicular traffic will not cause the subject to become lost, but not so close that the subject may become aware of being followed. It is desirable for officers on foot to have a surveillance vehicle follow them within sight in the event a subject on foot boards a bus, hails a taxi or is picked up by some other vehicle.

Where vehicles are used for surveillances, it is most desirable, for safety reasons, to have two officers in each. The officer not driving should be responsible for observing the subject and instructing the officer driving as to speed, direction, etc. This permits the officer driving to drive safely and pay attention to the normal hazards of the road and traffic, rather than the subject.

It is usual to utilize more than one vehicle on any surveillance of importance. The total number used depends on the importance of the case, the area where the surveillance is expected to be, the personnel and vehicles available, and the risk of "losing" the subject or having the subject identify the surveilling officers. As a general rule, the more vehicles and officers available, the more secure the surveillance will be.

Where the subject is particularly alert or wary, or where problems of terrain, one-way streets, highways with long stretches of visibility, etc., are present, officers should give consideration to a "leap frog" type of surveillance, covering the subject at a certain time for a certain distance and than discontinuing and doing this over a period of days or other periods of time, until his activities have been observed completely but in the safety of individual pieces.

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79. JUNK DEALERS

Buying or selling old metal is junk business. It is unlawful to engage in the junk business without a license (Genl. Bus. L. Sec. 60).

Licenses cost $5.00 and in cities and villages are procured from the mayor. In towns, they are procured from the town supervisor. All licenses expire June 30th of each year (Genl. Bus L. Sec. 60).

No one convicted of larceny or of knowingly receiving stolen property or of any violation of Sections 60-63 of the General Business Law may receive a license (Genl. Bus. L. Sec. 61).

Any junk dealer purchasing metal pigs, bronze or brass castings or parts thereof, sprues or gates or parts thereof, copper wire or brass car journals must require the seller to sign a statement as to when, where and from whom he obtained them, also his name, address, occupation, name of employer and place of employment. All such statements must be filed by the dealer in the office of the Chief of Police in cities and villages and elsewhere in the Sheriff's office, depending on where the purchase is made (Genl. Bus. L. Sec. 62). All such property must be separately maintained in piles or packages, for 5 days after purchase with a tag showing name and address of seller, date, hour and place of purchase and weight (Genl. Bus. L. Sec. 63).

Violations are Class A misdemeanors. The junk dealer laws previously set out do not apply in first class cities (New York and Buffalo) (Genl. Bus. L. Sec. 64).

BUYING FROM PERSONS UNDER SIXTEEN: It is a Class A misdemeanor for a junk dealer to buy anything from a child under age 16 (Genl. Bus. L. Sec. 63-A).

BUYING STOLEN PROPERTY: A person in the business of buying, selling or otherwise dealing in property is guilty of Criminal Possession of Stolen Property in the Second Degree when he knowingly possesses stolen property with intent to benefit himself or a person other than an owner thereof, or to impede the recovery by an owner thereof. Criminal Possession of Stolen Property is a Class E felony (P.L. Sec. 165.45; see Section 115, "'Stolen Property," this Manual).

PRESUMPTION OF GUILT: A person in the business of buying, selling or otherwise dealing in property who possesses stolen property is presumed to know that such property was stolen if he obtained it without having ascertained by reasonable inquiry that the person from whom he obtaned it had a legal right to possess it (P.L. Sec. 165.55 Subd. 2).

SCALES: All junk dealers must submit the scales used in their business to their county or city Weights and Measures official, at least twice yearly, for inspection (Agr. & Mkts. L. Sec. 184).

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80. KIDNAPPING AND CUSTODIAL INTERFERENCE

Under the new Penal Law, the crime of Kidnapping has two degrees.

KIDNAPPING IN THE SECOND DEGREE: It is Kidnapping second to abduct another person (P.L. Sec. 135.20). This is a Class B felony.

1. "Abduct" means to restrain a person with intent to prevent his liberation by:
   a. Secreting or holding the person in a place where the person is not likely to be found, or
   b. Using or threatening to use deadly physical force (P.L. Sec. 135.00, subd. 2).
      (1) Deadly physical force means physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury (P.L. Sec. 10.00, subd. 11).

2. "Restrain" means to restrict a person's movements:
   a. Intentionally and Unlawfully,
   b. Without consent,
   c. And with knowledge that the restriction is unlawful,
   d. In such manner as to interfere substantially with his liberty by:
      (1) Moving him from one place to another, or
      (2) Confining him either in the place where the restriction commences or in a place to which he has been moved.
   e. A person is moved or confined "without consent" when the moving or confining is accomplished by:
      (1) Physical force, or
      (2) Intimidation, or
      (3) Deception, or
      (4) Any means whatever, including acquiesence of the victim, if the victim is:
         (a) A child less than 16, or
         (b) An incompetent person, and
         (c) The parent, guardian or other person or institution having lawful control or custody of the victim has not acquiesced in the movement or confinement (P.L. Sec. 135.00, subd. 1).

KIDNAPPING IN THE FIRST DEGREE: It is the crime of Kidnapping first to abduct another person under any of the following circumstances:

1. Intending to compel a third person to:
   a. Pay or deliver money or property as ransom, or
   b. Engage in other particular conduct, or
   c. Refrain from engaging in particular conduct (P.L. Sec. 135.25, subd. 1); or

2. Restraining the person abducted for a period of more than 12 hours, with intent to:
   a. Inflict physical injury on the person abducted, or
   b. Sexually violate the person abducted, or
   c. Sexually abuse the person abducted, or
   d. Accomplish the commission of a felony, or
   e. Advance the commission of a felony, or
   f. Terrorize the person abducted, or
   g. Terrorize a third person, or
   h. Interfere with the performance of a governmental function, or
   i. Interfere with the performance of a political function (P.L. Sec. 135.25, subd. 2); or

3. The person abducted dies:

a. During the abduction, or

b. Before he is able to return or be returned to safety (P.L. Sec. 135.25, subd. 3).

c. **PRESUMPTION OF DEATH:**

(1) Where the person abducted was less than 16 or was incompetent at the time of the abduction, death is presumed from evidence that:

(a) Parents, guardians or other lawful custodians did not see or hear from him following the termination of the abduction and prior to trial, and

(b) Received no reliable information during such period persuasively indicating that the person abducted was alive (P.L. Sec. 135.25, subd. 3).

(2) In all other cases, death is presumed from evidence that:

(a) A person whom the person abducted would have been extremely likely to visit or communicate with during the period from termination of abduction to prior to trial if he were alive and free to do so did not see or hear from the one abducted during that period, and

(b) Received no reliable information during such period persuasively indicating that the person abducted was alive (P.L. Sec. 135.25, subd. 3).

Kidnapping First is a Class A felony.

CRIMES INVOLVING DETENTION OF A PERSON: The kidnapping statute is limited in application to actual kidnappings as understood in the conventional sense. If a crime is essentially a rape, robbery, etc., that specific crime must be charged, instead of kidnapping, even if there is some detention of the victim (Peo. vs. Levy, 15 NY 2d. 164).

KIDNAPPING BY PARENT OR OTHER RELATIVE: It is an affirmative defense to a Kidnapping charge that:

1. The defendant was a relative of the person abducted, and

2. The defendant's sole purpose was to assume control of the person abducted (P.L. Sec. 135.30).

An affirmative defense is one which must be established by a preponderance of the evidence, at trial (P.L. Sec. 25.00, subd. 2).

Relatives who successfully establish the affirmative defense may be subject to prosecution for Custodial Interference (see later in this Manual section).

A "relative" is a parent, ancestor, brother, sister, uncle or aunt of the one abducted (P.L. Sec. 135.00, subd. 3).

CONCEALING KIDNAPPING OR ASSISTING KIDNAPPER: It should be borne in mind that when one person engages in kidnapping, any other person is also criminally liable if he intentionally aids the kidnapper to engage in the kidnapping (P.L. Sec. 20.00).

In addition, it is the crime of Hindering Prosecution in the First Degree to render criminal assistance to a person who has already committed a kidnapping, if done with knowledge or belief that the person had committed the kidnapping. See, in this Manual, Section 72, "Hindering Prosecution." Experienced officers will observe that this is somewhat similar to the provisions in the old Penal Law concerning being an accessory to a kidnapping (old P.L. Sec. 1250-b).

CUSTODIAL INTERFERENCE IN THE SECOND DEGREE: Custodial Interference Second is a Class A misdemeanor. Separate sections of the law concern relatives and any other persons:

1. Relatives (parent, ancestor, brother, sister, uncle or aunt).

a. A relative is guilty of Custodial Interference Second who takes or entices a child under 16:

(1) From his lawful custodian,

(2) With intent to hold the child permanently or for a protracted period,

(3) Knowing he has no legal right to do so (P.L. Sec. 135.45, subd. 1).

2. Any person:

a. A person is also guilty of Custodial Interference Second who takes or entices:

(1) From lawful custody

(2) Any incompetent person, or

(3) Any other person entrusted by authority of law to the custody of another person or institution (P.L. Sec. 135.45, subd. 2).

"Entice" may be understood as meaning to wrongfully solicit, or persuade, or attract, or to coax. It is not specifically defined in the statute.

CUSTODIAL INTERFERENCE IN THE FIRST DEGREE. Custodial Interference Second constitutes the crime of Custodial Interference First when committed under circumstances which expose the person taken or enticed from lawful custody to a risk that his safety will be endangered or his health materially impaired (P.L. Sec. 135.50). The crime is a Class E felony.

UNLAWFUL IMPRISONMENT: Officers should refer to Section 122, in this Manual, "Unlawful Imprisonment," in respect to other violations relating to custody. It is a defense to Unlawful Imprisonment that the defendant was a relative, that the victim was under 16 and that the sole purpose was to assume control of the child.

FEDERAL LAW: The Federal kidnapping law, often called "the Lindbergh law" (Title 18 U.S. Code, Sec. 1201) makes it a Federal felony to knowingly transport in interstate or foreign commerce any person who has been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away and held for a ransom, reward, or otherwise.

Punishment is death if the kidnapped person has not been released unharmed and if the jury so recommends, or any term of imprisonment up to life (Title 18 U.S. Code, Sec. 1201).

TWENTY-FOUR HOUR RULE: Failure to release a victim within twenty-four hours after he was unlawfully seized, etc., creates a presumption (which is rebuttable) that the victim was transported in interstate or foreign commerce (Title 18 U.S. Code, Sec. 1201, subd. b).

RANSOM MONEY: It is a Federal felony, punishable by fine of not over $10,000 or imprisonment not over ten years or both, for any one to knowingly receive, possess or dispose of any money or other property or portion thereof which was at any time delivered as ransom or reward in connection with any violation of the Federal kidnapping law (Title 18 U.S. Code, Sec. 1202).

PARENTS: The Federal law specifically exempts parents kidnapping a minor child (Title 18 U.S. Code, Sec. 1201, subd. a).

INVESTIGATIONS

Officers should do nothing and should not allow anyone else to do anything which would interfere with the safe return of a person kidnapped. Officers should also refrain from expressing opinions as to the advisability or inadvisability of complying with a kidnapper's ransom demands.

Publicity or any public knowledge of a kidnapping may seriously jeopardize the victim's safety and hamper the investigation. Officers should take prompt steps to insure that any kidnapping is kept confidential and should make secure arrangements to consider and regulate any and all possible releases by the family to the press, radio and television. Steps to keep the kidnapping confidential should begin when the complaint is received.

The nearest FBI office should be immediately notified in all cases of kidnapping or possible kidnapping except where the subject is a parent of a minor victim.

RECEIPT OF COMPLAINT: Whenever a telephonic complaint is received that a kidnapping has occurred, the caller must be advised to stay on the line until questioning is complete. His name, address, telephone number and present location should be obtained. The details and exact wording of any message or note received must be secured. The caller should be advised to not handle the note or permit anyone else to do so and to not permit any other person (except parent or guardian of the victim) to read it or to become acquainted with its contents. The complete name and full description of the victim must be obtained.

Full details of the kidnapping should be secured, together with the names and identities of all other persons who have been notified or have knowledge of the kidnapping.

The caller should be told to maintain the utmost secrecy about the kidnapping with respect to all private individuals as well as all representatives of the press, radio and television.

Arrangements should be made for an immediate personal interview.

The FBI should be promptly contacted and arrangements made to proceed immediately with an FBI Special Agent to the designated place of contact with the family or complainant. Travel to the designated place and contact with the complainant or family should be most circumspect and as secret as possible. No outward indication of police activity should exist.

ADMINISTRATION OF THE INVESTIGATION: Investigations should be conducted in cooperation and collaboration with the FBI. In addition to its experience in and responsibility for kidnapping cases generally, the FBI has skilled investigators throughout the United States and is in a position to handle necessary investigation anywhere on an immediate basis.

An officer should be immediately assigned to the office phase of the investigation. He should keep a chronological log of all pertinent occurrences, maintain the files of the case, supervise all reports.

An experienced and capable officer should also be promptly dispatched to the place where contact may be made by the kidnapper with the victim's family, if this is known. He should be instructed to consider any action primarily from the view of the safe return of the victim. His presence should be held a close secret from all but the person or persons in the kidnapped victim's family who must know of his presence. Under no circumstances should anything be done which might permit the kidnapper to become aware of this officer's existence. The officer's purpose

is to ensure that all information pertinent to the case and concerning contacts with the kidnapper is secured for investigative action when the victim's safety is assured and to take appropriate steps against any action which would endanger the victim or hinder the victim's safe return.

An experienced ranking officer should be immediately assigned to take full charge of the kidnapping case. He should receive all official calls pertaining to the case, plan and supervise the investigation, assign leads and keep abreast of all developments in the case.

The Officer-in-Charge should hold frequent conferences with the officers assigned to the investigation. An initial conference should be held immediately following the establishment of the fact that the case is a kidnapping and the following topics should be discussed:

1. Facts of the case to date;
2. Handling of evidence;
3. Cooperations with FBI and other law enforcement agencies;
4. Policy on payment of informants;
5. Handling news media and necessity for secrecy;
6. Administrative organization of the investigation, including assignment of leads and reporting.

RANSOM NOTE: Any written or printed communication from the kidnapper should be promptly obtained and protected from contamination. Exact photographic copies should be provided in its place to use in any contacts with the kidnapper. It must be borne in mind that the original must be constantly available to meet a specific demand for its return by the kidnapper.

When deemed safe to do so, the original should be processed for latent fingerprints. Photographic copies should be examined in a Scientific Laboratory as soon as possible for all identifiable or distinctive characteristics. When deemed safe to do so, the original should be also examined for identity and source of paper and envelope.

EXTORTION: In any kidnapping case wherein the public gains knowledge that the case exists, it is likely that there will be false ransom demands, each of which will be a violation of state and possibly Federal extortion laws. Care must be taken that such cases are properly handled and every effort made to identify the offenders for prosecution.

INTERVIEW WITH VICTIM: A prime step in any kidnapping investigation where the victim is returned is an immediate and very detailed interview of the victim. This should be conducted as soon as possible after the victim's return. Quick and imaginative handling of leads developed by such interview are essential.

CUSTODIAL INTERFERENCE CASES: A major portion of this type of case will be found to involve family situations of divorce or custody of well-to-do incompetents. In all such cases, officers must take care to fully explore the legal situation and rights, under court orders, of the parties concerned, before taking such affirmative action as an arrest. In the usual case it will be well to make arrests only with warrants. Where the victim is taken out of the state, it must be borne in mind that the Federal law specifically exempts parents.

81. LABORATORY EXAMINATIONS

Scientific examination of evidence should never be attempted by non-expert police personnel. The services of the New York State Police Scientific Laboratory, at Albany, New York, and the FBI Laboratory, at Washington, D.C. are available to law enforcement agencies without charge, in any criminal case.

NEW YORK STATE POLICE SCIENTIFIC LABORATORY: The New York State Police Scientific Laboratory is located in Building 22, State Campus, Washington Avenue, Albany, New York, a short distance from Exit 24 of the Thruway. In addition to law enforcement agencies, its services will be made available in criminal cases to district attorneys, coroners, the courts, defendants in criminal cases on court order, veterinarians (in cases of animal poisoning) and agencies of Federal, state, county or other local government.

The Laboratory's services are not available to any agency in other than criminal cases, except that in emergency diagnostic situations, cooperation may be given to hospitals and doctors.

FBI LABORATORY: The FBI Laboratory is located c/o Director, Federal Bureau of Investigation, Washington, D.C., 20535. Its facilities are available to all duly constituted state, county and municipal law enforcement agencies. All examinations are made only when the evidence is connected with an official investigation of a criminal matter and the laboratory report of examination will be used for official purposes only, related to the investigation or a subsequent criminal prosecution.

The FBI Laboratory will not grant authorization for the use of a laboratory report in connection with a civil proceeding.

It is the policy of the FBI Laboratory not to make examinations if any evidence in the case has been or will be subjected to the same type of technical examination by other experts. This policy has been found desirable not only to eliminate duplication of effort but also to ensure the examination of evidence in its condition at the time of recovery, enabling the proper interpretation to be placed on the examiner's findings and the proper subsequent court presentation and testimony.

COSTS OF LABORATORY EXAMINATION: The only cost to a law enforcement agency for laboratory examination in either the New York State Police Scientific Laboratory or the FBI Laboratory is the cost of any communications from the law enforcement agency and the expense of transmitting the evidence to the laboratory (i.e. telephone calls, telegrams, postal, parcel delivery, express or freight charges, or travel expense of police member making personal delivery of evidence). There is no cost of any kind for examinations, reports or return of evidence and in addition both laboratories will furnish the experts necessary to testify in connection with the results of their examinations without any charge for the travel, living or other expenses of the experts.

TRIALS: In view of the volume of work of the laboratories, it is essential that when the testimony of an expert is determined to be definitely needed for trial that his time for testifying is carefully worked out with the district attorney or prosecutor to require the absolute minimum attendance and that a specific time be set for putting the expert or experts on the stand. As much advance notice as possible should be given and the laboratory should also be immediately informed when changes in such times must be made.

SWORN AFFIDAVITS ACCEPTED BY GRAND JURIES: A copy of the report of a public officer, who is a chemist, firearms identification expert, examiner of questioned documents, fingerprint technician or other such expert or technician, or of a chemist, firearms identification expert, examiner of questioned documents, fingerprint technician or other such expert or technician employed by a police officer, concerning the results of an examination, comparison, test or other scientific procedure made or done by him on or concerning evidence, when sworn to by such public officer as being a true and full copy of such report, may be received by the grand jury as prima facie evidence of the facts and circumstances therein contained (CCP Sec. 248).

SUBMITTING EVIDENCE: Evidence may be submitted to the laboratory by personal delivery, or by mail, express, parcel service or freight. Where mail is used (either parcel post, special delivery, certified or registered) a return receipt should be requested and insurance obtained, to establish continuity of evidence.

Unloaded firearms may be submitted by parcel post if labelled as "Firearms for Scientific Laboratory", otherwise personal delivery, express, parcel service or freight must be the means of transmission. Loaded ammunition cannot be sent via United States mail.

It may be submitted via United Parcel or a similar service, where available or convenient, otherwise it must be shipped via express, freight, or personal delivery.

If it is necessary to transmit evidence to the New York State Police Scientific Laboratory by personal delivery, at times other than normal business hours, or on Saturday, the Communications Section, New York State Police Headquarters, Albany, should be first contacted by teletype or telephone so that appropriate arrangements may be made for a laboratory technician to receive the evidence.

PACKING EVIDENCE: The section of this manual on "Investigations" should be referred to in regard to proper identification and packaging of evidence.

If the evidence is material that can be forwarded by mail, such as documents, a letter of transmittal should be enclosed with it. The requirements for letters of transmittal are set out under the next heading herein.

If the evidence is to be sent by parcel post, parcel delivery service, express or freight, an "invoice" copy of the letter of transmittal should be packed on top of the wrapped evidence with the wrapped evidence and the invoice securely packaged in a shipping case, wrapper or container. This outer case, wrapper or container should bear the laboratory address, the return address of the submitting agency, the notation "Evidence" and any necessary label such as "FRAGILE" or "Firearms for Scientific Laboratory."

Where the evidence is transmitted by personal delivery of a representative of the submitting agency, the letter of transmittal may be submitted in a separate envelope, delivered with the package or envelope of evidence.

LETTER OF TRANSMITTAL: Each transmittal of evidence to the laboratory requires a letter signed by a ranking officer of the submitting law enforcement agency setting out the following:

(1) Crime involved and nature of investigation,

(2) Time, place and date of crime,

(3) Name, address and age of victim and suspects or offenders (when known)

(4) Description of crime,

(5) Detailed list of evidence submitted and its source,

(6) Nature of examination or examinations desired,

(7) Any information which would provide leads or assistance to examiner, such as medication given deceased victim, suspected nature of unidentified pills, etc.

It is not necessary, in requesting examinations, for the law enforcement agency to specify the techniques of examination, the instruments to be used or similar technical things. This is, in fact, beyond the competence of most officers. It is only necessary to state the nature of the examination, what is to be sought, not how it will be sought. It is therefore not essential that the officer be familiar with techniques and instruments used in the laboratory.

For example, if it is desired to know whether a bullet removed from a cadaver was fired from a gun also submitted, it is only necessary to request an examination directed to determining this and the officer need not specify that a test bullet should be fired into a recovery chamber and then examined on a comparison microscope to determine whether the microscopic barrel markings on the submitted bullet and the test bullet identify them as having been fired through the same barrel.

LABORATORY REPORTS: The results of laboratory examination will be furnished to the submitting agency in a typed report. An original and one copy is ordinarily furnished. If a need exists in a particular case for an additional copy or copies, the Laboratory should be informed when the evidence is submitted.

TIME ELEMENT OR URGENCY: If there is any time element or urgency involved, the Laboratory should be informed in detail at the time of submission.

LABORATORY SERVICES AVAILABLE

The following are the most usual types of examinations available at the New York State Police Scientific Laboratory:

ALCOHOL: identification of liquids as alcoholic and percent of alcohol. Also determination of percent of alcoholic content of blood by examination of blood, urine or other samples.

BLOOD: identification of blood as animal or human and determination of blood grouping.

CASTS: examination of plaster and moulage casts and comparison with known specimens to determine identity, or to identify heel mark or tire-tread patterns.

CHECKS: See "Documents".

CHEMICAL EXAMINATIONS: Qualitative and quantitative analyses on any organic or inorganic substance connected with a crime, a suspect or a crime scene.

DOCUMENTS: examination of handwriting, typewriting, printing, rubber stamps, inks, paper, etc., for comparison with known standards, and to detect erasures, changes, age, etc.

EXPLOSIVES: Portable X-Ray apparatus is available for examination of suspected bombs and other explosives. Files of known standards of dynamite wrappers, blasting caps, wires, fuses and powders are maintained for comparison with material used in construction of bombs or with debris found at the scenes of explosives.

NOTE ON EXPLOSIVES: Do not ship or send explosives to the Laboratory without first contacting the Laboratory and receiving instruc-

tions as to what, if anything, may be transmitted and the method of transmittal.

FIREARMS: Facilities are available for repairing firearms so that they may be test fired, also for examination and test firing to prove that a weapon is capable of discharging a shot, comparison of bullets obtained by test-firing with bullets from scene or from body of a victim, comparison of test-fired bullets with bullets in open homicide cases in other police jurisdictions, examination and test-firing of seized weapons for comparison with bullets in open homicide cases.

LIE DETECTION: Experts and equipment are available for lie detection examinations. Request for such service should be made as early as possible, to permit scheduling of examinations. Where possible, examination must be at the Laboratory.

The exact connection of the person to be examined with the crime under investigation, including all pertinent data on motive and opportunity, and any alibi known or anticipated, together with factual information tending to disprove or support such alibi, must be furnished in detail to the Laboratory at least three days before the date set for the examination.

In addition, as much of the following information as is available should be furnished at the same time:

(1) Name and aliases of person to be examined,

(2) Date and place of his birth,

(3) Current residence,

(4) Parents' names and addresses if living; if deceased, date and cause of death,

(5) Names, addresses and dates of birth of brothers and sisters,

(6) Marital status, including whether living with spouse, legality of current marriage, details on prior marriages, if any,

(7) Children, including state of health, and where living,

(8) Religion and frequency of church attendance, extent of compliance with rules of his church,

(9) Education, including years of schooling, age left school, kind of student,

(10) Military service, including rank, whether served overseas, and type of discharge; if no military service, state why.

(11) Employment history, including current job, previous job, number of job changes in recent years, reasons for changes or leaving jobs.

(12) Medical history, including medications currently being taken, any long periods of hospitalization and reasons for each. If a person claims to have a serious heart condition, and a check with his doctor indicates that this is true, the person should not be tested.

(13) Previous known arrests. A check should be made to determine also minor violations and general reputation.

MICRO-CHEMICAL EXAMINATIONS: Tests to determine the identity of very small specimens of material including analyses of inks, fingernail scrapings, etc.

MICROSCOPY: Examination of hairs, fibers, minerals, powders, and other samples to determine source and/or identity.

PHOTOGRAPHY: Special apparatus is maintained for infrared, ultraviolet and color photography and photographic restoration of erased, obliterated, altered or burned documents. Large scale charts and other materials are prepared photographically for purposes of testimony by examiners.

POISONS: see "Toxicological Analyses"

POWDER PATTERNS: Examinations are made of articles of clothing and of bodies to determine powder dispersion patterns in order to determine a firearm's distance from the subject when it was fired. Similar examinations are made in shot-gun shootings, as shot-gun pellets also disperse to form characteristic patterns.

SEMINAL STAINS: Examinations are made to identify seminal stains as such, by identification of spermatazoa, in sex crimes.

SERIAL NUMBER RESTORATION: Obliterated serial numbers can frequently be restored on guns, typewriters, motors, tools, etc. Restored serial numbers on firearms are checked against the files of the Pistol Permit Section in each case, where a record is kept of all lost or stolen as well as licensed firearms.

SPECTROGRAPHIC ANALYSIS: Examinations are made of small bits of evidence by analysis of their metallic composition on a spectrograph to identify samples of paint in hit-and-run cases, dirt on clothing or shoes, chips of metal, such as borings, chips in hacksaw blades, etc.

TOOL MARKS: Tools such as wire cutters, punches, wrenches, chisels, etc., and tools used as jimmies usually leave characteristic marks which can be identified by microscopic comparison of the tool with the mark.

TOXICOLOGICAL ANALYSES: Toxicology is the study of poisons. Examinations made include analyses of organs and tissues of persons or animals in suspected poisoning cases and examination of foods and beverages for poisons, determination of carbon monoxide poisoning from blood sample and similar examinations.

OTHER EXAMINATIONS: In addition to the above kinds of examinations, the Laboratory will assist with problems requiring scientific research in connection with criminal cases in respect to matters not included in the above listing.

The Laboratory's contacts and consultants in various fields also enable the Laboratory to conduct examinations in fields requiring equipment special to industry and in case of doubt, officers should consult the Laboratory to determine whether assistance can be rendered and/or examinations conducted in a particular specialized case.

FBI LABORATORY FACILITIES: The FBI Laboratory is expertly staffed and fully equipped with complete facilities for scientific examination of evidence and materials in criminal cases of any kind. Any question as to whether an unusual specialized kind of examination can be made should be taken up directly with that Laboratory.

Officers handling cases possibly dealing with professional check passing activity should bear in mind that the FBI Laboratory has a fraudulent check file of national scope.

The FBI Laboratory also has facilities for handling cryptographic analysis work, in addition to its other technical facilities, including analysis of bookmakers' codes, and is equipped to handle translations in over twenty-five languages.

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82. LARCENY

The laws on Larceny have been completely changed by the new Penal Law.

The old law's distinctions about taking in the night time, taking from a dwelling, taking property over $500 in value, or over $100 but not over

$500, are not included in the new laws. Petit Larceny is now simply stealing property of any kind and of any value. Grand Larceny Third is stealing property over $250 in value, or a public record, or secret scientific material, or stealing from the person, or stealing by extortion. Grand Larceny Second is stealing any kind of property over $1500. in value, in any way. Grand Larceny First is stealing property of any kind or value by certain specified kinds of extortion.

LARCENY DEFINED: A person steals property and commits Larceny when:

1. With intent:
   a. To deprive another of property, or
   b. To appropriate property to himself, or
   c. To appropriate property to a third person,
2. He wrongfully:
   a. Takes, or
   b. Obtains, or
   c. Withholds,
3. The property,
4. From an owner of the property (P.L. Sec. 155.05, subd. 1).

PETIT LARCENY: A person is guilty of petit larceny when he steals property (P.L. Sec. 155.25). Petit larceny is a class A misdemeanor.

GRAND LARCENY IN THE THIRD DEGREE: A person is guilty of Grand Larceny in the Third Degree when he steals property and when:

1. The value of the property exceeds two hundred fifty dollars, or
2. The property consists of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant, or
3. The property consists of secret scientific material, or
4. The property, regardless of its nature and value, is taken from the person of another, or
5. The property, regardless of its nature and value is obtained by extortion. (P.L. Sec. 155.30).

Grand Larceny Third is a Class E felony.

GRAND LARCENY IN THE SECOND DEGREE: A person is guilty of Grand Larceny in the Second Degree when he steals property and when the value of the property exceeds one thousand five hundred dollars (P.L. 155.35).

Grand Larceny Second is a Class D felony.

GRAND LARCENY IN THE FIRST DEGREE: A person is guilty of Grand Larceny in the First Degree when he steals property and when the property, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will (a) cause physical injury to some person in the future, or (b) cause damage to property, or (c) use or abuse his position as a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely (P.L. Sec. 155.40) (see Section 60, "Extortion and Coercion," this Manual).

Grand Larceny First is a Class C felony.

PROPERTY DEFINED: Property means any money, personal property, real property, thing in action, evidence of debt or contract, or any article, substance, or thing of value (P.L. Sec. 155.00, subd. 1).

1. Officers should note that real estate or real property is specifically included in the new law as a possible subject of Larceny. Under the old law only personal property or things severed from the real estate could be stolen (e.g., apples from a tree, a kitchen sink taken from an apartment building).

STEALING SERVICES: Where the stealing involves a service instead of property, see Section 118, "Theft of Services," this Manual.

DEPRIVE DEFINED: To deprive another of property means:

1. To withhold it, or
2. To cause it to be withheld,
3. Permanently, or
4. For so extended a period or under such circumstances that:
   a. The major portion of the property's economic value is lost to the other (P.L. Sec. 155.00, subd. 3-a).

To deprive another of property also means:

1. To dispose of the property,
2. In such a manner or under such circumstances,
3. As to render it unlikely that an owner will recover it (P.L. Sec. 155.00, subd. 3-b).

The new law's definition of "deprive" points up the fact that it is not essential to larceny that there be a stealing for profit.

For example, a person who, with intent to deprive the owner, takes some property and throws it into a deep lake, thus making it unlikely that the owner will recover it, has committed larceny just as much as if he had stolen the same property to sell it for money. As another example, a person takes a news photographer's picture and negative of a "hot" news story. He wants to prevent publication of the picture. He gives them back to the photographer three weeks later, when the story is no longer news. He deprived the photographer of a major part of the picture's economic value and so committed larceny, just as if he had stolen the picture and negative to sell them for his own profit.

APPROPRIATE DEFINED: To "appropriate" property of another to oneself or to a third person means:

1. To exercise control over it, or
2. To aid a third person to exercise control over it,
3. Permanently, or
4. For so extended a period or under such circumstances as to acquire the major portion of its economic value of benefit (P.L. Sec. 155.00, subd. 4-a).

To appropriate also means to dispose of the property for the benefit of oneself or a third person (P.L. Sec. 155.00, subd. 4-b). This is the most usual motive of the thief, to get rid of the stolen property for a profit.

OWNER DEFINED: For purposes of larceny, it is not at all necessary that the taking, withholding or obtaining be from an actual owner who has title to property, or is the registered owner, etc. Under the law, an "owner" is any person whose right to possession is superior to the right of the one who takes, obtains or withholds it (P.L. Sec. 155.00, subd. 5). Larceny may be committed by taking, etc., from anyone possessing the property, if the possessor has a higher degree of right than the one taking.

In fact, a person who has stolen property or who has obtained posses-

sion of it by other illegal means has a right of possession superior to that of a person who takes, etc., from him by larcenous means (P.L. Sec. 155.00, subd. 5, par. 2). A thief can steal loot from a thief.

All joint or common owners of property have an equal right to possession and no one of them can have a right superior to that of any other joint or common owner. (P.L. Sec. 155.00, subd. 5, par. 3). Thus, one of them cannot commit larceny on their jointly owned property when it is in the possession of another of them.

Unless there is a specific agreement to the contrary, a person who is in lawful possession of property is deemed to have a right of possession superior to that of a person having only a security interest in the property. This is true even if the legal title remains in the person who has a security interest under a conditional sales contract or some other security arrangement (P.L. Sec. 155.00, subd. 5, par. 4).

OBTAIN DEFINED: The word "obtain" under the larceny laws includes (but is not limited to) bringing about a transfer or purported transfer of property or of a legal interest in property. It does not matter whether the transfer is to the obtainer, or to another (P.L. Sec. 155.00, subd. 2).

Officers will note real estate cannot ordinarily be taken or withheld, as can a diamond ring or money. But it can be "obtained". A transfer or purported transfer of it can be committed in any number of circumstances involving Larceny.

WRONGFUL TAKING, OBTAINING, WITHHOLDING: To constitute a larceny there must be either a taking, an obtaining or a withholding (P.L. Sec. 155.05, subd. 1). Obtaining is defined in preceding paragraphs. Taking means to get hold of, to get possession of, to grasp, to get possession or control, to seize. Withholding means holding back or refraining from giving, or keeping.

Larceny includes a wrongful taking, obtaining or withholding of another's property (with specified intent) committed:

1. By conduct previously defined or known as:

a. Common Law Larceny by Trespassory Taking (P.L. Sec. 155.05, subd. 2-a).

(1) This type of Larceny includes a major part of all the larcenies committed. It is any taking of property by a trespass, by a directly wrongful act, where there is no trick, false pretense or embezzling but just an outright stealing without the consent of the owner or possessor. It is the kind of Larceny where the owner does not in any way intend to part with title to or possession of the thing stolen.

b. Common Law Larceny by Trick (P.L. Sec. 155.05, subd. 2-a).

(1) Larceny by trick is the kind of theft accomplished by gaining possession of property or money without a trespass or wrongful taking, but through some trick or fraudulent device (Peo. vs. Miller, 169 NY 339).

c. Embezzlement (P.L. Sec. 155.05, subd. 2-a).

(1) Embezzlement involves stealing by a person who already has possession or custody or a right to deal with someone else's property and who converts it to his own use. Thus, when a person has money or property in his possession as agent, attorney, bailee, employee, custodian or other person in a position of trust and converts it to his own use, he is guilty of embezzlement (Peo. vs. Gibson, 218 NY 70). See also Section 86, "Misapplication of Property," this Manual.

d. Obtaining Property by False Pretenses (P.L. Sec. 155.05, subd. 2-a).

(1) This kind of Larceny includes cases of theft where the owner or rightful possessor gave title or possession of the property to the thief in reliance on a false statement by the thief as to a material fact of the transaction (Peo. vs. Miller, 169 NY 339). Where the false statement is not as to an existing fact but is only a promise of something in the future, the crime is not Larceny by False Pretenses, but is Larceny by False Promise (see item 4).

2. By acquiring lost property.

a. A person acquires lost property when he exercises control over the property of another and when:

(1) He knows it to have been lost or mislaid, or

(2) He knows it to have been delivered under a mistake as to the identity of the recipient, or

(3) He knows it to have been delivered under a mistake as to the nature or amount of the property,

(4) And he fails to take reasonable measures to return such property to the owner (P.L. Sec. 155.05, subd. 2-b).

b. Officers will note that Larceny by Acquiring Lost Property is not restricted to cases of finding and withholding lost property, such as where an offender finds a wallet containing $300 and the name and address of the owner, and just keeps it. It also includes situations such as where a person orders an appliance from a store and the store by mistake sends two appliances, but only bills for one and the person then gives the second appliance to a friend, without paying for it. Another type of situation included would be such as where a person pays for a gold ring with an imitation diamond setting and by mistake the jeweler delivers a gold ring with real diamonds. If the customer withholds the ring from the jeweler when he discovers the mistake, it becomes larceny. Officers should note that the law puts a duty on the receiver to take reasonable measures to return property received by mistake.

3. By committing the crime of issuing a bad check as defined in Penal Law Section 190.05 (P.L. Sec. 155.05, subd. 2-c). See section 31, "Bad Checks and Forged Checks," this Manual.

4. By False Promise.

a. A person obtains property by False Promise when:

(1) Pursuant to a scheme to defraud,

(2) He obtains property of another,

(3) By means of an express or implied representation that:

(i) He or a third person,

(ii) In the future,

(iii) Will engage in particular conduct, and

(4) He does not intend to engage in such conduct, or

(5) He does not believe that the third person intends to engage in such conduct (P.L. Sec. 155.05, subd. 2-d).

b. A person engages in Larceny by False Promise, for example, where he takes money for magazines to be delivered, intending merely to pocket the money, or takes other orders and money for other property which he does not intend to deliver.

c. The Penal Law specifically provides that in any case of Larceny by False Promise the defendant's intention or belief that the promise would not be performed cannot be either established or inferred from the fact alone that the promise was not performed.

It may be based only on evidence establishing that the facts and circumstances of the case are wholly consistent with guilty intent or belief, and wholly inconsistent with innocent intent or belief, and excluding to a moral certainty every hypothesis except that of the defendant's intention or belief that the promise would not be performed (P.L. Sec. 155.05, subd. 2-d).

(1) As an example, a legitimate magazine salesman would not be guilty under this section just because the first issues were not received as promised. But a thief who posed as a magazine salesman intending merely to pocket the subscription money could, when his guilty intent is clearly established, such as by showing that he had no connection at all with the magazine publisher or a distributor and that he had made a number of other similar false sales.

5. By Extortion (P.L. Sec. 155.05, subd. 2-e) (see Section 60, "Extortion and Coercion," this Manual).

GOOD FAITH: In any prosecution for larceny committed by a trespassory taking or by embezzlement, it is an affirmative defense that the property was appropriated under a claim of right made in good faith (P.L. Sec. 155.15, subd. 1).

INTENT TO RESTORE: The old Penal Law (Section 1307) provided that the fact the defendant intended to restore embezzled or stolen property was no ground of defense or of mitigation of punishment if it had not been restored before complaint to a magistrate charging the crime. This provision is not included in the current law.

CHARGING LARCENY: An information, complaint or indictment of Larceny is sufficient if it alleges that the defendant "stole" property of the kind or value required by the violation charged. It is not necessary to state the particular way or manner in which the property was stolen (155.45, subd. 1).

In addition, proof that the defendant engaged in any conduct defined as Larceny in Section 155.05 of the Penal Law, is sufficient to support an indictment, complaint or information which merely alleges that the defendant "stole" (P.L. Sec. 155.45, subd. 2).

There are two exceptions to these rules. Where it is an element of the crime charged that the property was taken from the person or by extortion, an indictment must so specify. In addition, if the indictment charges Larceny by Extortion it must be supported by proof establishing Larceny by Extortion (P.L. Sec. 155.45). Larceny by Extortion is dealt with in Section 60, "Extortion and Coercion," this Manual.

VALUE OF PROPERTY: For purposes of Larceny, the value of property is ascertained as follows:

1. Value is the market value of the property at the time and place of the crime (except in the special cases specified in 2 and 3 below). (P.L. Sec. 155.20, subd. 1).

b. The market value is the price one would have to pay on the open market for the property. In a case of theft from a store the market value would be the retail price and not the wholesale cost to the store. The retail price is not necessarily the price on the price tag. It is a realistic price at which the property could have been sold if it had not been stolen (Peo. vs. Irrizari, 5 NY 2d 142).

2. Written instruments (except those which have a readily ascertainable market value, such as stocks and bonds traded on recognized exchanges, are valued as follows:

a. The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, is the amount due or collectible on it, less any portion which has been satisfied or paid off (P.L. Sec. 155.20, subd. 2-a).

b. The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation is the greatest amount of economic loss the owner might reasonably suffer by virtue of the loss of the instrument.

(1) As an example, if a registered deed to real estate is stolen, the owner's loss would be merely the cost of obtaining a copy of the deed from the County Clerk. If he lost a sale because the deed had been stolen and he could not deliver a copy in time, his economic loss could be his lost profit from the sale.

c. It makes no difference in value whether the written instrument has been issued or delivered.

3. If the value of property cannot be satisfactorily ascertained as in 1 and 2, its value must be taken to be an amount under $250 (P.L. Sec. 155.20, subd. 3).

CONVERTING MILITARY PROPERTY: It is a Class A misdemeanor for any person to:

1. Secrete, sell, dispose of, offer for sale, purchase, or

2. Retain after demand by a commissioned officer of the organized militia, or

3. In any manner pawn or pledge,

4. Any arms, uniforms, equipments or other military property,

5. Issued under provisions of the Military Law (Mil. L. Sec. 238, subd. 1, 4).

CREDIT CARDS: Any person who obtains credit, cash, property or services by use of a credit card, knowing that he is not the person to whom it was issued or that he is not authorized to use it, is guilty of larceny. Credit card includes any credit card, credit plate, charge plate, courtesy card or other identification card or device authorizing the holder to obtain credit or purchase or lease property or services on the credit of the issuer or obligor of it (Genl. Bus. L. Sec. 511, 513). (See also "Interstate Transportation of Stolen Property" in this Manual section).

Use of a credit card with intent to deprive or defraud with knowledge that the credit card has expired or has been terminated or revoked by the issuer, is a misdemeanor (Genl. Bus. L. Sec. 513, subd. 2). See Section 118, "Theft of Services", in this Manual, which also concerns crimes by misuse of credit cards.

UNAUTHORIZED USE OF VEHICLE: Taking, using or operating any aircraft, any automobile or other motor vehicle or any boat, without the consent of the owner and under circumstances not constituting larceny, may constitute the crime of "Unauthorized Use of Vehicle". See Section 121, that title, in this Manual.

MOTOR VEHICLE OR MOTORCYCLE WITH CHANGED VEHICLE IDENTIFICATION OR ENGINE NUMBER: In many Larceny of Motor Vehicle cases thieves will change or alter the engine or vehicle identification number or both. These numbers, of course, are of major value in establishing the identity of such vehicles or in tracing the transfer of registration, or of title in "title" states. All officers handling vehicle larcenies should bear in mind the changed engine or vehicle number violations under the Vehicle and Traffic Law, as follows: It is unlawful for any person to sell or offer for sale a motor vehicle or motorcycle, the

original engine number of which has been destroyed, removed, altered, defaced or so covered as to be effectually concealed, (except an electric motor vehicle) unless the provisions of Section 421 of the Vehicle and Traffic Law are complied with.

1. For vehicles which bear a vehicle identification number, serving as identification both for the vehicle and the engine, the term "engine number," includes a vehicle identification number (Vehicle and Traffic Law, Sec. 421, subd. 1, 3).

2. The owner or lawful custodian of a motor vehicle or motorcycle whose original engine number has been destroyed, removed, altered, defaced or covered may apply to the Commissioner of Motor Vehicles for permission to make or stamp, or cause to be made or stamped on the engine a special engine number (Vehicle and Traffic Law, Sec. 421, subd. 1).

a. The Commissioner will issue written permission to make or stamp on the engine a special engine number designated by the Commissioner. The substitution of a new engine for one whose number has been destroyed, removed, altered, defaced or covered, can only be made upon written permission of the commissioner (Vehicle and Traffic Law, Sec. 421, subd. 1).

b. The new number must be used for identification, registration, etc., and the owner may sell and transfer the motor vehicle or motorcycle bearing such number.

c. The law permits the restoration, or stamping on a new block, of an engine number, which, though defaced, is actually decipherable, as well as the substitution of a new engine with the original number stamped thereon, if the latter is actually decipherable, without obtaining permission from the commissioner. It also permits the sale of a motor vehicle or motorcycle having such restored number or new engine with the original number (Vehicle and Traffic Law, Sec. 421, subd. 1).

3. Anyone selling or offering to sell a motor vehicle or motorcycle in violation of the provisions of this law is guilty of an unclassified misdemeanor, punishable by fine not less than $200 nor more than $500, or imprisonment not less than thirty days nor over six months, or both (Vehicle and Traffic Law, Sec. 421, subd. 1).

The owner of a registered motor vehicle or motorcycle who replaces the engine with another engine having a number different from that of the first engine must file with the Commissioner a statement giving the old engine number, the new engine number, the registration number of the vehicle, the name of the owner, and any other information the Commissioner may require. The Commissioner will issue a new certificate of registration for the vehicle without fee. No new certificate of registration need be issued for an omnibus having a seating capacity in excess of ten persons (Vehicle and Traffic Law, Sec. 421, subd. 1).

A motor vehicle or motorcycle without an engine number cannot be registered.

1. Before registering such a motor vehicle or motorcycle, the applicant must furnish the Commissioner of Motor Vehicles a statement that the special number assigned to be placed on the engine of the particular motor vehicle or motorcycle has been put on in a workmanlike manner.

a. The statement must be corroborated by the sheriff, chief of police, or other convenient peace officer, by a certificate to the effect that he has inspected the motor vehicle or motorcycle and

has found the number to be on the motor vehicle or motorcycle as required (Vehicle and Traffic Law, Sec. 421, subd. 2).

2. A manufacturer or importer or his agents (other than dealers) is permitted to do his own numbering on motor vehicles or motorcycles or parts removed or changed and replacing the numbered parts. (Vehicle and Traffic Law Sec. 421, subd. 2).

WRONGFUL POSSESSION OF MOTOR VEHICLE OR MOTORCYCLE WITH CHANGED ENGINE NUMBER: Any person having possession for more than thirty days of a motor vehicle or motorcycle (other than an electric motor vehicle) the engine number of which has been destroyed, removed, defaced or so covered as to be effectually concealed, without having made application for permission to make or stamp on a new number, is guilty of a violation, punishable by fine not less than twenty-five dollars nor more than fifty dollars (Vehicle and Traffic Law, Sec. 422).

1. In any prosecution, lack of knowledge of the condition of the engine as to number is a defense. Possession is prima facie evidence that the defendant had such knowledge, and the burden of proof is on him to show that he had no such knowledge (Vehicle and Traffic Law, Sec. 442).

It should be noted that since 1957, most manufacturers have used vehicle identification numbers as prime identification of vehicles. Engines or other parts may bear numbers of no value for identification. In some, and engine number and vehicle identification numbers are used, but are identical.

POLICE DUTY, VEHICLES WITH IMPROPER NUMBER: After the thirty days' period for procuring new engine or identification numbers, it is the duty of every sheriff, deputy sheriff, constable, chief of police, or other peace officer in the state having knowledge of a motor vehicle or motorcycle, the engine or identification number of which has been destroyed, removed, covered, altered or defaced, to immediately seize it, provided the possessor fails to secure registration, and to arrest the supposed owner or custodian, and cause prosecution to be brought in court.

1. The court must retain custody of the vehicle pending prosecution of the one arrested and until ownership of the vehicle is ascertained (Vehicle and Traffic Law, Sec. 423, subd. 2).

a. If the person arrested is the owner the vehicle cannot be surrendered to him until he has made application for and applied a proper number.

b. Operation of the vehicle on a public highway before it is properly numbered is a violation, punishable by fine not less than $25 and not more than $50.

2. If a person other than the one arrested is the owner of the vehicle, it must be returned to the owner forthwith.

a. If the owner does not apply for a new number within 30 days or if he (or anyone else) operates it on a public highway before the new number is applied, they are subject to arrest for a violation punishable as in 1-a. The Commissioner of Motor Vehicles must be informed by the arresting officer of any such arrest (Vehicle and Traffic Law, Sec. 423, subd. 2).

STOLEN AND UNCLAIMED MOTOR VEHICLES AND MOTORCYCLES: All sheriffs, police officers and other peace officers must report to the Commissioner of Motor Vehicles at least once each month on forms furnished by the Commissioner, the stolen and recovered motor

vehicles and motorcycles or unclaimed motor vehicles and motorcycles of which any such officer has knowledge (Vehicle and Traffic Law, Sec. 424, subd. 1).

Any policeman, state trooper or other peace officer has lawful power to seize any motor vehicle or motorcycle in the state when there is good reason to believe that such motor vehicle or motorcycle has been stolen (Vehicle and Traffic Law, Sec. 424, subd. 3).

1. In every case of seizure, the officer making the seizure must forthwith proceed to the most accessible magistrate or judge who must examine into the facts and direct either that the motor vehicle or motorcycle be forthwith released or that it be retained to await the action of the Commissioner of Motor Vehicles for the purpose of restoring it to its rightful owner or for the sale.

a. A magistrate or judge who directs that a motor vehicle or motorcycle be so retained must forthwith notify the Commissioner in writing and thereafter, for the purpose of the running of the one-month period mentioned in the next paragraph and not otherwise, the vehicle is deemed to be in the possession of the Commissioner.

(1) Whenever any alleged stolen or unclaimed motor vehicle or motorcycle comes into the possession of the Commissioner by seizure or otherwise, after the expiration of one month from the date it comes into his possession (provided the ownership has not been determined) he may sell the motor vehicle or motorcycle at public sale, upon notice of sale being posted conspicuously in at least three public places in the town, village or city where the sale is made, at least six days before the date of the sale. The Commissioner may, in his discretion, give other publicity to such a sale, or delay the sale, in the interests of justice.

(2) The proceeds of the sale, less the reasonable and necessary expenses incident to the recovery, preservation and sale of the motor vehicle or motorcycle is deemed abandoned property, subject to the provisions of the Abandoned Property Law (Vehicle and Traffic Law, Sec. 424, subd. 3, 4, 5).

2. It is a felony, under Section 426, Vehicle and Traffic Law, punishable by fine not less than $100 or more than $5,000, imprisonment not less than one or more than 5 years, or both, to do any of the following:

a. Knowingly make any false statement of a material fact in any endorsement of a certificate of registration on a sale or transfer of a motor vehicle or motorcycle.

b. With intent to procure or pass title to a motor vehicle or motorcycle and knowing or having reason to believe it is stolen, receive or transfer possession of the vehicle or cycle from or to another.

c. Possess any motor vehicle or motorcycle knowing or having reason to believe that it has been stolen (this violation does not apply to an officer engaged in the performance of duty).

REPOSSESSION OF VEHICLES BY CIVILIANS: Anyone legally repossessing or retaking a motor vehicle or motorcycle must, immediately following the repossession or retaking, personally appear at a station house or other office of the police department or agency or officer performing police functions in the locality where the vehicle was repossessed or retaken and give notice of the repossession or retaking. He must also notify the Commissioner of Motor Vehicles within twenty-four hours, on an approved form, and within the same period must notify the owner personally or by registered or certified mail.

Violations are punishable by fine not over $25, imprisonment not over 10 days, or both.

If repossession or retaking cannot be done without a breach of the peace it must be done by legal process (Vehicle and Traffic Law, Sec. 425).

COIN-OPERATED DEVICES AND SLUGS: The use of slugs, false tokens, etc. in coin-operated devices was formerly covered by Section 1293-c of the old Penal Law, and the manufacture, sale or possession of slugs or false tokens came under Section 1293-d. This type of crime is now the crime of Unlawfully Using Slugs, and is dealt with in this Manual in Section 67, "Forgery and Slugs."

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

1. Places his hand in the proximity of a person's pocket or handbag; or
2. Jostles or crowds another person at a time when a third person's hand is in the proximity of such person's pocket or handbag (P.L. Sec. 165.25).

Jostling is a class A misdemeanor.

FILE SEARCHES, FIREARMS: Stolen and lost firearms are recorded in the files of the Pistol Permit Section, New York State Police, Albany. Stolen property and stolen vehicle plates are recorded in the Special Files, Communications Section, New York State Police, Albany. A teletype request for search of these files should be sent in appropriate instances.

RELATED FEDERAL CRIMES

A number of Larceny situations constitute violations of various Federal criminal laws handled by the FBI, and in the case of U. S. Post Office property and the mails, by the U. S. Postal Inspectors. In pertinent cases the officer should promptly notify the nearest FBI office or resident agency (or Postal Inspector in appropriate instances) of the offense. The Federal violations most often encountered are:

THEFT OF GOVERNMENT PROPERTY: It is a Federal crime to embezzle, steal, purloin or knowingly convert to one's own use or the use of another any record, voucher, money or thing of value of the United States or any department or agency of the United States, or to receive the same with intent to convert it to one's own use or gain, knowing it to have been embezzled, stolen, etc.

The crime is a felony, punishable by fine not over $10,000, imprisonment not over 10 years, or both, if the value of the property exceeds $100, otherwise it is a misdemeanor punishable by fine of $1,000, imprisonment not over 1 year, or both. Value is market, face or par value, or retail or wholesale cost, whichever is greater (Title 18 U.S. Code, Sec. 641).

THEFT FROM INTERSTATE SHIPMENT: It is a Federal crime to embezzle, steal or unlawfully take, carry away or conceal or obtain by fraud or deception:

1. From any railroad car, wagon, motor truck or other vehicle or
2. From any station, station house, platform or depot, or
3. From any steamboat, vessel or wharf, or
4. From any aircraft, air terminal, airport, aircraft terminal or air navigation facility,
5. With intent to convert to one's own use,

6. Any goods or chattels moving as, or part of, or constituting, an interstate or foreign (into or out of New York) shipment of freight or express.

Possession or receiving, with knowledge that the property was so stolen, is equally a crime.

Baggage in possession of a common carrier for transportation in interstate or foreign commerce is subject to the same protection and it is a like offense to break into or steal any of the contents of such baggage.

It is also a Federal crime to embezzle, steal or unlawfully take by any fraudulent device or scheme from any car, bus, vehicle, steamboat, vessel or aircraft operated by a common carrier or from any passengers thereon any money, baggage, goods or chattels.

Prosecution lies in any Federal District in which the defendant took or possessed the stolen property, or the district where the theft, etc. occurred.

The way bill is prima facie evidence of origin and destination of any shipment.

Violations are felonies if the amount or value of the property exceeds $100 and a misdemeanor otherwise. Conviction or acquittal in a state court bars Federal prosecution (Title 18 U.S. Code, Sec. 659).

INTERSTATE TRANSPORTATION OF STOLEN PROPERTY: It is a Federal felony, punishable by fine not over $10,000, imprisonment not over 10 years, or both, to transport in interstate or foreign commerce any goods, wares, merchandise, securities or money of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud (Title 18 U.S. Code, Sec. 2314).

It is a Federal felony, similarly punishable, to transport (or cause to be transported) in interstate or foreign commerce, with unlawful or fraudulent intent, any falsely made, forged, altered or counterfeit securities or tax stamps (Title 18 U.S. Code, Sec. 2314). This section specifically excludes transportation of U.S. currency or securities or those of foreign governments which come under the counterfeiting laws. The main law enforcement business under this section is forged checks drawn on out-of-state banks. There have been some Federal cases holding that credit slips caused by illicit use of credit cards are included under this law and the FBI may be of assistance in credit card cases. (See "Credit Cards" earlier in this section.)

TRANSPORTATION OF STOLEN VEHICLES: It is a Federal felony to transport in interstate or foreign commerce a motor vehicle or aircraft, knowing it to have been stolen. Penalty is fine not over $5,000, imprisonment not over 5 years or both (Title 18 U.S. Code, Sec. 2312). Violations of this law are handled by the FBI, which should be immediately informed of any instance involving an out-of-state vehicle possibly stolen or a New York registered vehicle reported stolen and recovered outside the state.

Receiving, concealing, storing, bartering, selling or disposing of any such motor vehicle or aircraft, knowing it to have been stolen, is also a Federal felony, with the same penalties (Title 18 U.S. Code, Sec. 2313).

U.S. MAILS: It is a Federal felony, punishable by fine not over $2,000, imprisonment not over 5 years or both, to steal or obtain by fraud or deception, any letter, post card, package, bag or mail from any mail, post office, post office station, letter box, mail receptacle, mail route, authorized depository for mail matter, or letter or mail carrier.

It is also a felony violation to abstract or remove from any such letter, etc. any article or thing, or to secrete, embezzle or destroy any such letter, etc.

Stealing or taking by fraud or deception any letter, etc., (or anything contained therein), which was left for collection upon or adjacent to a col-

lection box or other authorized depository of mail matter is also a felony.

Buying, receiving, concealing or unlawfully possessing anything so stolen is a felony (Title 18 U.S. Code, Sec. 1708).

Stealing or embezzling any property used by the Post Office Department, or appropriating it to one's own use, or conveying it away to the detriment of the public service is a Federal felony punishable by fine not over $1,000, imprisonment not over 3 years, or both (Title 18 U.S. Code, Sec. 1707).

Any such violations should be immediately brought to the attention of the nearest U.S. Postal Inspector.

INVESTIGATIONS

Identification of the property or thing of value involved and proof of ownership are basic to any Larceny investigation. Proof of ownership depends upon identification of the property.

Property may be identified by its individual characteristics—known markings on an antique table, serial number on an automobile tire, waybill number and address on a package, etc.

Property may also be identified by external circumstances, such as an eye-witness's testimony that gasoline in a suspect's car was stolen from a particular pump or that coins in a thief's possession were seen to have been taken from a news-stand counter.

In addition, the officer cannot afford to overlook the capabilities of the Scientific Laboratory in making identifications of property, such as by matching the broken end of an electrical connection on a stolen car radio with the piece of the connection still soldered to a terminal in the car, or matching the cut ends of wire, or by spectographic analysis of the composition of stolen material and in innumberable other ways. In any case of importance where identification is difficult or doubtful, the possibilities of Laboratory assistance should be explored.

GIVING DIRECTION TO THE INVESTIGATION: The forms of possible Larceny are almost innumerable. Certain considerations will give direction to each Larceny investigation.

Analyze what was stolen. Its character will generally determine the class of thief involved. Larceny involving stealing a truck and its load while the driver is at lunch indicates a professional gang with means of disposal of large quantities of loot, thus pinpointing a limited group of suspects as the possible offenders. Informant coverage is a major factor to consider in solving such cases. Larceny of a variety of individual comic books from a news stand indicates local juveniles as the offenders.

Analyze the amount stolen. Theft of a number of cases of candy indicates adult offenders stealing for resale. A broken case and theft of six small boxes of candy indicates juveniles stealing for personal consumption or a spur of the moment theft by a transient or employee.

Analyze the manner in which stolen. Theft of bulky property requiring considerable manpower and a truck to remove indicates prior visits by the thieves to the site of the theft and pre-planning. Theft from a truck apparently occurring between or at delivery stops indicates "tailgate thefts" by thieves specializing in such Larceny, or spur of the moment theft by loungers, bar patrons or similar persons in the vicinity of a stop.

Analyze the modus operandi, the exact manner of working adopted by the thieves. Familiarity with prior thefts and thieves, through personal knowledge and criminal records and previously developed informant coverage will help to identify the specific individuals responsible.

INTERVIEW AND SEARCH: In a majority of cases, interview with more than one suspect will be required in larceny investigations. The officer should regularly utilize the technique of obtaining a signed permis-

sion to search from each suspect covering his residence, business and automobile and should conduct detailed searches for loot. Ordinarily, there are insufficient grounds on which to seek search warrants and the personal observation of an officer legally on premises will not detect loot hidden from view.

COMPLAINTS: In receiving Larceny complaints it is essential to pinpoint actual ownership and the means of establishing ownership.

A description of the property stolen and all information which would assist in its identification must be obtained at this time or early in the investigation. For example, an owner may not know the serial number of his portable typewriter, but obtaining the name of the store from which purchased will permit investigation to establish not only the ownership but also the identifying serial number. Similarly, if a furrier in the past had cleaned a mink coat later stolen, his marks on the coat may offer positive identification, as would a jeweler's marks on watches or jewelery he has worked on, etc. The officer must probe for such details to assist identification.

A very complete physical description of stolen property is always required. Refer to section in this Manual "Description of Persons or Property."

Details of the loss or theft must include information as to time of theft, how committed, from where, from whose possession and data as to the place where the property was, when taken, who knew of its presence and whether any other things were stolen.

Consideration should always be given to the possibility that allegedly stolen property may be actually lost, mislaid or misdirected property and all possible detail should be secured bearing on whether a Larceny actually occurred.

Many theft complaints are made only to meet insurance policy requirements. Frequently, unrealistic, sentimental or inflated values are assigned to property by complainants. In some instances, the taking of a sworn statement from the complainant may assist in obtaining more correct valuation. In all instances, specific details sufficient to permit value determination by investigation should be obtained.

FALSE COMPLAINTS: A complaint may often be made by an agent of an owner who had responsibility for property allegedly stolen. Such a complaint could be made to cover up some impropriety by the complainant. Questioning should be directed to determining the person who will bear the loss, his relationship to or position with the owner, his activities immediately preceding and at the time of loss. Sufficient personal information should be obtained to permit investigation of the possibility that drinking, gambling or other personal indulgence was the cause of embezzlement by the complainant. Business losses in a branch establishment or on a route may be a reason for a false Larceny complaint.

CHECKING COMMUNICATIONS: Information concerning stolen property and property which has been the subject of Larceny is disseminated to local law enforcement agencies throughout the State Police teletype system, in File 10 messages. Also, File 7 messages contain data on Burglaries, and File 1 and File 16 messages deal with stolen vehicles and lost or stolen license plates, respectively. A duty should be established and specifically assigned in each agency receiving such messages to ensure that (1) all File 1, 7, 10 and 16 messages are reviewed at frequent regular intervals and (2) are compared with the agency's own records on stolen property, burglarly loot, and stolen vehicles and plates which have been reported to or recovered by the agency.

It will assist in such reviews to require that all such stolen property and vehicles reported or recovered be indexed for ready comparison with the

teletype messages. The index cards may be prepared by the officer recovering or receiving the property or vehicle or by a person assigned to review officer's reports for the purpose of preparing such cards.

It is equally important that each agency transmit teletype messages in pertinent instances on reported or recovered stolen property or vehicles.

When stolen property or a stolen vehicle reported to or recovered by an agency is identified with property described in a message from another agency, the other agency should be immediately informed of the circumstances, by teletype or telephone, depending on the facts and the urgency. (See section "Communications" in this Manual, under subheading "Police Teletype System.")

IDENTIFYING PROPERTY: All possibly stolen property coming into an officer's possession during a Larceny investigation should be clearly and adequately marked by the officer for positive future identification by him on the witness stand or otherwise. (See Section 78, "Investigations," in this Manual.)

TRICK OR DECEIT, FALSE PRETENSES, FALSE PROMISE: Where the means of stealing the property in a Larceny involves a trick or deceit, or a false pretense or false promise, it is of primary importance that the officer conduct any interview of complainant or witness in complete detail, to develop as fully as possible exactly what was said and done, and by whom. For accuracy, such complaints should be reduced to the form of a signed statement.

Cases of this kind will include door-to-door "salesmen" of magazines or other articles who take money for subscriptions or other things without any intent of doing anything but pocketing the money, or thieves posing as repairmen who remove an appliance from a residence for "repair" and then immediately sell it. Confidence games also come under this category of Larceny.

LARCENY FROM AUTOMOBILES: Thefts of accessories and theft of luggage or property from automobiles total more than any other kind of Larceny offenses.

Where complaints are received after such a theft occurs, officers should bear in mind the basic problem of identification of the accessories, luggage or other property reported stolen. In case of accessories, information as to when and by whom installed may be of value. Mountings, clips, broken wires, etc., left when the accessories were removed from the car, may offer means of identifying the accessories and may be obtained at time of complaint and maintained in police files for possible later use. They should be properly marked and identified by the officer at the time. The possibilities in Scientific Laboratory examination should be borne in mind, in considering whether any such items may be of value.

Development of informants will be found of value in determination of identity of possible thieves and places where such stolen articles may be held or sold.

Officers in plain clothes and unmarked police vehicles may do much through proper surveillance to identify and apprehend persons "prowling" or "clouting" automobiles (i.e. stealing from automobiles). Surveillance activity should cover primarily vulnerable areas where thefts are known to have occurred.

A person walking, looking at each parked car passed, but without too obvious attention to each car, who suddenly ceases apparent interest in automobiles and begins looking at people and his surroundings, is a likely suspect. As soon as something worth stealing is spotted in a car, a prowling thief begins to look around to see if police or other deterring factors are in the vicinity. Thefts from cars, including locked cars, may be accom-

plished very quickly, such as by use of an elbow blow to quickly and unobtrusively break a front wing-window, after which the thief can open the car and openly remove things as if he were the owner.

Stopping a suspect on the street for brief questioning and a "frisk" is of limited value in connection with such thefts. If a suspicious person is observed possibly "prowling" cars, officers should in all instances observe the suspect with the thought in mind that by so doing they will be in a position to see the suspect commit his crime and make prompt apprehension. A person worth an interview and "frisk" on the street as a possible car clout or prowler is worth keeping under surveillance for some time. The interview and "frisk" will usually be unproductive. The surveillance will frequently catch a thief.

SHOPLIFTING: A peace officer or the owner or authorized employee of a store may detain a person in a reasonable manner but not more than a reasonable time to permit investigation or questioning as to the ownership of any merchandise, where there are reasonable grounds to believe that the person detained was committing or attempting to commit Larceny on the premises of such merchandise (Gen. Bus. L. Sec. 218).

"Reasonable grounds" includes but is not limited to knowledge that the person detained had concealed possession of unpurchased merchandise of a retail mercantile establishment.

"Reasonable time" means the time necessary to permit the person detained to make or refuse to make a statement and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise (General Business Law Sec. 218). This law is referred to as "Defense of Lawful Detention."

It is not required that a shop lifting subject be permitted to leave a store's premises before arrest, in order to establish theft. However, the fact that the thief left the store, in many situations, is added proof of the Larceny.

In all instances, it is advisable to immediately confront the victim with the clerks at the particular counters where thefts took place to pinpoint the facts and ensure that no unfounded claim of purchase, exchange, mistake, etc. can be later advanced at the trial. If the clerks are not interviewed at the time, later interview will usually be completely ineffective, due to the numbers of persons at store counters during the business day and consequent lack of recognition or remembrance by clerks. Clerks' testimony is always desirable as a supplement to testimony of detectives and/or officers alone.

REPEATED THEFTS: Where a particular kind of theft from the same establishment or place recurs, consideration may be given to marking property or dummy packages so that any person touching the property will be indelibly stained and may be picked out of a group of logical suspects who had access to the property.

Two basic organic types of dyes are used for such purposes, either of which may be dusted on the "bait" property without being noticed. One group will develop a brilliant stain when affected by the moisture of the hands, the other will be observable only under ultraviolet or "black" light. Gentian violet and malachite green powders will give excellent visible stains. Eosin or fluorescein will give excellent results under ultraviolet. None of these stains will wash off. They must wear off the hands over a considerable period. They can be removed by an expert chemist. The mentioned dyes and many others which will give satisfactory results may be obtained from drug stores, chemical supply houses and police supply firms.

In using "bait" property with powders, care must be taken to use them under circumstances such that the presence of the dye cannot be explained on a legitimate basis.

As a general rule, where repeated thefts occur, there must be the minimum of police investigation at the place of theft, to avoid alerting the thieves and causing them to hold off until after police interest has ceased. Such cases must be investigated on a discreet and confidential basis. The knowledge of the use of dye and bait property should be restricted to the officer or officers on the case, and where cooperation is required should be restricted to the owner or other person of known reliability.

CONFIDENCE GAMES: There are a variety of confidence games. Perhaps the most usual type is the "pigeon drop." This involves one thief dropping a purse or wallet immediately ahead of a second thief, who arranges to "find" it in company with the selected victim. The second thief and the victim discuss and examine the find, which contains a substantial sum in a couple of real or counterfeit bills. The thief insures that they agree to (1) split the money as equal finders and (2) that it is inadvisable to attempt then to cash the bills. The victim is allowed to hold the find for a later split and as a guarantee of good faith is persuaded to furnish the second thief with money, jewelry, etc., until they meet for the split. The thief abstracts any money in the "find" by means of a switch or may merely abandon counterfeits and leave the victim with the valueless purse or wallet. The game has many variations and people have been induced to withdraw money from bank accounts to give the thief in such a "con."

In this or any other type of confidence game, successful investigation will depend upon interviewing the victim promptly and in great detail, to obtain all possible identifying data concerning the thieves. The officer must promptly follow any leads. An immediate teletype alarm should be sent inquiring of other departments and Special Files, Communications Section, New York State Police, Albany, for information on confidence operators whose modus operandi and descriptions correspond.

Where the "con game" did not result in a successful Larceny, the offense may be prosecuted as an attempt or may be Fraudulent Accosting, a violation of Section 165.30 of the Penal Law. See Section 69, "Frauds," this Manual, sub-heading "Fraudulent Accosting."

PICKPOCKETS: The new crime of Jostling may be used in connection with pickpocket operations and covers situations where an actual Larceny cannot be established.

MOTOR VEHICLES: Larceny of motor vehicles is a police problem of major proportions. An average of 1300 cars a day were stolen in the United States, according to FBI figures for 1965. About 42 per cent of the cars stolen had the key left in the ignition or the ignition left unlocked or "on."

Approximately 25 per cent of the cars stolen are taken to be used in another crime, or for re-sale, or to be stripped of parts. The remainder are stolen for transportation or the reason for theft is unknown. About two-thirds of the auto thefts occur at night. Half of them are from private residences, apartments, or streets in residential areas.

STOLEN MOTOR VEHICLE COMPLAINTS: Officers receiving complaints of stolen motor vehicles should be alert to the fact that some of the cases reported may not be cases of actual theft.

In many cases, cars are lawfully repossessed for non-payment without notice to the owner or driver. Officers should take care to check whether their agency has received a repossession notice on a vehicle reported stolen, (under Section 425 of the Vehicle and Traffic Law), particularly in instances where inquiry of the complainant determines that he or she is making payments on the car reported stolen. Inquiry should also be made of the pertinent financing establishment.

Where the complaint involves a car taken with owner's permission and not returned, full details of the transaction or lending must be obtained,

since this could be a Larceny by Embezzlement, turning on the exact agreement or understanding when the car was taken and the intent of the taker. In some cases it will be found that the complainant in fact knows who "stole" his car but he is incensed at this person and will endeavor to conceal his knowledge in an attempt to ensure the person's arrest for car theft. This type of complainant must be detected by careful and detailed interviewing techniques.

Officers should be alert to the fact that in some instances where a car is reported stolen it may in fact have been taken by a member of the owner's family without his knowledge and attention should be paid to this possibility in taking any auto theft complaint.

Another type of complaint will sometimes be received from an individual who actually left his car somewhere when he was drunk or under other circumstances and cannot remember where it is. Rather than admit this he will report the car stolen to secure police assistance in locating it. This type of complainant must also be detected by careful and detailed interview.

Care in taking complaints is required, since great harm may result if a stolen car report is disseminated by a police agency, whether by teletype, radio, or otherwise, on a car which is in fact not stolen at all.

KEYS LEFT IN CAR: The law makes it a traffic infraction for any person driving or in charge of a motor vehicle to permit to stand unattended without locking the ignition and removing the key from the car (except hidden keys) (Vehicle & Traffic Sec. 1210, subd. a). Enforcement of this law can do much to reduce car thefts, since about 42 per cent of such thefts are of cars which had the keys in the ignition or the ignition "on."

RELEASE OF RECOVERED VEHICLES: No stolen car should be released to an owner or agent of the owner until a cancellation of any teletype or other alarm sent out on it has been actually received by the department recovering the car. This is an essential point, to prevent arrests or other harm to innocent persons driving the car.

ASPECTS OF PATROL RELATING TO STOLEN CARS: See section "Observation and Patrol," this Manual, beginning with the sub-heading "Vehicle Patrol."

INVESTIGATING POSSIBLY STOLEN VEHICLE: When a possibly stolen vehicle is found, prompt check of the car's license plates should be made against stolen car reports in the officer's own headquarters. File 1 and File 16 messages received on the State Police teletype system should also be checked, either in the officer's own department or with the nearest teletype station on the system. Where these messages contain nothing pertaining to the car, a further check of Special Files at Communications Bureau, New York State Police Headquarters, Albany, should be requested through the nearest State Police teletype station.

Where no license plates are on the car, the vehicle identification number of the car should be noted and this number should be checked by teletype against the records of the Communications Bureau. A complete search of the car should be made, including the trunk and glove compartment, for any evidence which might be identified with or tend to identify the thief. Care should be taken to process all logical parts of the vehicle in efforts to locate latent fingerprints of the thief, particularly on the steering wheel, front panel, rear view mirrors and ash trays.

In all cases care should be taken to note the vehicle identification number as well as the license number and to verify that they match the registration of the vehicle. Where the vehicle was stolen in the jurisdiction of the officer's department, the owner should always be interviewed to determine

what items located in searching the car may pertain to the thief rather than legitimate occupants. Followup of any leads so developed and neighborhood inquiry at the place where the car was stolen as well as at the place of recovery are a necessary part of a stolen car investigation.

It will be found in some cases that when cars are stolen for transportation, they will be left by the thief in the vicinity of his residence, but a limited distance away. If several stolen cars are recovered in a general area, a check of the locations on a map and comparison of the location with the hang-outs or residences of known violators may develop suspects with previous records whose fingerprints may match latents found in the cars or who can in other ways be identified as the thieves.

Where the theft was outside the jurisdiction of the officer's department, the department in whose jurisdiction the car was stolen should be promptly notified of the recovery. It should also be furnished the results of investigation and search of the car, by telephone, teletype, or report, depending on the urgency of the case.

In checking suspect cars, whether stopped on the highway by the officer or otherwise coming to police notice, attention should be given to the ignition keys, whether they are original factory keys (usually the original keys are numbered) or duplicate keys, which ordinarily have no number and may often be detected by their newness. Vent windows should be checked, since breaking them is an easy way to enter a locked car. Factory windows are trademarked on the glass while replacements may not be. Also, replacements may have a rough outer edge as compared with the smooth finish of the factory installed window.

The ignition should be checked to see whether there is evidence of jumping the ignition switch or whether a tap has been put to the coil to bypass the switch. Such a tap may be merely taped over and bits of tape on the coil lead should be checked for evidence that there was a bypass installed.

In examining the vehicle identification number, care should be taken to detect any changed number or attachment of a complete new number. Where any suspicion appears, the secret number should be checked. National Auto Theft Bureau representatives will be in a position to assist in locating and checking secret numbers. They may be located through the National Auto Theft Bureau's offices at 100 William Street, New York City, or in the field. Their identity is ordinarily known to individual departments about the state. The New York City office may be contacted by telephone or a TWX teletype message.

Care in checking any registration or "title" papers is required, and there should be a follow through to the motor vehicle department records of the state where originally registered.

If difficulty is encountered in identifying the car either by license plate numbers or vehicle identification numbers, the assistance of the National Auto Theft Bureau, 100 William Street, New York City, and the manufacturer, should be obtained for tracing procedures.

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83. LOST AND FOUND PROPERTY

Statutes provide for a uniform system for the handling of lost and found property by police departments. The General Municipal Law, Sections 250, 251, permits the governing boards of municipal corporations to enact rules and regulations for the administration of such laws (The Lost and Found Property Laws constitute Article 7-b of the Personal Property Law, Sections 251 through 258). The General Municipal Law also provides that municipalities may agree that the duties imposed on police in respect to lost

and found property may be discharged by police of one municipality on behalf of another or other municipalities (Genl. Munic. L. Sec. 251). All officers must be thoroughly informed as to their local rules in this regard.

The general laws of the state, applying to all officers, are:

PROPERTY DEFINED: Lost and Found Property may be money, goods, chattels or any tangible personal property and includes abandoned property, waifs, treasure trove and any other property which is found whether mislaid or lost (Pers. Prop. L. Sec. 251, subd. 1, 3).

Wrecks coming under the Navigation Law, logs, timbers, boards or plank, in rafts or otherwise, or other personal property which drifts upon an individual's land, or inanimate goods or chattels doing damage, or animals, are excepted from the definition of Lost and Found Property and are subject to different rules (Pers. Prop. L. Sec. 251, subd. 1).

Section 130, Navigation Law, requires the sheriff of the county to take possession of wrecked property in absence of an owner.

Section 323, Town Law, gives an individual a lien on logs, timbers, boards or planks, in rafts or otherwise, or other personal property which drifts on his lands and on inanimate goods or chattels doing damage. He must deliver a lien notice to the town clerk within thirty days.

Animals come under Article 18 of the Town Law, as strays.

INSTRUMENTS: Instruments are defined by the law as any check, draft, promissory note, bond, bill of lading, warehouse receipt, stock certificate or other paper or document (except money) showing a right or interest in respect to property or an enterprise (Pers. Prop. L. Sec. 251, subd. 2).

Instruments must be handled by finders in the same way as required for lost and found property.

FINDER: The "finder" is the person who first takes possession of lost property (Pers. Prop. L. Sec. 251, subd. 5). At the expiration of the period during which police are required to hold lost and found property, it must be delivered to the finder on demand, if the owner has not previously claimed it. The finder may be required to pay reasonable expenses (Pers. Prop. L. Sec. 254, subd. 2).

A finder who takes possession of lost property while he is on premises with respect to which his presence is a crime is not entitled to assert any claim as finder and the person in possession of such premises has the right of finder if he files a written notice asserting his rights with the police before the property is delivered to the original finder (Pers. Prop. L. Sec. 256, subd. 1).

If the finder is an officer or employee of the state or of a public corporation the state or the public corporation is deemed the finder (Per. Prop. L. Sec. 256, subd. 2). A public corporation includes a county, city, town, village, school district, or any territorial division of the state with the power to contract indebtedness and levy taxes, or a corporation organized to construct or operate a public improvement (Genl. Corp. L. Sec. 3, subd. 1,2,3,4).

If a finder is an employee of anyone and is under a duty to deliver the lost property to his employer, the employer has the right of the finder, if he files written notice of his right with the police before the property is delivered to the original finder (Pers. Prop. L. Sec. 256, subd. 2).

DUTY OF FINDER: Any person who finds lost property of the value of ten dollars or more or any "instrument" (or comes into possession of such with knowledge that it is lost) must, within ten days of the finding, either return it to the owner or report the finding to the police and deposit the property with the police of a city and elsewhere with the local police, State Police or sheriff (Pers. Prop. L. Sec. 252, subd. 1,2). Failure to do so

is an Unclassified misdemeanor, punishable by fine not over $100, imprisonment not more than 6 months, or both (Pers. Prop. L. Sec. 252, subd. 3).

A finder is excused if he delivers the property or instrument to the person in possession of the premises where found, provided he had no reason to believe such person would not comply with the requirements of the law (Pers. Prop. L. Sec. 252, subd. 4).

TRANSPORTATION FACILITIES: A transportation facility is any railroad or pullman car or coach, street car, subway car, bus, taxi, aircraft, steamship or any other vehicle or conveyance used to carry people, whether or not in the course of a business of transporting persons (Pers. Prop. L. Sec. 251, subd. 6).

A transportation facility is deemed "premises" under the law and a finder may deliver property found in or on a transportation facility to any person actually operating the facility and any officer, agent or employee of the transportation company actually or apparently authorized to receive delivery of such property (Pers. Prop. L. Sec. 256, subd. 4).

TRANSPORTATION FIRMS, SAFE DEPOSIT COMPANIES AND BANKS: A special rule applies to certain companies whose employees find lost property or instruments or to whom others deliver lost property or instruments found on their premises or facilities. Such companies must report the finding to the police within ten days, but may hold the property or instrument for sixty days if not previously returned to the owner, subject to inspection at any time by the police (Pers. Prop. L. Sec. 256, subd. 5).

The companies to which this rule applies are railroad, bus and coastal vessel or other transportation companies subject to the Federal Interstate Commerce Act, airlines or commercial air operators and other transportation companies operating under certificate or permit of the Federal Aviation Agency, safe deposit companies and banks (Pers. Prop. L. Sec. 256, subd. 5).

WHICH POLICE MUST BE NOTIFIED, ETC.: The rule is that the required report and deposit of property or instrument must be in a police station or police headquarters of the city where found or where possession was acquired (Pers. Prop. L. Sec. 252, subd. 1).

If the finding or acquiring possession was outside a city, the report and deposit must be at a station or substation of the New York State Police, or in a police station, police headquarters or sheriff's office of the county, town or village where the finding occurred or possession was acquired (Pers. Prop. L. Sec. 252, subd. 1).

If the finding or acquiring possession was in or on a transportation facility, any place where a finder or possessor leaves the transportation facility taking the property or instrument with him is the place where the report and deposit must be made (Pers. Prop. L. Sec. 256, subd. 4).

DUTIES OF POLICE: The police to whom lost and found property or a found instrument are delivered must accept and retain custody of it and must give a receipt. The receipt must identify the transaction or deposit and identify the property or instrument. The receipt must be connected with the records of the police pertaining to the property, instrument or transaction, either by description and recital of the facts of the transaction or by reference numbers, duplicate copies of records or other method (Pers. Prop. L. Sec. 253, subd. 1).

The property or instrument and the report made by the finder must be transmitted to the police officer or official designated by the department to hold such property. He must record the deposit and the report in his Lost and Found Property records (Pers. Prop. L. Sec. 253, subd. 2).

If the finding was in a place other than a public street or highway, the police must notify the occupant of the premises where found. If the item

found is an "instrument" notice must also be given by the police to each person whose name and address appears on the instrument or to any person whose name appears on it and whose address is known (Pers. Prop. L. Sec. 253, subd. 3).

If at any time the police have reason to believe that a person has an interest in found property or a found instrument in police possession they must notify such person (Pers. Prop. L. Sec. 253, subd. 4).

Lost and found property must be delivered to the owner on demand and upon payment of reasonable expenses incurred in connection with the property (Pers. Prop. L. Sec. 254, subd. 1).

STORAGE BY POLICE: The police may hold lost and found property which requires special care in any public or private facilities they deem appropriate for the purpose of preserving it (Pers. Prop. L. Sec. 253, subd. 5-b).

Found property having no value may be destroyed by the police. This includes derelict automobiles and motorcycles which may be found. The Commissioner of Motor Vehicles should be notified of each such automobile or motorcycle.

Any lost and found property having only salvage value may be sold by the police in any manner reasonable under the circumstances. Any lost and found property may be sold at auction when the expense involved amounts to more than one-half its anticipated auction sale price.

Perishable property should be sold by the police in such manner as is reasonable under the circumstances (Pers. Prop. L. Sec. 253, subd. 5-a).

The proceeds of any sales must be held by the police as lost and found property, after deducting expenses of keeping or storing and the sale expenses, if any.

PERIOD PROPERTY MUST BE HELD BY POLICE: Lost and found property (or the proceeds of sale of such, when sale was required) must be held by the police as follows, if not sooner delivered to the owner (Pers. Prop. L. Sec. 253, subd. 7):

Property Value	*Period to Hold*
$500 or less	6 months
Over $500 to less than $5000	1 year
$5000 or more	3 years

FINAL DISPOSITION OF PROPERTY: Three months before the expiration of the period for which the property must be held, as listed in the preceding paragraph, the police must notify (in writing) the owner and any person believed to have an interest in the property, including the finder, that if not claimed by the owner in three months the property will be delivered to the finder or will be sold at public auction if the finder does not claim it. The notice should be in the wording of Section 253, subdivision 8, of the Personal Property Law. If neither owner nor finder claim the property within 10 days after the end of the period for which the police were required to hold the property, it should be sold at public auction and the proceeds become the property of the municipality (Pers. Prop. L. Sec. 254, subd. 3; Sec. 253, subd. 8). If at any time there is any action or court proceeding to determine the right to lost and found property, the police cannot deliver it to anyone without a court order (Pers. Prop. L. Sec. 256, subd. 6).

PROPERTY FOUND IN SAFE DEPOSIT PREMISES: Any lost and found property or any instrument deposited with the police, which was found on the premises of a safe deposit company or in the safe deposit department of a bank must be returned by the police to the safe deposit company or bank at the expiration of six months from the date the police

received it, which company or bank must hold it for fifteen years as bailee for the owner (Pers. Prop. L. Sec. 256, subd. 3).

FINAL DISPOSITION OF INSTRUMENTS: With the exception of instruments mentioned in the preceding paragraph, instruments must be delivered to the owner or finder and cannot be destroyed or sold by the police. The person to whom delivered may be required to pay reasonable expenses incurred by the police in connection with the instrument (Pers. Prop. L. Sec. 255, subd. 2).

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84. MARRIAGE VIOLATIONS

MARRIAGE: Marriage is a civil contract, to which the consent of parties capable in a law of making a contract is essential (Dom. Rel. L. Sec. 10). It is also a personal relationship in which the state is deeply concerned and over which the state exercises exclusive dominion. It is not merely a civil contract but is a foundation upon which society depends for its very survival (Morris vs. Morris, 31 Misc. 2d 548).

MARRIAGES MUST BE SOLEMNIZED—WHO CAN SOLEMNIZE: No marriage can be valid unless solemnized by:

1. A clergyman or minister of any religion or the leader of any Ethical Culture Society (Dom. Rel. Sec. 11, subd. 1).

   a. The terms clergyman or minister include a duly authorized pastor, rector, priest, rabbi, and a person having authority from, or in accordance with, the rules and regulations of the governing ecclesiastical body of the denomination or order, if any, to which the church belongs, or otherwise from the church or synagogue to preside over and direct the spiritual affairs of the church or synagogue (Dom. Rel. L. Sec. 11, subd 6; Religious Corporation Law Sec. 2).

2. A mayor, recorder, city magistrate, police justice or police magistrate of a city, or the city clerk of a city over one million inhabitants or any of his deputies or not more than four regular clerks, designated by him for such purpose. In cities which contain more than one hundred thousand and less than one million inhabitants, a marriage can be solemnized by the mayor, or police justice, but by no other officer of the city, except as provided in 1 and 3 herein (Dom. Rel. L. Sec. 11, subd. 2).

3. A justice or judge of a court of record, or of a municipal court, a police justice of a village, or a justice of the peace. In cities which contain more than two hundred thousand and less than one million inhabitants, justices of the peace have no power to solemnize marriages (Dom. Rel. L. Sec. 11, subd. 3).

4. A written contract of marriage signed by both parties and at least two witnesses, acknowledged before a judge of a court of record by the parties and witnesses (Dom. Rel. L. Sec. 11, subd. 4).

5. If either party is under 21, a marriage can be solemnized only by a clergyman or minister or by the mayor of a city or a judge of a court of record, or of any city court or of the district court (Dom. Rel. L. Sec. 11, subd. 5).

MARRIAGE LICENSE: Every person wishing to be married in New York State must obtain a marriage license from a town or city clerk and must deliver the license within 60 days to the clergyman or magistrate who will officiate at the marriage. The license must be delivered before the marriage is performed (Dom. Rel. L. Sec. 13). It is the statutory duty of such clerks to issue licenses in accordance with the instructions in Section 15 of the Domestic Relations Law (Dom. Rel. L. Sec. 15).

UNLAWFULLY PROCURING A MARRIAGE LICENSE: A person is guilty of Unlawfully Procuring a Marriage License when he procures a license to marry another person at a time when he has a living spouse, or the other person has a living spouse (P.L. Sec. 255.10).

Unlawfully Procuring a Marriage License is a Class A misdemeanor.

MINORS UNDER SIXTEEN YEARS OF AGE: Any marriage in which the man is under the age of sixteen years or in which the woman is under the age of fourteen years is prohibited. Any town or city clerk who knowingly issues a marriage license to any man actually under the age of sixteen years or to any woman actually under the age of fourteen years, is guilty of a violation punishable by a fine of $100. for each offense (Dom. Rel. L. Sec. 15-a).

IMPEDIMENTS TO MARRIAGE: Various laws create impediments to marriage. Statutory impediments include living spouse not divorced (P.L. Sec. 255.15, "Bigamy," Dom. Rel. L. Sec. 6), incestuous relationship (P.L. Sec. 255.25, "Incest," Dom. Rel. L. Sec. 5), party not of age of consent (Dom. Rel. L. Sec. 7, subd. 1), party incompetent (Dom. Rel. L. Sec. 7, subd. 2), party physically incapable of being married (Dom. Rel. L. Sec. 7, subd. 3), lack of consent because of force, duress or fraud (Dom. Rel. L. Sec. 7, subd. 4), and party insane (Dom. Rel. L. Sec. 7, subd. 5).

PERFORMING MARRIAGE WITHOUT LICENSE OR KNOWING OF IMPEDIMENT: Any clergyman or person authorized to perform marriage ceremonies who solemnizes a marriage without a license being presented to him or with knowledge that either party is legally incompetent to contract matrimony is guilty of an Unclassified misdemeanor, punishable by fine not less than $50. nor more than $500., or imprisonment for a term not exceeding one year (Dom. Rel. L. Sec. 17).

1. Any such clergyman or officer who receives a license duly issued and who does not have personal knowledge of any incompetency of either party may lawfully solemnize matrimony between them (Dom. Rel. L. Sec. 18).

UNLAWFULLY SOLEMNIZING A MARRIAGE: A person is guilty of Unlawfully Solemnizing a Marriage when:

1. Knowing that he is not authorized by the laws of New York to do so, he performs a marriage ceremony or presumes to solemnize a marriage; or

2. Being authorized by the laws of New York to perform marriage ceremonies and to solemnize marriages, he performs a marriage ceremony or solemnizes a marriage knowing that a legal impediment to such marriage exists (P.L. Sec. 255.00).

Unlawfully Solemnizing a Marriage is a Class A misdemeanor.

UNLAWFULLY ISSUING A DISSOLUTION DECREE: A person is guilty of Unlawfully Issuing a Dissolution Decree when, not being a judicial officer authorized to issue decrees of divorce or annulment, he issues a written instrument reciting or certifying that he or some other purportedly but not actually authorized person has issued a valid decree of civil divorce, annulment or other dissolution of a marriage (P.L. Sec. 255.05).

Unlawfully Issuing a Dissolution Decree is a Class A misdemeanor.

1. No divorce can be had in New York except by judicial process (New York State Constitution, Art. 1, Sec. 9).

a. A religious divorce outside the courts is invalid in New York (Chertok vs. Chertok, 208 App. Div. 161).

b. Divorce may be procured in New York, through the judicial process, for cruel and inhuman treatment, abandonment for 2 years, imprisonment for 3 years, adultery, living apart two years under decree of separation or living apart two years by agreement (Dom. Rel. L. Sec. 170).

ADVERTISING TO PROCURE DIVORCES: Whoever prints, publishes, distributes or circulates, or causes to be printed, published, distributed or circulated any circular, pamphlet, card, hand bill, advertisement, printed paper, book, newspaper or notice of any kind offering to advise on laws of any foreign state, nation or jurisdiction for the express purpose of procuring or aiding in procuring any divorce, severance, dissolution, or annulment of any marriage, or offering to procure or to aid in procuring any divorce, or the severance, dissolution, or annulment of any marriage, or offering to engage, appear or act as attorney or counsel in any suit for alimony or divorce or the severance, dissolution or annulment of any marriage, either in New York this state or elsewhere, is guilty of a class A misdemeanor. This law does not apply to the printing or publishing of any notice or advertisement required or authorized by law (Genl. Bus. L. Sec. 337).

INVESTIGATIONS

Officers should note that where either party to a marriage is under 21, the law permits only a limited group of persons to solemnize the marriage or perform the ceremony (i.e. clergyman, minister, city mayor or judge of a court of record, city court or district court). A knowing performance of such a marriage by any other person is a crime under Section 255.00 of the Penal Law.

Officers will find that complaints in a major number of marriage violation cases come from parents of under-age marriage partners. In all such cases, investigation should immediately establish age by means of birth certificates or other documentary evidence (baptismal records, immigration records, etc.). Investigation should also be immediately directed to locating place where license issued and determining facts in respect to its issuance, with a view to appropriate charges against the issuing clerk, if the facts warrant, and also to pin down specific facts as to the marriage parties and statements made by them.

A difficulty in most marriage solemnizing cases will be proof of knowledge of lack of authority and knowledge of existing impediment.

In respect to proof of knowing lack of authority, all facts concerning the solemnizer's church or faith (if any), his activities therein, length of time each such activity continued, details on the church or faith, its establishment age and adherents, should be gathered. Following this, a discussion with the district attorney will assist in determining whether and how an offense can be proved.

Proof of knowledge of any impediment may be established by testimony of parties to the marriage or the abettors or associates, as to what was told the one solemnizing, or by testimony of friends, neighbors and others as to the prior acquaintance or relationship of the one solemnizing the marriage and the parties married or their close relatives.

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85. MENTAL HYGIENE LAW

Mentally ill persons are persons afflicted with mental diseases to such an extent that for their own welfare or the welfare of others or of the community, they require care and treatment (Ment. Hy. L. Sec. 2, subd. 8).

ARRESTS OF MENTALLY ILL PERSONS: Any peace officer may take into custody any person who appears to be mentally ill and is conducting himself in a manner which in a sane person would be disorderly (Ment Hyg. L. Sec. 78, subd. 3).

The officer may direct his removal or remove him to any hospital, approved by the Commissioner of Mental Hygiene to receive and retain patients, or temporarily detain any such person in another safe and comfortable place pending his examination or admission to any such hospital (Ment. Hy. L. Sec. 78 Subd. 1, 3). However, no person known to be mentally ill may be committed as a disorderly person to any prison, jail or lock-up for criminals (Ment. Hy. L. Sec. 81 Subd. 4).

ARRESTS UNDER WARRANT, MENTALLY ILL PERSONS; Upon receipt of information that a person is apparently mentally ill, any magistrate may issue a warrant directing that such person be brought before him or another judge of the court out of which the warrant issues. If, when the person is brought before the court, it appears to the magistrate that the person is or may be mentally ill, he may issue an order directing the person's removal to any of the hospitals to which a police officer may remove such a person (Ment. Hy. L., Sec. 78, subd. 4).

PLACES OF TEMPORARY DETENTION: The Mental Hygiene Law permits municipalities to provide a permanent place for detaining the mentally ill. A peace officer may deliver a mentally ill person whom he arrests to such a place (Ment. Hy. L., Sec. 81, subd. 5). Officers should inform themselves of any such facility in their jurisdiction.

ESCAPED INMATES: Any person who has been committed, certified or admitted to an institution under the jurisdiction of the Department of Mental Hygiene and who has been reported as escaped therefrom or from lawful custody or who resists or evades lawful custody may be apprehended, restrained, transported to and returned to such institution by any peace officer.

It is the duty of any peace officer to assist any representative of such an institution to take into custody any such person on request of such representative (Ment. Hy. L., Sec. 53).

USE OF FORCE: The use of physical force upon another person, which would otherwise constitute an offense, is justifiable and not criminal when a person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself uses physical force upon such person to the extent that he reasonably believes it necessary to thwart such result (P.L. Sec. 35.10, Subd. 4).

MENTALLY ILL FEMALES: The law provides that when health officers cause the transportation of a mentally ill person to a hospital, such person, if a female, must be accompanied by a female attendant unless accompanied by her father, brother, husband or son (Ment. Hy. L. Sec. 81, subd. 3).

HANDLING COMPLAINTS

The law provides for various means of securing examination and treatment for the mentally ill which do not require police action. These include admission to hospitals by voluntary application, or on a certificate of a county commissioner of health, a health officer or a director of community medical services or any one they designate, or on a certificate of two physicians, a certificate of one physician, or on a magistrate's order (Ment. Hy. L. Sec. 70, subd. 1).

Officers should bear in mind that their authority to summarily arrest mentally ill persons requires (1) that the persons appear to be mentally ill, and (2) that they be conducting themselves in a disorderly manner. Without these two things, the officer has no authority to make the arrest and should either apply to a magistrate for a warrant or encourage the family of the mentally ill person to transport the person to a proper facility for examination, admittance and treatment. He should also report the matter to the local health officer or director of community medical services.

When notified or otherwise informed that there is a mentally ill person in need of care in their jurisdiction, the health officer or director of community medical services is required to see that the proceedings are taken for the determination of such person's mental condition and his admission to hospital. In New York City this duty is placed upon the Commissioner of Hospitals, in Erie County on the Board of Managers of the Edward J. Meyer Memorial Hospital, and in Albany County on the Commissioner of Public Welfare (Ment. Hy. L. Sec. 81, subd. 1).

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86. MISAPPLICATION OF PROPERTY

The provisions of old Penal Law sections on "Pawning Borrowed Property" and "Conversion of Materials Furnished to a Person for Purpose of Being Manufactured, and Articles of Merchandise Furnished for Personal, Trade or Business Uses" (old P.L. Secs. 94, 1310) have been carried over into the new law in a broadened statute on "Misapplication of Property."

MISAPPLICATION OF PROPERTY: A person is guilty of Misapplication of Property when:

1. Knowingly possessing,
2. Personal property of another,
3. Pursuant to an agreement that the property will be returned to the owner at a future time,
4. He:
   a. Loans the property, or
   b. Leases the property, or
   c. Pledges the property, or
   d. Pawns the property, or
   e. Otherwise encumbers the property,
5. Without the consent of the owner, and
6. In such a manner as to create a risk that the owner:
   a. Will not be able to recover it, or
   b. Will suffer a pecuniary loss (P.L. Sec. 165.00, subd. 1).

The word "encumber" is not defined in the Penal Law. It may be taken to mean to subject property to a charge, or liability, or a security interest.

Misapplication of Property is a Class A misdemeanor.

DEFENSES: It is a defense to any prosecution for Misapplication of Property that:

1. The defendant recovered possession of the property without it being in any way encumbered by the unlawful disposition (P.L. Sec. 165.00, subd. 2-a), and
2. The owner suffered no material economic loss as a result of the unlawful disposition (P.L. Sec. 165.00, subd. 2-b).

MISAPPLICATION DISTINGUISHED FROM EMBEZZLEMENT LARCENY: In both Larceny by Embezzlement and Misapplication of Property the offender is in lawful possession or custody of the property.

They are distinguished by the fact that Misapplication can apply only to personal property and that for Larceny by Embezzlement (or any Larceny) the offender must "steal".

In Misapplication of Property there is no stealing, only a lending, leasing, pledging, pawning or encumbering. Also, there must be an actual, existing agreement that the property is to be returned to the owner at a future time.

INVESTIGATIONS

When an officer receives a complaint of a violation under this new law, whether a complaint that a borrowed outboard motor has been pawned, or that four dozen waiters' uniform coats have been loaned without the owning supply company's consent and cannot be found, it is essential to pin down at the beginning the exact means by which the property may be identified. Details must also be secured of the exact agreement between the owner and the person who allegedly committed the misapplication, and just how it applies to the property in question. If there is an existing contractual arrangement or set of announced owner's rules to which the alleged offender has agreed, copies should be obtained together with copies of any other documents establishing understanding or agreement between the owner and the alleged offender.

Care in exploring these details at the beginning will ensure that police are not used by owners merely to trace or otherwise locate things where there is no crime, and that officers will devote investigative activity to cases which are crimes. In any case of misunderstanding, unexplained loss, etc., the owner always has his remedy through civil action, including a private law suit.

Successful prosecution will depend upon establishing proof that the offender actually loaned, leased, pawned, etc., the personal property in question. Where the case concerns business firms, the object of initial interviews of employees, truckmen, others in the trade etc., should be to develop (1) the whereabouts of the property now and (2) who took it there. Thereafter investigation can be devoted to obtaining needed proof of the lending, leasing, etc.

Officers should, in most cases, be wary of "seizing" or otherwise taking possession of the property in question and in the usual case should obtain search warrant when the property's whereabouts has been ascertained.

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87. NAVIGATION LAW

The Navigation Law applies to all navigable waters of New York (Navig. L. Sec. 1). Navigable waters are all lakes, rivers, streams and waters within the boundaries of the state, not privately owned which are navigable in fact or upon which vessels are operated (Navig. L. Sec. 2, subd. 4).

Tidewaters bordering on and lying within the boundaries of Nassau and Suffolk Counties are not "navigable waters of the state" (Navig. L. Sec. 2, subd. 4). However, the general jurisdiction of the state in the marginal sea runs to a line three geographical miles distant from the coast line (State Law Sec. 7-a, subd. 1-b).

The boundaries of the state, on the Great Lakes and the St. Lawrence River, are described by Section 5 of the State Law. In general, the boun-

dary runs in the middle of Lakes Ontario and Erie and the middle of the St. Lawrence. For specific areas, Section 5 should be consulted.

On Lake Champlain, the boundary runs from East Bay through the middle of the deepest channel to the eastward of Four Brothers islands and westward of Grand Isle and Long Isle (The Two Heroes) and Isle La Mott (State Law Sec. 4).

On the Delaware, New York exercises a concurrent jurisdiction with Pennsylvania between the lines of low water on either bank. The actual state boundary is the middle of the main channel of the Delaware (State Law Sec. 6).

PRIVATE WATERS: The provisions of the Navigation Law also apply to any privately owned navigable waters to which the public has or is granted access for boating, bathing, swimming or other recreational use (Navig. L. Sec. 37).

PENALTIES: Any violation of any provision of the Navigation Law, for which no other punishment is prescribed, when committed by a person having charge, command or control of a vessel, is a Class A misdemeanor (Navig. L. Sec. 140-a, subd. 4). However, many offenses against the Navigation Law have a "violation" type punishment prescribed. A number of offenses are thus violations and not misdemeanors (P.L. Sec. 55.10 provides that any offense is a violation if the only penalty is a fine or if imprisonment is limited to not over 15 days).

FEDERAL JURISDICTION, (U.S. COAST GUARD): The U.S. Coast Guard exercises Federal jurisdiction over navigable waters of the United States. Many of the Navigable waters of the state are also navigable waters of the United States and there is therefore concurrent jurisdiction over these waters on the part of both the U.S. Coast Guard and local and state law enforcement officers.

In practice, the U.S. Coast Guard inspects vessels and issues licenses or certificates to the officers or operators of vessels on all navigable waters of the United States. Motorboats up to 65 feet in length are subject to the Motorboat Act of 1940 (Title 46 U.S. Code, Sections 526-526u). Larger vessels are subject to other provisions of the Federal shipping and navigation laws.

The Motorboat Act of 1940 creates equipment and light requirements similar to those of the New York Navigation Law. It also makes it a misdemeanor to operate any motorboat or vessel in a reckless or negligent manner so as to endanger the life, limb or property of any person (Title 46 U.S. Code, Sec. 526e). Penalty is fine not over $2,000, imprisonment not more than one year or both (Title 46 U.S. Code, Sec. 526m).

Any commissioned, warrant or petty officer of the U.S. Coast Guard has authority at any time to go aboard any vessel on navigable waters of the United States and to question those aboard, examine the vessel's documents and papers and examine, inspect and search the vessel, to use all necessary force to compel compliance, and to make summary arrests for any violation of Federal law found (Title 14 U.S. Code, Sec. 89; 46 U.S. Code, Sec. 527e, subd. c).

NAVIGABLE WATERS OF THE UNITED STATES: The navigable waters of the United States (in New York) are:

All waters surrounding Long Island
All waters surrounding New York City
The Hudson River
Lake Champlain
Greenwood Lake
The Barge Canal System

Seneca Lake
Cayuga Lake
Onondaga Lake
Oneida Lake
Lake Erie
Lake Ontario
The St. Lawrence River

The U.S. Coast Guard maintains Marine Inspection Offices in New York City, Albany, Oswego and Buffalo. It also maintains a number of small patrol craft on or available to the various navigable waters in the state. Any problems involving Federal navigation laws or concurrent jurisdiction may be taken up by officers with the nearest U.S. Cost Guard office. Any violations of Federal navigation laws known should be immediately reported to the nearest such office.

VESSELS DEFINED: A "vessel" is any floating boat or craft (other than a sea plane on the water (Sec. 350.1, subd. c, Conser. L.)). All vessels belong to one of the following classes (Navig. L. Sec. 2, subd. 6):

1. Public vessels — every vessel propelled in whole or in part by mechanical power and used or operated for commercial purposes on the navigable waters of the state; that is either carrying passengers, carrying freight, towing, or for any other use; for which a compensation is received, either directly or where provided as an accommodation, advantage, facility or privilege at any place of public accommodation, resort or amusement (Navig. L. Sec. 2, subd. 6-a).

2. Pleasure vessel — every vessel not within the classification of public vessel. However, the provisions of the Navigation Law do not apply to rowboats and canoes except as expressly provided. (Navig. L. Sec. 2, subd. 6-b).

Any vessel which is not required to have, and does not have, a valid marine document issued by the Federal Bureau of Customs is known as an "undocumented vessel."

REGISTRATION AND IDENTIFICATION NUMBERS OF VESSELS: Every mechanically propelled vessel operated on the navigable waters of the state or any other waters within the boundaries of the state, except waters which are privately owned, must be registered and numbered. No person may operate or give permission for the operation of any such vessel on said waters unless it is registered and numbered in accordance with the provisions of this law and the identification number of such vessel is in full force and effect and displayed on each side of the bow thereof. Failure to comply with Section 71 of the Navigation Law is a violation, punishable by fine not over $50. (Navig. L. Sec. 71, subd. 2-h).

1. The owner of each vessel requiring registry must file an application with the Conservation Commissioner. The commissioner will issue a certificate of registration, stating the number assigned to the vessel. The owner must paint or attach on each side of the bow of the vessel the number assigned to it in a conspicuous manner, with figures and letters at least three inches in height. The number must be maintained in a legible condition so that the figures and letters are readily discernible during daylight hours at a distance of one hundred feet. No other number can be carried on the bow of such vessel. The certificate of registration is pocket size and must be available at all times for inspection on the vessel for which it is issued, whenever such vessel is in operation. Each certificate of registration is valid for not over three years from the date of issuance, as prescribed by the Conservation Commissioner (Navig. L. Sec. 71, subd. 2-a, b).

2. In the event any certificate of registration is lost, mutilated or illegible, the owner of the vessel may obtain a duplicate (Navig. L. Sec. 71, subd. 2-c).

3. Upon change in ownership of a registered vessel the certificate of registration must be surrendered to the Conservation Commissioner, a new application form filed and a new certificate of registration issued (Navig. L. Sec. 71, subd. 2-d).

4. The owner of any registered vessel must notify the Conservation Commissioner in writing of its destruction or abandonment, or transfer of all or any part of his interest therein (except a security interest such as a chattel mortgage) within fifteen days thereafter (Navig. L. Sec. 71, subd. 2-e).

5. The owner of registered vessel must notify the Conservation Commissioner in writing of any change of address within fifteen days after the change occurs. The new address of the owner must be noted by him on the certificate of registration for the vessel (Navig. L. Sec. 71, subd. 2-f).

VESSELS EXEMPT FROM REGISTRATION AND IDENTIFICATION NUMBER

The provisions of Section 71 of the Navigation Law requiring registration and numbering do not apply to the following mechanically propelled vessels:

1. Vessels having a valid marine document issued by the United States or a foreign government.

2. Vessels displaying a valid identification number awarded pursuant to the laws of the United States, or a state under a numbering system which has been approved in accordance with the provisions of the Federal Boating Act of 1958 provided such vessel shall not have been in New York for a period in excess of ninety consecutive days.

3. Foreign vessels temporarily using the waters of the state.

4. Vessels owned by the United States, a state, or a subdivision thereof.

5. Ships' life boats.

6. Undocumented vessels used exclusively for racing (Navig. L. Sec. 71-a).

FEDERAL AND OUT-OF-STATE REGISTRATIONS: Federal law requires that every undocumented mechanically propelled vessel of more than 10 horsepower on navigable waters of the United States must be numbered. The number must be secured from the state in which principally used, if the state's numbering system is Federally approved. New York's numbering system is so approved. Federal law requires award of a number and issuance of a pocket-sized certificate, valid for three years (Title 46 U.S. Code, Sec. 527a).

New York vessels are thus numbered under New York law. Vessels from other states may operate in New York waters for 90 days, if numbered under the Federal system or by their own state's Federally approved system. If not so numbered, they must be immediately numbered in New York, and have no grace period. Many states' numbering laws follow the Federal rule and do not require numbering if the vessel has a motor of 10 horsepower or less. However, New York law makes no exception as to horsepower and all mechanically propelled vessels must be numbered to operate legally on the navigable waters of New York (Navig. L. Sec. 71-a).

DEALERS: The Navigation Law permits issuance of special dealer registrations and numbers to dealers in vessels (Navig. L. Sec. 71-b).

NAVIGATION INSPECTORS: The Conservation Commissioner may appoint an inspector or inspectors who shall have a practical knowledge of the construction, equipment and management of vessels and experience and qualifications required to carry out the duties of an inspector. The inspector must annually, and at such other times as he shall deem it expedient, or as the commissioner may direct, inspect every public vessel, except vessels which navigate on waters over which the United States exercises active control.

Inspectors have all the powers of a peace officer for the enforcement of the provisions of the Navigation Law applicable to vessels.

The Conservation Commissioner may also appoint traveling navigation inspectors, with the same powers (Navig L. Sec. 12, 13. 17).

PUBLIC VESSELS: The owner of a public vessel which he intends to operate on the navigable waters of the state must notify the inspector of such intention at least one month before it is desired to place the vessel in operation and request an inspection of the vessel. A temporary permit to operate pending inspection may be issued. No public vessel may be used or operated without a certificate of inspection or a temporary permit (Navig. L. Sec. 50).

1. Every public vessel carrying passengers must have permanent stairways and other sufficient means for passing from one deck to the other, and gangways large enough to allow persons freely to pass. Gangways must be open fore and aft, the length of the vessel, and to and along the guards, and whoever obstructs a gangway by freight or otherwise is guilty of a violation punishable by fine not over fifty dollars for every such offense (Navig L. Sec. 55).

2. It is unlawful to take on board any public vessel a greater number of passengers than the number allowed in the certificate of inspection. Violations by a master, pilot, joint pilot and engineer or an owner are Class A misdemeanors (Navig. L. Sec. 58).

LICENSES, PERSONNEL OF PUBLIC VESSELS: All public vessels while under way under their own power must be in charge of a licensed master, pilot, engineer, or joint pilot and engineer. Any owner who permits the operation of a public vessel by a person who does not possess a valid license or temporary permit, in full force and effect as master pilot, engineer or joint pilot and engineer is guilty of a Class A misdemeanor (Navig. L. Sec. 59).

OPERATORS OF PLEASURE VESSELS: No person under the age of 10 can lawfully operate a mechanically propelled vessel on the navigable waters of New York unless accompanied in the vessel by a person over age 14 (Navig. L. Sec. 70, subd. 1). No person between 10 and 14 can lawfully operate a mechanically propelled vessel on the navigable waters of New York unless accompanied in the vessel by a person over 14 or is the holder of a Boating Safety Certificate issued by the Conservation Commissioner (Navig. L. Sec. 70, subd. 2).

1. Failure to exhibit a boating safety certificate upon demand to any magistrate, peace officer or other officer having authority to enforce the provisions of the Navigation Law is presumptive evidence of lack of a certificate (Navig. L. Sec. 70, subd. 3).

2. No owner of a mechanically propelled vessel may knowingly authorize or permit its operation on the navigable waters of the state by any person under age 14, unless such operator is accompanied in

the vessel by a person over 14, or holds a Boating Safety Certificate (Navig. L. Sec. 70, subd. 4).

3. The preceding rules as to youthful operators of pleasure vessels do not apply while the operator is actually preparing for or competing in a regatta or boat race authorized by the Commissioner (Navig. L. Sec. 70, subd. 6).

4. Failure to comply with the preceding provisions of law relating to youthful operators is an "offense," punishable by fine not over $100 (Navig. L. Sec. 70, subd. 7). Under section 55.10, subd. 3 of the Penal Law, such "offenses" are "violations" and handled accordingly.

REGATTAS: The Commissioner may authorize regattas. He must be notified by the person in charge of the regatta 15 days before the regatta, by means of an application to hold the regatta filed with the Commissioner. He must issue a written authosization to permit a lawful regatta (Navig. L. Sec. 34).

1. No permit or authorization is required for a racing shell regatta by educational institutions or amateur rowing organizations (Navig. L. Sec. 43-a).

2. The Commissioner may appoint persons of local boat clubs or others to act as Special Navigation Inspectors during regattas. They have power to enforce the navigation law during the regatta (Navig. L. Sec. 18).

BOATING SAFETY CERTIFICATES: Under the educational programs of the Commissioner, safe boat operation is taught by local groups and can result in the issuance of a Boating Safety Certificate, which evidences that the holder has successfully completed a course of instruction in boating safety. This certificate can be earned by youthful operators and qualifies them to operate a boat alone when between the ages of 10 to 14.

INTOXICATION: No person in an intoxicated condition may operate a vessel on navigable waters of the state (Navig. L. Sec. 70, subd. 5). Operating a vessel while intoxicated is an offense, punishable by fine not over $100 (Navig. L. Sec. 70, subd. 7). Under section 55.10, subd. 3 of the Penal Law, such an offense is a "violation."

CLASSES OF VESSELS: All vessels, both public and pleasure, are divided into classes by length (for equipment requirements) as follows:

Class A — less than 16 feet long.
Class 1 — 16 feet long or more, but less than 26 feet.
Class 2 — 26 feet long or more, but less than 40 feet.
Class 3 — 40 feet long or more, up to 65 feet.
Class 4 — Over 65 feet.
Class 5 — Rowboats and canoes (Navig. L. Sec. 43, subd. 1).

EQUIPMENT AND LIGHTS OF VESSELS: Equipment required by the law must be carried on every vessel while underway or at anchor with a person aboard, while on the navigable waters of the State (except vessels competing in authorized regattas and trials preceding such regattas). Lights listed must be displayed in all weathers from sunset to sunrise, while underway, and during such time no other lights which may be mistaken for those prescribed may be exhibited.

1. **Class A.**

1 U.S. Coast Guard approved life saving device for each person aboard (pleasure vessels only) (Navig. L. Sec. 40, subd. 1a).

1 Whistle (mechanically propelled vessel only) (Navig. L. Sec. 40, subd 2).

EQUIPMENT RULES HEREIN BECOME EFFECTIVE 1/1/68; UNTIL THEN USE RULES IN 1966 EDITION, THIS MANUAL.

1 Anchor and cable (mechanically propelled only) (Navig. L. Sec. 40, subd. 3).

1 Flame arrestor on carburetor of any gasoline engine installed after 4/25/40, except on outboard motors (Navig. L. Sec. 40 subd. 4).

1 U.S. Cost Guard approved B-1 fire extinguisher, except open outboards under 26 feet (mechanically propelled only) (Navig. L. Sec. 40, subd. 6).

2 Ventilators for engine and fuel compartment, except open boats (mechanically propelled only) (Navig. L. Sec. 40, subd. 7).

1 White light aft, to show all around horizon, 360 degrees (Navig. L. Sec. 43, subd. 2a).

1 Combination red-green light, showing red to port, green to starboard, from dead ahead to two points abaft the beam, 112½ degrees (Navig. L. Sec. 43, subd. 2a).

a. **PROPELLED BY SAIL ONLY**

1 Combination red-green light showing red to port, green to starboard, from dead ahead to two points abaft the beam, 112½ degrees (Navig. L. Sec. 43. subd. 2e).

1 Lantern or flashlight ready at hand to exhibit a white light in sufficient time to avoid a collision (Navig. L. Sec. 43 subd. 2e).

2. **CLASS 1:**

Same as Class A.

a. **PROPELLED BY SAIL ONLY**

Same as Class A.

3. **CLASS 2:**

1 U.S. Coast Guard approved life saving device for each person aboard (pleasure vessels only) (Navig. L. Sec. 40, subd. 1a).

1 Whistle (mechanically propelled only) (Navig. L. Sec. 40, subd. 2).

1 Anchor and cable (mechanically propelled only) (Navig. L. Sec. 40, subd. 3).

1 Flame arrestor on carburetor of any gasoline engine installed after 4/25/40, except outboard motors (Navig. L. Sec. 40, subd. 4).

2 U.S. Coast Guard approved B-1 fire extinguishers (mechanically propelled only) (Navig L. Sec. 40, subd. 6).

2 Ventilators for engine and fuel compartment (mechancally propelled only) (Navig. L. Sec. 40, subd. 7).

1 Bell.

1 White light, as near stem as practicable, to show light in arc of 20 points fixed to throw light ten points each side, i.e., 225 degree light to throw 11½ degrees each side (Navig. L. Sec. 43, subd. 2b).

1 White light aft to show all around the horizon, 360 degrees (Navig. L. Sec. 43, subd. 2b).

1 Green light on starboard side to throw light in arc of ten points, from dead ahead to two points abaft the beam, 112½ degrees, fitted with inboard screen high enough to prevent the light from being seen across the bow (Navig. L. Sec. 43, subd. 2b).

1 Red light on port side, same description as green light above (Navig. L. Sec. 43, subd. 2b).

a. **PROPELLED BY SAIL ALONE**

1 Green light on starboard side to throw light in arc of ten degrees from dead ahead to two points abaft the beam, 112½ degrees, fitted with in board screen high enough to prevent the light from being seen across the bow (Navig. L. Sec. 43, subd. 2e).

1 Red light on port side, same description as green light above (Navig. L. Sec. 43, subd. 2e).

1 Lantern or flashlight ready at hand to exhibit a white light in sufficient time to avoid collision (Navig. L. Sec. 43, subd. 2e).

4. **CLASS 3:**

Same as Class 2 except 3 fire extinguishers required (Sec. 40, subd. 6), and life saving devices must be life preservers or ring buoys (Navig. L. Sec. 40, subd. 1b).

a. **PROPELLED BY SAIL ALONE**

Same as Class 2.

5. **CLASS 4:**

Equipment same as Class 3, except must carry fire extinguishers and fire fighting equipment required by Federal Navigation Law and rules and regulations of U.S. Coast Guard (Navig. L. Sec. 40, subd. 6).

1 White light visible at five miles, on or in front of foremast, if no foremast, in forward part of vessel, to show light in arc of 20 points, fixed to throw light ten points each side, i.e. 225 degree light to throw 112½ degrees each side, (Navig. L. Sec. 43, subd. 2c).

1 White light aft elevated at least fifteen feet above the white light forward, to show all around horizon, 360 degrees, (Navig. L. Sec. 43, subd. 2c).

1 Red light, same as Class 2 (Navig. L. Sec. 43, subd. 2c).

1 Green light, same as Class 2 (Navig. L. Sec. 43, subd. 2d).

a. **PROPELLED BY SAIL ALONE**

Lights same as when mechancially propelled.

6. **CLASS 5:**

a. **PROPELLED BY OARS OR SAIL**

Approved life preserver, for each person aboard; Lantern showing a white light ready at hand to be temporarily exhibited in sufficient time to prevent collision (Navig. L. Secs. 40. subd. 1-a, 43, subd. 2-d).

7. **VESSEL TOWING, MECHANICALLY PROPELLED**

Side lights required for her class and in addition two bright white lights in a vertical line, one over the other, and not less than three feet apart (Navig. L. Sec. 43, subd. 2h).

8. **ANY VESSEL**

A vessel may carry and exhibit the lights required by Federal Regulations for Preventing Collisions at Sea, 1948, in lieu of the lights required by the Navigation Law (Navig. L. Sec. 43, subd. 2-g).

1. White lights required by law must be visible at two miles on a dark night with clear atmosphere. Colored lights must be visible at a distance of one mile. Class 4 foremast lights must be visible at five miles (Navig. L. Sec. 43, subd. 2-j).

2. A revolving blue light may only be carried or exhibited on enforcement vessels owned and operated by the State of New York or a political subdivision (Navig. L. Sec. 43, subd. 2-k).

FIRE EXTINGUISHERS AND VENTILATION: Fire extinguishers, to be approved, must be capable of extinguishing gasoline, oil or grease fires. They must be U.S. Coast Guard approved (Navig. L. Sec. 40, subd. 5, 6).

One Class B-2 fire extinguisher (type is marked on extinguisher) may be substituted for two Class B-1 fire extinguishers.

When the engine compartment of the motorboat is equipped with a fixed fire extinguishing system of a U.S. Coast Guard approved type, one less Class B-1 fire extinguisher is required (Navig. L. Sec. 40, subd. 6-b, c).

1. **VENTILATION.** All mechanically propelled vessels, the construction or decking over of which was commenced after April 25. 1940, and which uses fuel having a flash point of 110° fahrenheit or less must have at least two ventilators fitted with cowls or their equivalent for the purpose of properly and efficiently ventilating the bilges of every engine and fuel tank compartment in order to remove any inflammable or explosive gases. Mechanically propelled vessels constructed as to have the greater portion of the bilges under the engine and fuel tanks open and exposed to the atmosphere need not be fitted with such ventilators (Navig. L. Sec. 40, subd. 7).

2. **CARBON TETRACHLORIDE, CHLOROBROMOMETHANE.** No fire extinguishers of the toxic vaporizing liquid type, including those containing carbon tetrachloride and chlorobromomethane extinguishing agents can be approved (Navig. L. Sec. 40, subd. 6-d).

ANCHORS AND ANCHORING: The anchor and cable carried by any vessel must be of sufficient weight and strength to provide a safe anchorage. It is the duty of the master of any vessel to exercise reasonable care and maritime skill in everything relating to the safe anchorage of his vessel (Navig. L. Sec. 40, subd. 3).

LIGHTS AT ANCHOR: Vessels under 150 feet in length must display a white light, forward, not over 25 feet above the hull and visible all around the horizon at a distance of one mile when at anchor. Failure to do so is an "offense" punishable by fine not over $50. (under Sec. 55.10, subd. 3, Penal Law, all such offenses become "violations").

1. Vessels up to 65 feet in length, at special anchorage areas designated by the Conservation Commissioner are not required to display anchor light (Navig. L. Sec. 43, subd. i).

2. Vessels over 150 feet must carry not only the prescribed forward light but also a similar light aft, 15 feet lower than the forward light (Navig. L. Sec. 43, subd. i).

EXHAUST NOISE: A person who operates a boat, barge, vessel or other floating structure, on any lakes, rivers, streams, canals or other waters of the state, excepting Lake Erie and the Saint Lawrence river, and the waters of Lake Ontario outside of Great Sodus and Fair Haven bays, propelled wholly or partly by an engine operated by the explosion of gas, gasoline, naptha or other substance, without having the exhaust from the engine run through a muffler so constructed and used as to muffle the noise of the exhaust in a reasonable manner, is guilty of a misdemeanor. This law does not apply to any boat, barge vessel or floating structure while actually competing in a definite race over a given course held under the auspices of any bona fide club or racing association between the hours of nine o'clock in the morning and sunset, provided due written notice of the date of such race or regatta has been given to the Superintendent of Public Works at least fifteen days prior to such race under Section 36, Navigation Law. Hydroaeroplanes, except those on the waters of Lake George which are engaged in the business of carrying passengers for hire or sightseeing purposes to and fro over the waters of the lake, are not deemed boats or floating structures within the meaning of this law (Navig. L. Sec. 44-a).

1. A person who operates a boat, barge, vessel or other floating structure, on Salmon river or on Ontario bay within Oswego county,

or on Oneida river within Oswego and Onondaga counties, propelled wholly or partly by an engine operated by the explosion of gas, gasoline, naptha or other substance, without having the exhaust from the engine run through a muffler so constructed and used as to muffle the noise of the exhaust in a reasonable manner, is guilty of a misdemeanor. Hydroaeroplanes are not deemed boats or floating structures within the meaning of this law. (Navig. L. Sec. 44-b).

2. It is unlawful to use a boat propelled in whole or in part by gas, gasoline or naptha, or similar explosive medium, unless the same is provided with an under-water exhaust or muffler so constructed and used as to muffle the noise of the explosion. The provisions of this law apply only to tidal waters of the waters of this state wherein the tide ebbs and flows and shall not apply to boats competing in a race held under the direction of a duly incorporated yacht club or racing association. Any person who operates a boat in violation of the provisions of this section shall be guilty of a misdemeanor and punishable by a fine of not more than twenty-five dollars (Navig. L. Sec. 44-c). Under Section 55.10, subd. 3 of the Penal Law, such a misdemeanor is now a violation.

PILOT RULES: The pilot rules govern all vessels propelled by machinery on the navigable waters of the state, including those operated by police, and are the equivalent, on water, of the rules of the road for motor vehicles on land. The rules are required to conform to the Federal navigation law and rules (Navig. L. Sec. 41, subd. 6). All violations of the Pilot Rules are offenses, punishable by fine not over $50. (Navig. L. Sec. 41, subd. 7). Under Sec. 55.10, Penal Law, all such "offenses" become violations.

1. When mechanically propelled vessels approach each other head-on or nearly so, they must each pass on the port side of the other, i.e., keep to the right or starboard (Navig. L. Sec. 41, subd. 2-a).

2. When mechanically propelled vessels approach each other so far to the right or starboard of each other that they cannot be considered to be approaching head-on or nearly so, they must each pass to the starboard of the other i.e., if approaching well to the left, keep to the left (Navig. L. Sec. 41, subd. 2-b).

3. When mechanically propelled vessels approach each other at right angles or obliquely so as to involve risk of collision, the vessel which has the other on her port side (to her left) must hold course and speed. The other vessel must keep out of the way and direct her course to starboard (to the right) to pass astern of the vessel on whose port (left) side she is (Navig. L. Sec. 41, subd. 2-c).

4. When mechanically propelled vessels are running in the same direction and the one astern desires to pass, she must give one distinct whistle blast to indicate she wishes to overtake and pass on the starboard (right) side of the vessel ahead, or two distinct whistle blasts to indicate she wishes to overtake and pass on the port (left) side of the vessel ahead. If the vessel ahead answers with the same whistle blast as given, the overtaking vessel must pass on the side indicated. It is unlawful to answer a whistle signal with a "cross" signal (i.e., if the overtaking vessel gives one blast to indicate a desire to overtake or pass to starboard, the vessel ahead may not give two blasts to indicate the other should pass on the port side or vice versa). The vessel ahead must give the "danger signal" if she wants the other vessel to pass on the other side — the danger signal is five blasts. When it is given the overtaking vessel must wait until the vessel ahead gives

either one or two blasts and then pass to starboard or port as indicated by the blast or blasts (Navig. L. Sec. 41, subd. 2-d).

5. When mechanically propelled vessels are on approaching, crossing or overtaking courses and either fails to understand the course or intention of the other, the vessel in doubt must give the danger signal (five whistle blasts) and both must then slow, stop or reverse as required until proper signals have been given, answered and understood or until they have passed (Navig. L. Sec. 41, subd. 2-e).

6. Mechanically propelled vessels approaching, crossing or overtaking are required to give signals of their course and intention as specified in the law and cross signals are forbidden, i.e., one blast cannot be answered by two or vice versa. If the responding vessel does not feel the course and intention indicated by a signal are safe she must so indicate by sounding the danger signal (Navig. L. Sec. 41, subd. 1-e, f. 2-d).

7. One blast means "I direct my course to starboard" or if given when approaching at right angles or obliquely, means that the one which is to starboard of the other intends to hold course and speed (Navig. L. Sec. 41, subd. 1-a).

8. Two blasts mean "I direct my course to port" (Navig. L. Sec. 41, subd. 1-b).

9. Three blasts mean "My engines are going at full astern" (Navig. L. Sec. 41, subd. 1-c).

10. In narrow channels, every vessel, when it is safe and practicable, shall keep to the side of the channel which lies on the starboard (right) side of the vessel (Navig. L. Sec. 41, subd. 2-g).

11. When a mechanically propelled vessel meets a sailing vessel proceeding in such direction as to involve risk of collision, the sailing vessel has the right-of-way. However, it is incumbent on the master of the sailing vessel to keep a vigilant lookout and change course if necessary, to avoid any danger (Navig. L. Sec. 41, subd. 2-f).

12. It is the legal duty of every master or pilot of any vessel to render such assistance as he can possibly give to any other vessel coming under his observation and being in distress, whether on account of accident, collision or otherwise (Navig. L. Sec. 41, subd. 3). Four distinct blasts on a vessel's whistle mean "I am in distress and need your assistance" (Navig L. Sec. 41, subd. 1-d).

VIOLATIONS OF THE PILOT RULES: Any failure to comply with the pilot rules constitutes an offense punishable by a fine not over $50. (Navig. L. Sec. 41, subd. 7). Such "offenses" are violations by virtue of Penal Law Section 55.10, subd. 3.

AID IN DISTRESS: It is the duty of every master or pilot of any vessel to render such assistance as he can possibly give to any other vessel coming under his observation and being in distress on account of accident, collision or otherwise (Navig. L. Sec. 41, subd. 3).

1. The master of a vessel is any individual having at the time the charge, control or direction of a vessel. The law applies equally to any master of a vessel and thus, includes the masters of both private and public vessels (Navig. L. Sec. 2, subd. 9).

2. Violation of any provision of the Navigation Law for which no punishment is otherwise specifically prescribed is a misdemeanor (Navig. L. Sec. 140-a, subd. 4).

SPEED AND RECKLESS OPERATION: Every master or operator of a vessel must at all times navigate the same in a careful and prudent manner and at such rate of speed as not to unreasonably interfere with the free and proper use of the navigable waters of the state or unreasonably endanger any vessel or person (Navig. L. Sec. 45, subd. 1).

1. No vessel other than the tending vessel shall be operated within one hundred feet of a red flag with a diagonal white bar which, when displayed on the water or from a boat, indicates underwater diving. No such flag may be placed so as to deny access to or use of any boathouse, wharf, harbor, bay, channel or navigable waterway (Navig. L. Sec. 45, subd. 1-a).

2. No vessel may be operated within one hundred feet of the shore, a dock, pier, raft, float or an anchored or moored vessel at a speed exceeding five miles per hour (Navig. L. Sec. 45, subd. 2).

3. The provisions of this section do not apply to a vessel while actually competing in an authorized regatta or boat race, or to vessels having a valid marine document issued by the United States or a foreign government (Navig. L. Sec. 45, subd. 3, 4).

4. Failure to comply is an "offense", punishable by fine not over $100., imprisonment for more than 30 days or both, (first offense); fine not less than $50. nor over $200., imprisonment not more than 90 days or both (second offense within eighteen months); fine not less than $100. nor over $500., imprisonment not more than 180 days, or both (third or subsequent offense within eighteen months). Under Penal Law Section 55.10, all such "offenses" are Unclassified misdemeanors.

THE ST. LAWRENCE RIVER BOAT REGULATION ZONE: The St. Lawrence River Boat Regulation Zone is established by state statute. It runs in the St. Lawrence River in the Town of Alexandria from Point Vivian to near the east end of Alexandria Bay. The maximum speed within harbor lines in this Zone is five miles per hour and from one-half hour after sunset to one-half before sunrise, anywhere in the Zone, the maximum is fifteen miles per hour (Navig. L. Sec. 102). Violations are Unclassified misdemeanors punishable by fine not over $50., imprisonment not more than 90 days, or both (Navig. L. Sec. 103). Failure to operate a motorboat in the zone in a careful and prudent manner and at such rate of speed as to not endanger the property of another, or the life or limb of any person, or operating in a reckless manner, is also a misdemeanor, similarly punishable (Navig. L. Sec. 102, subd. 2, 3; Sec. 103).

OTHER VESSEL REGULATION ZONES: A county, city or incorporated village may establish a vessel regulation zone with the approval of the Conservation Commissioner and adopt regulations for the use of a lake or part of a lake or other body of water within the county, or in case of a city or incorporated village of the part of said waters adjacent thereto. The limits of zones cannot exceed one thousand feet from the shore line at low water.

1. When zones are established a signboard must be erected facing the water and bearing in large letters **"VESSEL REGULATION ZONE"** with the rate of speed limited in that area. It must be of sufficient size to be easily readable by a person using the waters.

2. Violation of any regulations adopted for such zones by the municipality is a misdemeanor punishable by fine not over $50., imprisonment not more than 90 days, or both.

3. The Zone regulations do not apply to a vessel while actually competing in a regatta authorized by the Commissioner, provided due written notice of the date of the regatta has been filed with the clerk of the county where the vessel regulation zone is established.

4. It is the duty of the state police and all peace officers to enforce this law (Navig. L. Sec. 46).

ROUND ISLAND LAKE, ORANGE COUNTY: Pleasure vessels equipped with detachable outboard motors or permanent inboard motors (except vessels propelled by electric motors of not over one-fourth rated horsepower) cannot be lawfully operated at any time on the waters of Round Lake, Orange County (Navig. L. Sec. 72). Violations are misdemeanors (Navig. L. Sec. 140-a, subd. 4).

OPERATION ON THE INLAND WATERS OF CHAUTAUQUA COUNTY: No water craft may pass the stern of a boat being used for trolling less than two hundred feet from the stern of such boat on the inland lakes of Chautauqua County. Violations are misdemeanors (Navig. L. Secs. 72-a, 140-a, subd. 4).

WATER SKIS AND SURFBOARDS: No person may operate a vessel on the navigable waters of the state for towing a person on water skis, a surfboard or similar device unless there is in the vessel a person other than the operator, at least 10 years old, in a position to observe the progress of the person being towed (Navig. L. Sec. 73, subd. 1).

1. No person can ride water skis, surfboards or similar devices, or use or operate vessels to tow persons, on the waters of Lake George from sunset to one hour after sunrise, or on other navigable waters of the state from one hour after sunset to one hour after sunrise. A paid performer engaged in a professional exhibition is exempt from this law (Navig. L. Sec. 73, subd. 2).

2. Any person riding on water skis, surfboards, or similar devices on the inland waters of Chautauqua County or on the waters of Lake George, must wear a life preserver, life belt. or similar device. A paid performer engaged in a professional exhibition is exempt (Navig. L. Sec. 74, subd. 3).

3. Water skiing and lifebelt violations under this law are "offenses" punishable by fine not over $25. Under section 55.10, subd. 3, of the Penal Law, such offenses are violations (Navig. L. Sec. 73, subd. 3).

LOSS OF LIFE BY MISCONDUCT OF OFFICERS: A master, or other person employed on a public vessel, by whose misconduct, negligence or inattention to his duties on such vessel the life of any person is destroyed and every owner or character through whose fraud, neglect, misconduct or violation of law, the life of any person is destroyed, is guilty of a felony punishable by imprisonment not more than 5 years, fine not over $5,000, or both (Navig. L. Sec. 62).

UNLAWFUL USE OF SEARCHLIGHTS: It is a misdemeanor to flash or cause to be flashed the rays of a searchlight into the pilot house or into the eyes of the master, pilot or operator of an approaching vessel. A licensed master, pilot, joint pilot and engineer or operator committing such violation may have his license revoked. The crime is punishable by fine not over $50., imprisonment not more than 6 months, or both (Navig. L. Sec. 42).

AIDS TO NAVIGATION: The Conservation Commissioner may issue permits to place aids to navigation in the navigable waters of the

state to mark obstructions to navigation, or for any other purpose. When authorization has been granted the aids to navigation are deemed lawfully placed.

Each aid to navigation lawfully placed must bear in a conspicuous place and in legible condition the letters "SCD". Any person placing such designating letters on an aid to navigation not lawfully placed, is guilty of a "misdemeanor" and subject to fine not over $25. for each and every offense. Any person mooring or fastening a vessel to a lawfully placed aid to navigation or who shall wilfully damage, alter the location of, or otherwise render ineffective a lawfully placed aid to navigation is guilty of "misdemeanor" and subject to a fine of not over $50. for each offense (Navig. L. Sec. 35). Under section 55.10, of the Penal Law, subd. 3, such "misdemeanors" become violations.

MOORINGS AND FLOATING OBJECTS OTHER THAN AIDS TO NAVIGATION. The Conservation Commissioner may issue a permit for placing mooring buoys, bathing beach markers, swimming floats, speed zone markers, or any other floating objects having no navigational significance in navigable waters if the placing will not be a hazard to navigation.

1. Upland owners may place one mooring buoy and one swimming float (not more than one hundred square feet of surface area) in the waters adjacent to and within the boundaries of their shoreline, but not more than one hundred feet from shore.

2. No vessel or any part of a vessel secured to a mooring buoy can at any time extend more than 100 feet from shore (Navig. L. Sec. 35-a, subd. 3).

3. No floating object may be placed in a navigable channel or in any location where it will interfere with free and safe navigation or free access to another person's property. The Conservation Commissioner may remove or alter the location of any such buoy or float in the interests of navigation (Navig. L. Sec. 35-a, subd. 3).

4. No fishing buoys may be placed in navigable waters of the state except as specified by the Conservation Commissioner's rules and regulations (Navig. L. Sec. 35-a, subd. 4).

5. Failure to comply with this law or the Commissioner's rules and regulations is an offense punishable by fine not over $50. Such "offenses" are in fact "violations" under Penal Law Section 55.10 (Navig. L. Sec. 35-a, subd. 7).

UNAUTHORIZED FLOATING OBJECTS: No unattended floating object may lawfully be anchored in navigable waters of the state for any purpose, except those authorized under United States laws, rules and regulations, by sections 35 and 35-a of the Navigation Law, or by local ordinances approved by the Commissioner. Any person finding such anchored objects is authorized to remove them (Navig. L. Sec. 36).

EXCAVATIONS, FILL OR STRUCTURES, NAVIGABLE WATERS: No person or local public corporation may excavate in or place fill in the navigable waters of the state or construct any wharf, dock, pier, jetty, or other type of structure without first obtaining a permit therefor in conformity with provisions of Sections 429-b or 429-c of the Conservation Law. (Navig. L. Secs. 31, 32).

Violations are Class A misdemeanors (Navig. L. Sec. 140-a, subd. 4).

INTERFERING WITH DEPTH OF WATER: A person who throws or causes or permits to be thrown, from any vessel or in any other manner into any of the navigable waters of this state, any earth, ashes, cinders,

stone, or other material, or builds any structure therein which will in any manner lessen the depth of such waters, or interfere with free and safe navigation is guilty of a misdemeanor (Navig. L. Sec. 32-c).

DUMPING OR DEPOSITING TRASH AND OTHER DEBRIS IN CHAUTAUQUA LAKE AND ITS TRIBUTARIES: Any person who dumps, deposits or allows or causes to be dumped or deposited in any manner any trash, glass, bottles, garbage or any other debris in the waters of Chautauqua Lake or its tributaries, or upon the shore line adjacent thereto, or upon the ice covering the waters of Chautauqua Lake, or any person who constructs, moves, places or causes or allows to be constructed, moved or placed any structure upon the ice covering the waters of Chautauqua Lake, is guilty of an offense punishable by fine of twenty-five dollars, unless the person who constructs, moves, places or causes or allows to be constructed, moved, or placed any structure upon the ice covering the waters of Chautauqua Lake shall have placed thereon with paint or in some other permanent manner the owner's full name in characters at least three inches high and his address in a contrasting color to the surrounding structure, and provided the structure is removed not later than the fifteenth day of March in each year or such other date as may be set by the Conservation Department (Navig. L. Sec. 33-b). Such "offenses" are violations under Section 55.10, subd. 3 of the Penal Law.

THROWING GAS TAR OR REFUSE INTO PUBLIC WATERS: A person who throws or deposits gas tar, or the refuse of a gas house or a gas factory, or offal, refuse, or any other noxious, offensive, or poisonous substance into any public waters, or into any sewer or stream running or entering into such public waters, is guilty of a misdemeanor (Publ. H. L. Sec. 1300-b).

GARBAGE, EXCREMENT, ETC. IN NAVIGABLE WATERS: No person may drain, deposit or cast any dead animal, carrion, offal, excrement, garbage or other putrid or offensive matter into the navigable waters of the state, except as authorized by the State Department of Health. Every violation is an Unclassified misdemeanor, punishable by fine not to exceed $100., imprisonment not more than one year, or both (Navig. L. Sec. 33). The District Attorney must prosecute such offenders.

DISPOSING OF SEWAGE, WASTES, TRASH OR LITTER ON BOATS: Section 33-c of the Navigation Law is a comprehensive law covering the discharge of wastes or any trash or litter, or human excrement, from boats and marinas into the water. The provisions of this new law with reference to requiring watercraft with toilet facilities to be equipped with pollution control devices, and prohibiting the placing, throwing, depositing or discharging of any untreated sewage from any watercraft into the waters of the state will take effect June first, nineteen hundred sixty-eight. Until that date the provisions of any local law or ordinance requiring or regulating the installation of such devices, or prohibiting the placing, throwing, depositing or discharging of any untreated sewage from any watercraft into the waters of the state will remain in full force and effect. All other provisions of this law took effect August first, nineteen hundred sixty-six. Pertinent portions of the law are:

1. No person, whether engaged in commerce or otherwise may place, throw, deposit, or discharge, or cause to be placed, thrown, deposited, or discharged into the waters of this state, from any watercraft, marina or mooring, any sewage, or other liquid or solid materials which render the water unsightly, noxious or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment of the water for recreational purposes (Navig L. Sec. 33-c, subd. 2-a).

2. No person, whether engaged in commerce or otherwise, may place, throw, deposit or discharge, or cause to be placed, thrown, deposited, or dicharged into the waters of this state, any litter from any watercraft, marina or mooring (Navig. L. Sec. 33-c, subd. 2-b).

3. No marine toilet on any watercraft used or operated upon waters of this state may be operated so as to discharge any untreated sewage into such waters, directly or indirectly (Navig. L. Sec. 33-c, subd. 3-a).

4. No person owning or operating a watercraft with a marine toilet may use, or permit the use of, such toilet on the waters of this state unless the toilet is equipped with facilities that will adequately treat, hold, incinerate or otherwise handle sewage in a manner that is capable of preventing water pollution, as required by the law (Navig. L. Sec. 33-c, subd. 3-b).

5. No container of sewage may be placed, left, discharged or caused to be placed, left or discharged in or bordering any waters of this state by any person at any time (Navig L. Sec. 33-c, subd. 3-c).

6. Every marine toilet on watercraft used or operated upon the waters of this state must be equipped with a pollution control device, either for the treatment or holding of sewage, in operating condition, of a type approved by the State Health Department in conformance with applicable public health standards and rules and regulations; and approved by the Conservation Department in conformance with the boating safety standards and rules and regulations adopted by the Conservation Department. Pollution control devices must be securely affixed to the interior discharge opening of marine toilets and all sewage passing into or through such toilets must pass solely through such treatment facilities (Navig. L. Sec. 33-c., subd. 4-a).

7. No marine toilet pollution control device may be used, sold or physically offered for sale in this state unless it is of a type which has officially been approved by the State Department of Health and the Conservation Department (Navig. L. Sec. 33-c, subd. 5).

8. The Conservation Department must require persons making application for a boat registration certificate to disclose whether the watercraft has within or on it a marine toilet, and if so, to certify that such toilet is equipped with a pollution control device as required by the law. The Conservation Department is further empowered to direct that the issuance of a boat registration certificate or renewal be withheld if such a device has not been installed (Navig. L. Sec. 33-c, subd. 6).

9. The owner or whoever is lawfully vested with the possession, management or control of a marina is required to provide suitable trash receptacles or similar devices designed for the depositing of litter at locations where they can be conveniently utilized by watercraft users (Navig. L. Sec. 33-c, subd. 7).

10. All marinas that provide for the handling and disposal of sewage from holding tanks of watercraft shall do so in a manner that will prevent the pollution of the waters of the state (Navig. L. Sec. 33-c, subd. 8).

11. All watercraft located upon waters of this state are subject to boarding and inspection by the Conservation Department or Health Department (or any lawfully designated agents or inspectors of either) for the purpose of determining whether such watercraft is equipped with approved marine toilet pollution control facilities operated in compliance herewith (Navig. L. Sec. 33-c, subd. 9).

12. Any person who violates paragraph 2 above is guilty of an "offense" punishable by fine not over $100, imprisonment not more than 60 days, or both. A person who violates this section more than twice during the same calendar year and is convicted of more more than two violations is guilty of a misdemeanor on the third and each subsequent violation (Navig. L. Sec. 33-c, subd. 13-a). (The "offenses" described are in fact "violations" under P.L. Sec. 55.10).

13. Any person who violates any other provision of this law or any regulations of the Conservation Department adopted pursuant to this law is guilty of a misdemeanor punishable by fine not over $100, imprisonment not more than 60 days, or both (Navig. L. Sec. 33-c, subd. 13-b).

14. By the enactment of Section 33-c, the state fully exercises its exclusive right to establish requirements in regard to the disposal of sewage from watercraft. In order to insure uniformity on a statewide basis, on and after June 1, 1968, no political subdivision of the state or any municipality may regulate sewage disposal from watercraft (Navig. L. Sec. 33-c, subd. 10).

SANITARY FACILITIES-CRAFT ON LAKE GEORGE AND GREENWOOD LAKE: It is unlawful to launch, moor, dock or operate any craft upon Lake George and upon Greenwood Lake, Orange County, their tributaries or outlets, equipped with toilets or other sanitary facilities which in any manner discharge into the waters of the lake, its tributaries or outlet. All such toilets, or other sanitary facilities, must be removed or sealed or made to drain into a tank or reservoir which can be carried or pumped ashore for disposal according to the regulations of local boards of health or county and state health agencies. Failure to comply is a misdemeanor, punishable by fine not over $100, imprisonment not more than one year, or both (Navig. L. Sec. 33-a).

WRECKS: It is the duty of the sheriff, in the absence of the owner or other person entitled to possession, to take all necessary measures to save and secure wrecked property (Navig. L. Sec. 130).

1. Such property may be sold under court order (Navig. L. Sec. 131). The owner is entitled to claim wrecked property or proceeds of sale thereof within one year from its finding (Navig. L. Sec. 132).

2. A reasonable allowance for salvage is allowable to sheriff and persons assisting him (Navig. L. Sec. 136).

KEEPING WRECKED GOODS: A person who takes away goods or other property not his own from a stranded vessel, or any goods or other property cast by the sea upon the land or found in a bay or creek, or who knowingly becomes possessed of any such goods or other property, and does not deliver the same, within forty-eight hours thereafter, to the sheriff or one of the coroners or wreck masters of the county where the same was found, is guilty of keeping wrecked goods (Navig. L. Sec. 139-a), is a misdemeanor.

UNLAWFULLY DETAINING WRECKED PROPERTY: An officer whose duties pertain in any way to wrecked property, who without authority of law, detains such property or proceeds thereof, after the salvage and expenses chargeable thereon have been paid or offered to him, or who is guilty of any fraud in the discharge of such duties is guilty of detaining wrecked property, a misdemeanor (Navig. L. Sec. 139-c).

DEFACING MARKS UPON WRECKED PROPERTY: A person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof, with intent to prevent the owner

from discovering its identity, or who destroys or suppresses any invoice, bill of lading or other document tending to show the ownership thereof, is guilty of defacing marks upon wrecked property; a misdemeanor (Navig. L. Sec. 139, subd. 1).

UNIFORM NAVIGATION SUMMONS AND COMPLAINT: The Conservation Commissioner is authorized to prescribe a form of summons and/or complaint to be used in cases involving violation of any provision of the Navigation Law or any ordinance, rule or regulation relating to navigation or of any class or category of such cases, and to establish procedures for administrative controls over the disposition of summonses (Navig. L. Sec. 19, subd. 1).

1. The chief executive officer of each local police force including county, town, city, and village police department, sheriffs, and the superintendent of state police must prepare or cause to be prepared such records and reports as may be prescribed by the Commissioner (Navig. L. Sec. 19, subd. 2).

2. The Conservation Commissioner may adopt rules and regulations concerning summonses, including requirements for reporting by trial courts having jurisdiction over navigation violations. (Navig. L. Sec. 19, subd. 3).

3. The provisions of this law do not apply to or supersede any ordinance, rule or regulation adopted or prescribed in Nassau or Suffolk counties or in any city having population of one million or over (Navig. L. Sec. 19, subd. 4).

4. Any person who disposes of any Uniform Navigation Summons and/or complaint in any manner other than prescribed by law, rule or regulation is guilty of a misdemeanor. (Navig. L. Sec. 19, subd. 5).

5. **CONSERVATION DEPARTMENT REGULATIONS:** Each law enforcement agency must secure supplies of Navigation Law summonses at its own expense. It must utilize the form approved by the Conservation Department, with each part 4¼ inches wide by 7 inches long, plus 3/4 inch tab for binding. The summons must be multi-copy form, with interleaved carbons, and at least 4 parts, in approved colors (original white, duplicates blue, green and pink). Extra parts must be approved by the Conservation Department. Summonses must be serially numbered.

a. Printers must report all summonses printed, including serial numbers, to the Conservation Department.

b. All law enforcement agencies using summonses must maintain a file of Part III of issued summonses, by serial number, and match Part II when returned from court.

c. Agencies must maintain permanent record of all summonses issued to officers, by serial numbers.

d. Agencies must report on their summonses quarterly by one month from end calendar quarter, to the Conservation Department, including summonses assigned, issued by officers, disposed of (and disposition, by attaching Part II of each), still pending, and those void, mutilated or destroyed.

e. All courts must indicate disposition on Part II and forward promptly to the law enforcement agency which issued it.

f. When a summons is issued to a violator, the officer must deliver Part I to the violator, Part II to the court in which violator is to appear, Part III to his department, for its permanent record,

and may keep Part IV for his own record (6 New York Code, Rules and Regulations, Sections 352.1-352.13).

VERIFICATION OF COMPLAINT, NAVIGATION SUMMONS: Where a summons has been served by an officer in lieu of arrest, in cases of violations of the Navigation Law or ordinances, rules or regulations enacted pursuant thereto or pursuant to any other law relating to navigation, any chief, deputy chief, captain, lieutenant, or acting lieutenant, sergeant or acting sergeant of a police department, or any sheriff, undersheriff, chief deputy, deputy sergeant or deputy in charge of navigation to whom service is reported is authorized to administer to the officer all necessary oaths in connection with the execution of the complaint to be presented in court by the officer. (Navig. L. Sec. 20).

ACCIDENT REPORTS BY OPERATORS; DUTY OFFICERS: Whenever any pleasure vessel meets with an accident involving a loss of life, personal injury or damage to property, the operator must stop and give his name, address, name and address of the vessel owner, and identification number, (if any) assigned to the vessel, to the injured party or the party sustaining the damage. In the event the person injured or the damage cannot be located at the place where the accident occurred, then the information and a description of the accident must be reported by the operator, within twenty-four hours, to the nearest police or local judicial officer (Navig. L. Sec. 47 subd. 1). Every person operating a vessel within the boundaries of the state which is in any manner involved in an accident, in which any person is killed or injured, or in which damage to the property of any person (including himself) in excess of $25.00 is sustained, must report the matter in writing to the Conservation Commissioner within 7 days after the accident (Navig. L. Sec. 47, subd. 2). Failure to report is an "offense", punishable by fine not over $100. Such offenses are "violations" under P.L. Sec. 55.10 (Navig. L. Sec. 47, subd. 5).

1. A police or judicial officer receiving information of an accident involving a pleasure vessel must make a written memorandum of the information received, and such additional facts relating to the accident as may come to his knowledge, and mail the same within five days to the Conservation Commissioner, and keep a record thereof in his office (Navig. L. Sec. 47, subd. 3).

STATE AID: Each county, city, town or village enforcing the provisions of the Navigation Law is entitled to receive state aid. Any municipality seeking reimbursement must submit to the Conservation Commissioner by October 1 each year an estimate of expenditures for the current calendar year and within one month after the close of the calendar year, a statement of expenses actually incurred. Specific details of forms to use and allowable expenditures should be secured from the Division of Motorboats. State aid is paid by the Comptroller of the State on certification of the Conservation Commissioner and the maximum is one-half the authorized expenditures approved by the Conservation Commissioner.

The amount of aid is fixed by determining the percentage proportion of what a municipality spends on navigation enforcement to the total authorized expenditures of all municipalities. This percentage is then applied against one-half the amount taken in by the Conservation Department in fees for registration of motorboats during the year. The result is the amount of state aid (Navig. L. Sec. 79-b).

JURISDICTION OF CRIMES ON THE WATER: When an offense is committed on board of a vessel navigating a river, lake or canal, or lying therein the course of her voyage, or in respect to any portion of the cargo or lading of such boat or vessel, the jurisdiction is in any county

through which, or any part of which, such river or canal passes, or in which such lake is situated, or on which it borders, or in the county where such voyage terminates, or would terminate if completed.

If the charge against the defendant consists of a violation of the Navigation Law committed outside the jurisdiction of the courts of the City of New York, concurrent jurisdiction of such offense shall be possessed and exercised by the courts within the county having jurisdiction thereof, held in and for any town, village or city which borders upon such river, lake or canal, or in which a part of such river, lake or canal is situated (CCP Sec. 136).

ENFORCEMENT AND INVESTIGATION

All officers assigned to enforcement and investigation work on navigable waters should be excellent swimmers, not only for their personal safety but also because rescue activity may require their going into the water.

Officers on navigation enforcement work should be well trained in the physical skills of boat handling and the pilot rules. Boat handling techniques require practice and are essential to the officer, since he will be docking and coming alongside with considerable frequency and must be able to do so without risk of damage to property or injury to persons. The larger the police boat, the more urgent the need for such skill, to avoid possible serious consequences.

Where police vessels are trailered, it is essential that officers assigned be well practiced in launching procedures. All practicable points at which the waters patrolled may be entered should be known, for emergency use. Where there is no access to remote parts of the waters patrolled from a road, surveys should be undertaken to determine places which can be made usable at small cost for trailered police boats, to permit rapid road travel and water access in emergencies.

It is essential that standard safety precautions and routines be established for all police patrol vessels and that inspections by ranking officers are made to ensure continued adherence to requirements, particularly in respect to fuel, and maintaining safety and rescue equipment.

First aid training and competence in methods of resuscitation should be prerequisites for assignment to any navigation enforcement work.

The officer on the water will most usually be involved in enforcing a limited number of laws: the pilot rules, equipment regulations, Navigation Law Section 45 (Speed and Reckless Operation), the law as to operating while intoxicated and local vessel regulation zone or local ordinance requirements. The many other laws will be found less frequent sources of violations.

To establish violations of Section 45 (other than speed over 5 miles per hour within 100 feet of shore, etc.) it is necessary to show facts (1) indicating lack of the care which should be exercised by a careful and prudent operator, and (2) unreasonable interference or endangering (Peo. vs. Gorman, 36 Misc. 2d 568). Violations of the pilot rules are facts to be considered in respect to violations of Section 45, and of course are also individual violations in themselves (Peo. vs. Gorman 36 Misc. 2d. 568).

It is not necessary that a person be injured or that damage of any kind be done to constitute a violation of Section 45.

There is no specific authority in New York law permitting officers to board vessels for purposes of inspection or search except under the same rules as on land. If an officer is refused permission to board a vessel he may not legally board it except to make a valid arrest or when he has a search warrant for it.

However, all watercraft are subject to boarding and inspection re proper marine toilet pollution control facilities by agents of either the Conservation Department or Health Department lawfully designated (Navig. L. Sec. 33-c, subd. 9).

In difficult situations, the U. S. Coast Guard may be able to assist on navigable waters of the United States, in view of the Coast Guard's complete boarding authority, as previously mentioned in this section.

ARRESTS AND SUMMONS: Officers may make arrests for navigation crimes under the usual rules, or may issue a summons. The law requires that a uniform summons and complaint be used, as approved by the Conservation Commissioner (Navig. L. Sec. 19).

ACCIDENTS: The general principles governing accident investigations are set out in the section on "Accidents," this manual, together with the specific requirements of the law in respect to reports of boating accidents.

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88. OBSCENITY AND PORNOGRAPHY

OBSCENITY: A person is guilty of Obscenity when, knowing its content and character, he:

1. Promotes, or possesses with intent to promote, any obscene material (P.L. Sec. 235.05, subd. 1), or

2. Produces, presents or directs an obscene performance or participates in a portion thereof which is obscene or which contributes to its obscenity (P.L. Sec. 235.05, subd. 2).

Obscenity is a class A misdemeanor.

DEFINITIONS:

1. Obscene — Any material or performance is "obscene" if:

a. Considered as a whole, its predominant appeal is to prurient, shameful or morbid interest in nudity, sex, excretion, sadism, masochism;

(1) "Prurient" may be taken to mean lascivious, lewd or lustful;

b. It goes substantially beyond customary limits of candor in describing or representing such matters, and

c. It is utterly without redeeming social value.

d. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience (P.L. Sec. 235.00, subd. 1).

2. Material — anything tangible which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner (P.L. Sec. 235.00, subd. 2).

3. Performance — any play, motion picture, dance or other exhibition performed before an audience (P.L. Sec. 235.00, subd. 3).

4. Promote — means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same (P.L. Sec. 235.00, subd. 4).

PRESUMPTIONS IN OBSCENITY CASES: A person who promotes obscene material or possesses it with intent to promote it, in the course of his business, is presumed to do so with knowledge of its content and character (P.L. Sec. 235.10, subd. 1).

A person who possesses six or more identical or similar obscene articles is presumed to possess them with intent to promote them (P.L. Sec. 235.10, subd. 2).

DEFENSE TO OBSCENITY: In any prosecution for Obscenity, it is an affirmative defense that the persons to whom the allegedly obscene material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational, governmental or other similar justification for possessing or viewing the same (P.L. Sec. 235.15).

An affirmative defense must be established by the defendant and by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

DISSEMINATING INDECENT MATERIAL TO MINORS: A person is guilty of Disseminating Indecent Material to Minors when:

1. With knowledge of its character and content,
2. He sells or loans to a minor,
3. For monetary consideration,
4. Any of the following:

a. Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct of sado-masochistic abuse and which is harmful to minors, or

b. Any book, pamphlet, magazine, printed matter (however reproduced), or sound recording which contains any matter enumerated in preceding paragraph "a" or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors (P.L. Sec. 235.21, subd. 1).

A person is also guilty of Disseminating Indecent Material to Minors when:

1. With knowledge of the character and content,
2. Of a motion picture, show or other presentation,
3. Which in whole or in part depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors.
4. He exhibits the same to a minor for monetary consideration, or
5. He sells to a minor an admission ticket or pass to premises whereon there is exhibited or to be exhibited such a motion picture, show or presentation, or
6. He admits a minor for monetary consideration to premises whereon there is exhibited or to be exhibited such motion picture, show or presentation (P.L. Sec. 235.21, subd. 2).

Disseminating Indecent Material to Minors is a Class A misdemeanor.

PRESUMPTION AND DEFENSE: A person who commits any offense under the Dissemeninating Indecent Material to Minors law is presumed to do so with knowledge of the character and content of the material sold or loaned or of the motion picture, show or presentation exhibited or to be exhibited (P.L. Sec. 235.22, subd. 1).

In any prosecution for such an offense it is an affirmative defense that the defendant had reasonable cause to believe that the minor involved was 17 years old or older and that the minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the minor was 17 or older (P.L. Sec. 235.22, subd. 2-a, b).

An affirmative defense must be established by the defendant by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

DEFINITIONS: A minor is any person under seventeen years old (P.L. Sec. 235.20, subd. 1).

The law defines "nudity" as the showing of human male or female genitals, pubic areas or buttocks with less than a full opaque covering, or the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state (P.L. Sec. 235.20, subd. 2).

"Sexual conduct" is defined as acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area or buttocks and in case of females, the breast (P.L. Sec. 235.20, subd. 3).

"Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal (P.L. Sec. 235.22, subd. 4).

"Sado-masochistic abuse" means flaggellation (beating) or torture by or upon a person clad in undergarments, a mask or bizarre costume or the condition of being fettered, bound or otherwise physically restrained on part of one so clothed (P.L. Sec. 235.20, subd. 5).

"Harmful to minors" means that quality of any description or representation of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominantly appeals to the prurient, shameful or morbid interest of minors and is patently offensive to prevailing standards in the adult community as to what is suitable for minors and is without any redeeming social importance for minors (P.L. Sec. 235.20, subd. 6).

INTERSTATE TRANSPORTATION: It is a felony under Federal law, punishable by imprisonment for not more than 5 years, fine up to $5,000 or both, to: (1) knowingly transport in interstate or foreign commerce (into or out of New York or the United States), (2) for the purpose of sale or distribution, (3) any obscene, lewd, lascivious or filthy (4) book, pamphlet, picture, film, paper, letter, writing, print, silhouette, drawing, figure, image, cast, phonograph recording, electrical transcription or any other matter of indecent or immoral character (Title 18 U.S. Code, Sec. 1465).

PRESUMPTIVE EVIDENCE: The Federal law provides that transportation of two or more copies of any publication or two or more of any article, or a combined total of five publications and articles within the Federal law creates a rebuttable presumption that the things are intended for sale or distribution (Title 18 U.S. Code, Sec. 1465).

It is also a Federal felony to bring into the United States or knowingly use any express company or common carrier to carry in interstate or foreign commerce any such things or any contraceptives or abortifacients or literature concerning them, or to knowingly take them from any common carrier or express company.

Violations are punishable by imprisonment not over 5 years, fine up to $5,000 or both (10 years and $10,000 maximum for second and later offenses) (Title 18 U.S. Code, Sec. 1462).

Violations of these Federal laws are handled by the FBI.

UNITED STATES MAILS: The same kinds of things are unmailable under Federal law (Title 18 U.S. Code, Sec. 1461; Title 39 U.S. Code, Sec. 4001) and U. S. Post Office authorities are entitled to put a stop to business in such things by returning mail from customers marked "unlawful" (Title 39 U.S. Code, Sec. 4006). The illicit material may be seized, detained and disposed of as the Postmaster General directs (Title 39 U.S.

Code, Sec. 4001, subd. b). Contact should be had with the U.S. Postal Inspectors in respect to mail violations, seizures, etc., under these laws.

SEIZURE, EQUIPMENT AND VEHICLES: Any peace officer may seize any equipment used in the photographing, filming, printing, producing, manufacturing or projecting of pornographic still or motion pictures and may seize any vehicle or other means of transportation (except a vehicle or other means of transportation used by any person as a common carrier in the transaction of business as such common carrier) used in the distribution of such obscene prints and articles, and such equipment or vehicle or other means of transportation shall be subject to forfeiture (P.L. Sec. 410.00, subd. 1).

1. For the purposes of this law only, a pornographic still or motion picture is one showing acts of sexual intercourse or acts of sexual perversion. (This rule does not apply to bona fide medical photographs or films) (P.L. Sec. 410.00, subd. 9).

Seized property must be delivered by the peace officer who made the seizure to the custody of the district attorney of the county wherein the seizure was made. In New York City and Buffalo, the seized property must be delivered to the police department (with a report of all the facts and circumstances of the seizure) (P.L. Sec. 410.00, subd. 2).

1. It is the statutory duty of the district attorney of the county where the seizure was made (except in New York City or Buffalo where the duty of the corporation counsel) to inquire into the facts of the seizure so reported and if it appears probable that a forfeiture has been incurred to cause the proper proceedings to be commenced and prosecuted (at any time after thirty days from the date of seizure) to declare such forfeiture, unless, upon inquiry and examination the district attorney (or corporation counsel) decides that such proceedings cannot probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case, the district attorney or corporation counsel must cause the seized property to be returned to the owner (P.L. Sec. 410.00, subd. 3).

2. Notice of the institution of forfeiture proceedings must be served either:

(a) personally on the owners of the seized property or

(b) by registered mail to the owners' last known address and by publication of the notice once a week for two successive weeks in a newspaper published or circulated in the county where the seizure was made (P.L. Sec. 410.00, subd. 4).

3. Forfeiture cannot be adjudged where the owners establish by a preponderance of the evidence that:

(a) the use of the seized property was not intentionally on the part of any owner, or

(b) the seized property was used by any person other than an owner, while it was unlawfully in the possession of a person who acquired possession in violation of the criminal laws of the United States, or any state (P.L. Sec. 410.00, subd. 5).

4. The district attorney or the police department having custody of seized property, after a judicial determination of forfeiture, must, by a public notice of at least five days, sell the forfeited property at public sale. The net proceeds of any such sale, after deduction of lawful expenses is paid into the general fund of the county where the seizure was made seized (in New York City and Buffalo, into the respective general funds of such cities) (P.L. Sec. 410.00. subd. 6).

5. Whenever any person is interested in any property which is seized and declared forfeited under the provisions of this law and files (with a justice of the supreme court) a petition for the recovery of such property, the justice of the supreme court may restore it upon such terms and conditions as he deems reasonable and just, if the petitioner establishes either of the affirmative defenses set forth in preceding paragraph 3 and that he was without personal or actual knowledge of the forfeiture proceeding. If the petition is filed after the sale of the forfeited property, any judgment in favor of the petitioner must be limited to the net proceeds of the sale, after deduction of the lawful expenses and costs incurred by the district attorney, police department or corporation counsel (P.L. Sec. 410.00, subd. 7).

6. No suit or action under this section of law, for wrongful seizure, can be instituted unless it is commenced within two years after the time the property was seized (P.L. Sec. 410.00, subd. 8).

INVESTIGATIONS

In handling possible violations relating to indecency in printed materials, pictures, recordings, etc., the officer must take a sensible view and exercise good judgment. He must act promptly against things which common sense dictates clearly obscene or outrage the community's standards of decency. Where the illicit nature of the thing is not clearly apparent, the officer should first seek the advice of the District Attorney, who will have the responsibility of carrying the matter through the courts.

The officer should make or obtain a clear-cut decision as to the illicit nature of the book, picture, etc. Having resolved this point, the remainder of the investigation is the same as any investigation involving contraband.

If the illicit material is being peddled or handled on a surreptitious basis, the use of undercover individuals to make purchases is a usual initial step.

The local FBI and the U.S. Postal Inspectors' office should be notified in cases involving surreptitious sales of pornographic materials coming under the State and Federal laws each of them handles in view of the fact that much of this kind of material is from out-of-state.

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89. OBSERVATION AND PATROL

A basic attribute of a good patrol officer is a well developed power of observation. Natural ability for keen observation is not a common trait. The police officer will find that he must continually train himself to develop satisfactory powers of observation. The patrol officer's success will in a large measure depend upon his ability to make observations of the activities and conditions on his patrol beat or post.

The officer on patrol must be continually alert to observe all possible violations in his assigned area. He must become familiar with the physical conditions, the individuals in the area, and the usual vehicles, as well as the buildings, their occupants and their uses. Constant observation is required to be able to detect the unusual (i.e. A vehicle parked in shopping plaza long after closing hours).

NOTEBOOK: A well-used notebook is an essential part of the patrol officer's equipment. It should be used for noting wanted vehicles, wanted persons and other police matters from the blotter, teletypes, orders and other official sources, before beginning each shift. It should also be used

for noting license numbers of cars stopped, license numbers of vehicles to be checked, descriptions of persons and facts of investigations or inquiries, as well as notes on municipal services requiring attention, signs needing repair, holes in the road and all similar matters which are proper subjects for observation and report, or other action.

PATROL GENERALLY: In all patrol activity, whether on foot, in one-man or two-man cars or on motorcycle, a basic requirement is that the patrol not be so regularly patterned that law-violators will have an easy time determining when the patrol will be away from a particular point and for how long. Patrols should be as continually varied as practicable to avoid violators taking action secure in the knowledge that the officer is somewhere else on his beat and will be away from their area for a known and usual period of time.

Thorough acquaintance with the beat or patrol area is essential. This includes developing a good personal relationship with residents and businessmen and constant development of sources of information and informants. The officer must have a detailed knowledge of all legitimate businesses and activity, so that the unusual or out-of-the-ordinary will be immediately apparent and can be investigated.

Patrol during the nighttime offers additional hazards which the officer must recognize and take steps to minimize. Any set patrol routine is inadvisable. The officer should take advantage of concealment as required to properly observe his beat. In trying doors, windows and gratings of business establishments, vacant property, etc. it is advisable to do so without noise, so that if any police action must be taken the officer will not have given away the advantage of surprise. In rounding corners or entering darkened areas, a momentary pause is advisable to listen for sounds of suspicious or potentially dangerous activity. When using a flashlight, it should be held away from the body, in the non-shooting hand, to avoid giving an unknown assailant in the dark a vulnerable target to throw or shoot at. The flashlight is an excellent aiming point for a criminal hidden in the dark.

Officers should not hesitate to call for other police assistance when a door check or other circumstance indicates a crime may be in progress. The use of sirens by officers in assisting cars will alert any subjects in the area and use of sirens should ordinarily be avoided. In any instance where an officer discovers that a forced entry has been made into a building, he should summon police assistance and await its arrival before proceeding into the building. It is a basic requirement that, when possible, the back of the building and other logical exits be covered. When this is done, a noisy entry by the officers at the front may well induce the subjects to flee out the back, into the hands of officers stationed there. If surprise can be maintained, a quiet entrance may be equally effective, surprising the subjects at work. When their means of exit and transportation are definitely known, a surprise capture as they emerge may be considered.

In searching a building, it is well to open a door cautiously a brief crack to ensure it is free, then fling it back to the wall, to ensure no one is hiding behind it, before attempting to enter the room. Each room or space should then be entered in an abrupt move, to avoid framing the officer as an easy target in the doorway.

Officers on patrol must be alert for suspicious persons loitering where they seem out of place or near logical targets of larceny or other theft. Persons carrying suitcases or bags under suspicious circumstances, men apparently following women, or adults, particularly men, engaging children in conversation, and similar persons must always be considered for attention. It must be borne in mind that if such persons are in fact intending

a violation, a prompt questioning and "frisk" on the street will usually have no material result. The officer should always consider the advisability of maintaining surveillance of such persons so that an arrest for a criminal violation may be made. Where no facts indicate any immediate prospect of a violation, prompt questioning and a "frisk" may be considered and should, of course, be made the subject of a detailed notebook entry. Officers should be thoroughly familiar with their right to question persons on the street (see Section "Arrests and Bail" in this Manual and "What Is An Arrest" in that Section).

VEHICLE PATROL: In conducting vehicle patrol on streets or highways, it is most effective to patrol at slightly under the legal speed limit, both to avoid hindering traffic and to avoid driving too fast for observation. The officer driving at this speed does not delay traffic and at the same time traffic passing the officer's car can be observed and attention can be directed to oncoming traffic as well.

VEHICLES AND LICENSE PLATES: Officers should constantly compare drivers with their vehicles and also plates with vehicles. They should be alert for drivers who appear out of place, such as teen-age boys driving expensive cars or out-of-state cars. Teenagers driving such cars or cars with plates from distant points should be checked.

Low number plates on dilapidated vehicles, old or mutilated plates on new vehicles, old cars with new plates, plates hurriedly attached by wire, string, dealer's clamps, etc., cardboard plates, plates in the rear window, expired and altered plates, new bolts on old plates, dirty plates on clean vehicles, all indicate a vehicle worth checking. Vehicles with plates from one state and an inspection sticker from another should also be checked.

New cars with dents, which could indicate either a stolen car or a hit-and-run are worth checking. New car owners tend to have dents promptly repaired.

DRIVERS: It is well to observe all drivers as they pass, looking particularly for those who are watching for police and who, as soon as they make "eye contact" with the officer, immediately snap their head around to look another way or try to hide their face by raising a hand. Drivers who take any evasive action when they observe a police car, such as those who apparently fear to pass the police car or immediately turn down a side road on seeing the police car, or who try to look unaware of the police car, should be checked.

Care should be taken to note apparently unlicensed operators, such as when an operator appears to be unfamiliar with driving and there is an unusual amount of side-to-side steering. A frequent violation will involve a man instructing a woman who has no learner's permit. The woman will drive at a slow or moderate rate of speed and the man will sit close beside her, frequently with his left arm over the back of the seat.

SUSPICION OF BURGLARY: All vehicles whose tail lights or license plates lights are not illuminated at proper hours should be checked. Criminals may install cut-off switches for unlawful purposes or deliberately disable such lights to avoid detection.

Pickup trucks carrying cutting torches or acetylene bottles should be checked, as such items are commonly used in safe burglaries.

In checking vehicles it should be remembered that burglars tools or other contraband may be wrapped and carried between the grille and radiator rather than in a car's interior or in its trunk.

STOLEN CARS: (See section "Larceny," this Manual, for pertinent crimes involving stolen cars.)

Certain points are valuable as possible indicators of a stolen car and officers should consider checks when the following are observed:

1. Broken vent window.
2. Car operated in daylight with lights on.
3. Driver apparently unfamiliar with car's operation—stalls, jerky stops, etc.
4. Slashes in top of convertible.
5. Damage to new car.
6. Operator does not appear natural in car or is otherwise suspicious.
7. Out-of-state vehicle without luggage or clothes in view.

Damage around windows, license plates insecurely fastened, dirty plates on new car or new plates on dirty car, expensive cars with unkempt or poorly clad occupants, and out-of-state cars with no luggage or clothes in view should all be considered as worth checking.

Car thieves fall into five general classes: the joy-riding thief (frequently juveniles), the thief who steals for transportation, the thief who steals for use in committing a crime, the thief who steals so that the car can be looted of property and accessories and the thief who steals for resale. The thief who steals for resale is often part of a car theft ring. Suspect car thieves should always be regarded as dangerous. All approaches to suspected thieves should be made with extreme caution.

Persons apparently trying different keys in doors of parked cars, or apparently repairing or loitering in the vicinity of parked cars without apparent reason are open to suspicion. An inconspicuous surveillance of such persons, out of their sight, will often bear fruit.

STOPPING VEHICLES: Stopping cars, whether for traffic infractions, for more serious violations or for checks of possible criminal violators, is a continually dangerous business and should always be regarded as such by the officer. It should be borne in mind that the driver stopped for speeding may in fact be a wanted person or criminal who will be made nervous and desperate by the officer's approach. If such a person is armed, the officer's life is in serious danger.

A prime consideration in stopping a vehicle is locating a safe place to do so. The officer must consider his own safety as well as the safety of the occupants of the stopped vehicle and other users of the highway. Only in unusual situations of urgency should officers stop a car anywhere but completely off the traveled part of a road or street.

In preparing to stop a vehicle, officers should first look over the road for safety factors, including all traffic.

When safe to do so, the officer should pull alongside the pursued vehicle, until his front bumper is even with the left front door of the pursued car. He must then reduce his speed to that of the other car and signal the other driver with two horn blasts and a hand signal to stop. The officer should then drop back to follow the pursued car to a safe stop. The officer must check traffic to the rear before decelerating. The police car should park about 15 feet behind and offset three feet to the left of the pursued vehicle, with the police vehicle slanted front to left, to give the officer emerging some cover in case of necessity. The stopped vehicle should be approached through the blind spot made by the rear body section or convertible top.

There is some risk attendant upon driving up even with the driver of the vehicle to be stopped and signaling to him or her from that position and officers should be very alert when doing so.

It is good practice to give headquarters or radio control station radio notice including vehicle identification, description of occupants, direction of travel and location before stopping a suspected stolen vehicle. Suspect cars should be checked promptly by teletype or telephone against records of appropriate state giving license plate, vehicle identification and engine numbers, as determined by actual inspection of the vehicle.

If there is the slightest question in the officer's mind as to the possibility of attack from the person to be stopped, he should notify his headquarters by radio of his location and the identity of the vehicle so that action may be taken in the event he does not check back within a given time.

It is important to watch the occupants and their hands very carefully and to issue prompt orders to them (such as to place hands up, in sight) when good judgment dictates. The officer's gun hand should be free at all times and he should take licenses, etc., to read, with his non-shooting hand.

At night, when stopping suspicious cars, if the headlights of the police vehicle are placed on "high" beam and its spot light is on, directed on the rear window of the suspicious car, the illumination is an added safety measure. Suspicious cars should always be stopped near occupied premises, in a well lighted area when practicable.

PURSUIT: In pursuing any vehicle, officers should always anticipate that the pursued driver may attempt to force them off the road or otherwise terminate the pursuit.

Officers should be alert for attempts to damage the pursuing police car. A not-uncommon tactic is to stop and abandon the fleeing car around a short curve, or in dust clouds if pursuit is on a dirt road, with intent to cause a collision and radiator puncture of the police car, and to cause other injury to it and its driver. The pursued operator may also suddenly apply the brakes to force the police vehicle into collision with his rear, hoping to puncture its radiator and disable it.

A basic advantage of the officer in any pursuit is the officer's intimate knowledge of his patrol area. The determining factor in high-speed pursuit is the officer's ability to negotiate difficult streets and highways based on his knowledge of the area and the confidence this gives him. Officers should always familiarize themselves with the driving hazards and conditions in their assigned areas to avoid unnecessary risks. They should know every sharp curve, blind intersection, dangerous roadway or street, traffic control and other possible hazard in their area.

All pursuit is dangerous, as it may involve moving through traffic under emergency conditions and high speed. Before initiating pursuit, officers must weigh the hazards to determine if they outweigh the hazard created by the violator to be pursued. Officers are not exempted from a legal requirement to drive safely merely because they are in pursuit (V & T Sec. 1104, subd. d).

At the initiation of any pursuit, a basic duty is to obtain identification of the pursued vehicle, including plate number, year, make, model and color. Officers should train themselves to observe a complete plate number in one quick glance rather than attempting to read the numbers and letters one by one. A quick glance should suffice, after which the officer can "read" his mental image of the plate, if necessary. Headquarters should be advised by radio so that other patrols may be alerted and directed to assist if required. Headquarters should be advised when apprehension has been accomplished.

As much observation as possible should also be made of the driver, including sex, race, age, head covering, hair, type and color of clothing.

Siren and warning light should be used during pursuit in most instances. Officers should not rely on either siren or light to give them a right-of-way and will find that in many instances, neither appear to alert other drivers.

The siren pitch should be alternated for better effect rather than run continuously at top speed.

CLOSE PURSUIT: In any case where a peace officer may make an arrest without a warrant or issue a traffic summons to a person for a crime or traffic infraction committed in the officer's municipality or district, the officer may follow the person in continuous close pursuit to any part of the state and may make the arrest or issue the summons in any part of the state, if the continuous close pursuit was necessary to make the arrest or issue the summons (CCP Sec. 182-a).

INTERVIEWING DRIVERS: Every person operating a motor vehicle, motorcycle or trailer must, on demand of any peace officer, produce the certificate of registration or registration renewal stub for examination by the officer and must furnish any information necessary for the identification of the vehicle and its owner and all information required concerning his license to operate. If required, he must sign his name in the officer's presence as a further means of identification. Failure to produce a registration or renewal stub is prima facie evidence the vehicle or trailer is not registered (V & T Sec. 401, subd. 4).

Failure by an operator to exhibit his license (but not including the "record of convictions stub") to any peace officer is presumptive evidence that he is not licensed (V & T Sec. 501, subd. e).

In checking licenses and registrations, officers must continually train themselves to carefully read the information set out, rather than to merely look at the license, registration and other documents proffered by operators. The officer must take time to let the information "soak in" and be analyzed.

It is inadvisable for an officer to reach into a subject car, such as to turn off the ignition or take the ignition keys, unless all occupants are out of the car and under supervision. If the driver is in the car he may be instructed to remove the keys and drop them outside the car.

In asking for a license or registration the officer should require the driver to handle them separately. Officers should not remove such items from wallets, etc., offered by drivers.

In checking a driver of a suspicious or possibly stolen vehicle, officers should investigate the following:

1. Can operator give name of dealer shown on dealer's emblem on body or license plate frame?

2. Can operator give approximate speedometer reading or date or miles of last lubrication.

3. Are keys in the ignition or has the ignition switch been jumped under the dash or otherwise?

4. Can operator describe the contents of the trunk or glove compartment?

Officers should be observant of operator's wearing gloves in warm weather, soiled clothing or scraps of food in the car (indicating possibly living in car, and possible vagrant, tramp or fugitive), or quantities of household or other appliances (may be a salesman or a thief).

A rubber hose and can may indicate gasoline thefts, a knotted woman's stocking, a bandana or mask suggests a robbery or other unlawful purpose, and items such as loose change, candy and gum wrappers, cigarette cartons, check books, checkwriters, money wrappers, bank bags, certain tools, and toy guns are suggestive of various crimes.

Officers should observe whether drivers are nervous and confused when questioned. They should examine the license and compare its picture (if any) with the driver. Possible erasures, alterations, other irregularities in license should be looked for.

The descriptive data in license and registration should be carefully compared with the vehicle and the driver. A driver wearing sunglasses may do so to conceal his eye color.

Officers should be alert for a name switch or the use of a false name. A driver offering a license in the name of John Doe, for example, wearing a monogrammed belt, handkerchief, sport shirt, etc., should have the monogram "JD." The backs of watches and the inside of rings may show initials or engraving of similar value.

Keen observation will permit the officer to detect such wrong licenses by noting monograms with initials differing from the name on the license, or that the person offering the license or identification seems obviously of a racial background not suited to the name given.

If the driver is using a fraudulent, stolen, found or borrowed license, a few quick questions will likely determine that he does not know answers to the routine things listed on the license.

Often, in a case of switched licenses, the driver will memorize some of the data but will be too excited under questioning to tell the age in years correctly, or the birth date. The same is true of middle name, street number, date license was issued or is to expire, etc.

The person's signature should be obtained as a useful check and other identification may be required in a suspicious case. Officers should carefully watch drivers as they seek proof of identification from their wallet, pocket, etc. By so doing they may see parole or probation papers, clippings on crimes committed, stolen credit cards, unanswered traffic tickets, pawn tickets, business cards of lawyers and bondsmen and similar things which will be of value as to the identity and status of the driver. Officers should be alert to the possibility that the hand which reaches into a pocket for a wallet may come out holding a gun or other weapon.

Anyone may obtain license or registration blanks very easily. It is necessary for the officer to remove licenses or registrations from cellophane or plastic covers, envelopes, containers, etc., for careful visual inspection to determine whether they were in fact validly stamped by a proper issuing agency. For example, forged licenses or registrations have been confiscated where the person traced the state seal and validation through colored carbon paper onto a blank. Suspicious licenses should be checked by running a thumb or finger over the seal and stamp to determine whether it smears as readily as a carbon impression.

VEHICLE CHECKS: When a check is made of a vehicle, the contents and interior of the car should be noted. This observation may indicate the need for further inquiry or investigation.

1. A quantity of new household appliances may indicate that the driver is a salesman, but it may also indicate a burglary, larceny, or other contraband.

2. Soiled clothing or scraps of food may indicate living and sleeping in the vehicle, which suggests possible minor thefts.

3. A rubber hose and can suggest theft of gasoline.

4. A woman's stocking knotted, a bandana or a mask suggest robbery.

5. Items such as loose change, candy and gum wrappers, cigarette cartons, check books, check writing machines, money wrappers, bank deposit slips, bank bags, certain tools, and toy guns suggest other offenses.

6. Trucks transporting any type of contraband (slot machines, illicit alcohol, lottery tickets, stolen property, etc.) may load this material to the front of the truck and place legtimate freight to the rear.

7. There are many places in a car where weapons, narcotics, and other contraband, small in size, may be concealed. Areas of concealment commonly used include the trunk, spare tire, glove compartment; under the driver's seat; pockets of wearing apparel hanging or thrown over a seat; in the springs and on the tracks of the front seat; in back or on top of the radio or glove compartment; between the seat and seat back; in the air vents; behind the door panel; under the dashboard in the motor compartment, between radiator and front grille, welded or bolted attachments to and in the frame members underneath the car.

VEHICLES RECOVERED BY POLICE: No car should be released to an owner or agent of the owner until a cancellation of any teletype or other alarm sent out on it has been actually received by the department recovering the car.

When stolen cars are recovered after abandonment by a thief, a complete search of the car is required to locate any evidence which will tend to identify the thief. Care should be taken to process all logical parts of the vehicle in efforts to locate latent fingerprints of the thief, particularly on the steering wheel, front panel, rear view mirrors, and ash trays.

The owner should always be interviewed to determine what items located by search may pertain to the thief rather than the owner. Follow-up of any leads so developed, and neighborhood inquiry at the place where the car was stolen, are a necessary part of any stolen car case.

In all instances where a stolen car from outside New York is recovered the FBI should be immediately notified, in view of the apparent Federal violation.

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90. OBSTRUCTING GOVERNMENTAL ADMINISTRATION

Obstructing Governmental Administration is a crime based on old Penal Law prohibitions against Interference with Officers (old P.L. Sec. 196), Resisting Officer (old P.L. Sec. 1825), Resisting Public Officer in the Discharge of his Duty (old P.L. Sec. 1851), and others.

A person is guilty of Obstructing Governmental Administration who:

1. Intentionally:
   a. Obstructs, or
   b. Impairs, or
   c. Perverts
2. The administration of law, or
3. Any other Governmental function
4. By means of:
   a. Intimidation, or
   b. Physical force, or
   c. Interference, or
   d. Any independently unlawful act,

(P.L. Sec. 195.05).

A person is also guilty of Obstructing Governmental Administration who:

1. Intentionally prevents or attempts to prevent,

2. By means of:
   a. Intimidation, or
   b. Physical force, or
   c. Interference, or
   d. Any independently unlawful act,
3. A public servant
4. From performing an official function.

Obstructing Governmental Administration is a Class A misdemeanor.

INVESTIGATIONS

Under prior statutes, many court decisions turned on whether or not one charged with obstructing officers did so to resist an illegal search or seizure by the officers. If the officers' actions amounted to an illegal trespass, no violation was charged to the one resisting. The same rule will hold under the new Penal Law.

In all cases of Obstructing Governmental Administration involving police action, officers should consider (1) the authority for and validity of the officer's action, and (2) whether what the defendant did was in fact an obstruction, prevention, etc. Ordinarily the intent will be established by the circumstances and the thing done.

Thus, where an officer arrests a person without proper cause and makes a search of his person, vehicle or premises the one arrested would not be Obstructing Governmental Administration when he resisted the unlawful search (see Peo. vs. O'Connor, 257 NY 473). But if the officer is lawfully authorized to do what he did, the one resisting, interfering, preventing, etc., does violate the Obstructing Governmental Administration law (see Peo. vs. Fidler, 280 App. Div. 698).

Obstructing Governmental Administration covers a wide variety of possible crimes. It can include such different offenses as tripping an officer to prevent him from apprehending an offender, furnishing false information to the District Attorney as to the whereabouts of one's client who is wanted on a criminal charge or obstructing a highway to prevent some public work being accomplished. Under the broad elements of this statute a large variety of acts will be prosecutable and officers should remain continually alert to the possibilities inherent in this new law.

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91. OFFENSIVE EXHIBITIONS

The current law on offensive exhibitions was derived from Article 78 of the old Penal law, "Exhibitions," which covered knife throwing, shooting, life saving apparatus at bathing beaches, bicycle races, marthon dances, ball dodger and other "disgraceful" games, and booths in pool rooms. The new law restricts itself to public entertainments and amusements and covers much (but not all) of the ground of the old laws.

OFFENSIVE EXHIBITIONS: A person is guilty of Offensive Exhibition who:

1. Knowingly,
2. Produces, operates or manages, or
3. Furnishes premises for, or
4. In any way promotes or participates in,
5. Any exhibition,

6. In the nature of public entertainment or amusement, in which:

a. A person competes continuously without respite for a period of more than eight consecutive hours in a dance contest, bicycle race or other contest involving physical endurance (P.L. Sec. 245.05, subd. 1); or

b. A person is held up to ridicule or contempt by voluntarily submitting to indignities such as throwing of balls or other articles at his head or body (P.L. Sec. 245.05, subd. 2); or

c. A firearm is discharged or a knife, arrow or other sharp or dangerous instrument is thrown or propelled at or toward a person (P.L. Sec. 245.05, subd. 3); or

d. A person is projected or thrown for a considerable distance by a cannon or comparable device (P.L. Sec. 245.05, subd. 4).

Offensive Exhibition is a violation.

INVESTIGATIONS

The Offensive Exhibitions law makes marathon competitions over eight hours, "ball dodger" and similar human target carnival games, shooting or knife-throwing acts with human targets and acrobats propelled by cannon illegal acts which cannot be performed anywhere in the state. They are flatly illegal. No permits or licenses can be granted or exceptions made for them.

The officer's problem in these cases will consist primarily of (1) successful arrest of the real propietor in interest and (2) preservation of evidence of the offense. Still or motion pictures of the offending act can be utilized, where necessary, to preserve satisfactory evidence. The use of live witnesses recruited expressly to observe and testify as to the act will also be found a useful technique when support of the officer's testimony appears necessary.

It is axiomatic that no arrest can be made until the performance is either attempted or actually engaged in. No crime occurs until there is at least an attempt.

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92. OFFICIAL MISCONDUCT

The offense of Official Misconduct in the new Penal Law is a misdemeanor and includes within its broad elements a variety of crimes formerly spelled out in more narrow sections of the old Penal Law, such as Weighmaster Making False Entry of Weight of Canal Boat (old P.L. Sec. 461), Canal Officer Concealing Frauds upon the Revenue (old P. L. Sec. 462), Extortion Committed under Color of Official Right (old P.L. Sec. 854), Taking Fees for Services Not Rendered (old P.L. Sec. 1830), Neglecting or Refusing to Execute Process (old P.L. Sec. 1840), Neglect of Duty (old P.L. Sec. 1841), Misconduct in Executing Search Warrant (old P.L. Sec. 1847), Omission of Duty by Public Officer (old P.L. Sec. 1857), Auditing and Paying Fraudulent Claims (old P.L. Sec. 1863), Violations of Law by Public Officers (old P.L. Sec. 1866), Neglecting to Make Transcripts or Making False Certificates (old P.L. Sec. 1874), and others.

OFFICIAL MISCONDUCT: A public servant is guilty of official misconduct, when, with intent to obtain a benefit or to injure or deprive another person of a benefit:

1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized (P.L. Sec. 195.00, subd. 1); or

2. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office (P.L. Sec. 195.00, subd. 2).

Official Misconduct is a class A misdemeanor.

REWARDING OFFICIAL MISCONDUCT: A person is guilty of Rewarding Official Misconduct who:

1. Knowingly confers, or offers or agrees to confer,
2. Any benefit,
3. Upon any public servant,
4. For having violated his duty as a public servant (P.L. Sec. 200.20).

Rewarding Official Misconduct is a Class E felony.

BRIBERY, EXTORTION, COERCION DISTINGUISHED: A basic distinction between Official Misconduct and Bribery, Extortion or Coercion, is that Official Misconduct may be independently committed by the public servant without any other person being associated with him in the offense. In Bribery, Extortion or Coercion it is essential that there be another person to proffer or be solicited for the bribe, or to make the threat, etc.

INVESTIGATIONS

The crime of Official Misconduct may be committed by omission or commission. A licensing officer, for example, can violate this law by issuing a license to one not entitled, or by pocketing license fees instead of turning them over to the comptroller, county treasurer, etc., or by failing to issue a license to one who was entitled to it and had properly applied for it.

COMPLAINTS: In view of the broad terms of this law, the initial interview with the complainant should pin-point the exact position and sphere of duty of the public servant, as well as the specific act or failure to act which is alleged as constituting the violation. Only acts relating to the office of the public servant, or omissions to perform a duty of the office can be the basis for a violation under this statute. Thus, a licensing officer could not violate this law by engaging to "fix" an income tax charge (but could, of course, violate other criminal laws).

INTENT: In planning interviews and other investigation in this type of case, the officer must keep in mind that each element of the crime has to be proved beyond a reasonable doubt. In many instances it will be found easy to prove what was done by the public servant and the key problem will be proof of his intent to obtain a benefit or to injure another or to deprive another of a benefit. The usual intent is to benefit by receiving money.

PAY-OFFS: If a "pay-off" can be made, proof of the violation may be simplified. The pay-off should be in marked money, under police supervision as in any bribery, extortion, or coercion case.

OTHER INVESTIGATION: Open investigation should ordinarily be put off in this type of case until chance of a "pay-off" under police supervision has passed. Prior to that time any police inquiry may be relayed to the offender and thus could make further efforts to obtain proof impossible of success.

93. PARTY LINES

PARTY LINE: REFUSAL TO YIELD IN EMERGENCY: It is a Class B misdemeanor of Unlawfully Refusing to Yield a Party Line when, being informed that a party line is needed for an emergency call, a person refuses immediately to relinquish such line (P.L. Sec. 270.15 subd. 2).

A "Party Line" means a subscriber's line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number (P.L. Sec. 270.15 subd. 1-a).

An "Emergency Call" means a telephone call to a police or fire department, or for medical aid or ambulance service, necessitated by a situation in which human life or property is in jeopardy and prompt summoning of aid is essential (P.L. Sec. 270.15 subd. 1-b).

Cases involving a false statement that a telephone line was needed for an emergency call were formerly specifically covered in the old Penal Law section. They are not included in the new law. Harassment may be charged in such cases, if the facts permit.

TELEPHONE DIRECTORY TO CONTAIN CERTAIN NOTICE: A person, firm or corporation providing telephone service, which distributes or causes to be distributed in this state, copies of telephone directories without the required warning and explanation of unlawfully refusing to yield a party line is guilty of a Class A misdemeanor. Directories distributed solely for business advertising purposes, commonly known as classified directories, and directories distributed to the general public prior to September, 1967, are exceptions to this law (Genl. Bus. L. Sec. 336).

INVESTIGATIONS: In cases where a party has refused to relinquish a telephone line, establish:

1. the offender was informed of the fact that the line was needed for an emergency call.

2. the call was in fact an emergency call under the statutory provisions.

3. identify the offender.

Where the offender is known to the complainant, have the complainant sign an information before a magistrate, and obtain a warrant.

Where the identity of the offender is not known, the telephone company can identify other subscribers on the party line.

1. Pinpoint time of call and determine who had access and could be the offender. Check with family and neighbors.

2. A factor of identification of offender is always present. If the complainant does not know the offender, try to arrange for telephone confrontation of the complainant and each possible offender, for identification purposes.

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94. PAWNBROKERS

WHO IS A PAWNBROKER: The word "pawnbroker" is defined by law to include any person, partnership or corporation:

1. Lending money on deposit or pledge of personal property other than securities or printed evidence of indebtedness; or

2. Dealing in the purchasing of personal property on condition of selling back at a stipulated price; or

3. Designated or doing business as furniture storage warehousemen, and loaning and advancing money upon goods, wares or merchandise pledged or deposited as collateral security (Genl. Bus. L. Sec. 52).

PAWNBROKER LICENSES: No one may carry on the business of pawnbroker without having first obtained a license from the mayor of the city or licensing authority of the local governing body where the business is to be carried on.

1. The Town Board of a town may license pawnbrokers (Town L. Sec. 136, subd. 1, Sec. 137).

2. The Village Board of a village may license pawnbrokers (Vill. L. Sec. 89, subd. 52).

3. Licenses in the City of New York are issued by the Commissioner of Licenses (Genl. Bus. L. Sec. 40).

4. Licenses are issued to citizens of good character.

a. Cost: $500 per year in cities with over 1 million population; not to exceed $250 in other areas.

b. The licensee must file a bond of $10,000 with the licensing authority, conditioned on the faithful performance of duties and obligations of the business (Genl. Bus. L. Sec. 41).

5. Licenses are issued for one year.

6. Licensing authority has full power to revoke license for the willful violation of any provision of pawnbroker section (Genl. Bus. L. Sec. 41).

SECONDHAND BUSINESS; PLEDGE OF WEAPONS: No pawnbroker is permitted to purchase, directly or indirectly, any secondhand furniture, metals, clothing or other article or thing whatever, offered to him as a pawn or pledge. It is also unlawful for any pawnbroker to engage in any secondhand business, or to receive in pawn or pledge any instrument or weapon mentioned in the first three subdivisions of Penal Law Section 265.00 (machine-guns, silencers and concealable firearms) (Gen. Bus. L. Sec. 47). Violations are Unclassified misdemeanors.

STOLEN PROPERTY: A pawnbroker or anyone in the business of buying, selling or otherwise dealing in property who possesses stolen property is presumed to know that such property was stolen if he obtained it without having ascertained by reasonable inquiry that the person from whom he obtained it had a legal right to possess it (P.L. Sec. 165.55, subd. 2).

MISAPPLICATION OF PROPERTY: A person is guilty of misapplication of property when, knowingly possessing personal property of another pursuant to an agreement that the same will be returned to the owner at a future time, he lends, leases, pledges, or pawns such property without the consent of the owner and in such manner as to create a risk that the owner will not be able to recover it or will suffer a pecuniary loss. This is a Class A misdemeanor (P.L. Sec. 165.00).

PAWNBROKER DEALING WITH A CHILD: No pawnbroker or person in the employ of a pawnbroker can receive or purchase anything, or make any loan or advance, or permit to be loaned or advanced to any child actually or apparently under the age of sixteen years, any money, or in any manner directly or indirectly receive any goods, chattels, wares or merchandise from any such child in pledge for loans made or to be made to it or to any other person or otherwise, howsoever (Genl. Bus. L. Sec. 47-a).

It is no defense to a prosecution for violation of this section that in the transaction the child acted as the agent or representative of another, or that the defendant dealt with the child as the agent or representative of another (Genl. Bus. L. Sec. 47-a).

PAWNBROKERS' BOOKS: (Sec. 43 Genl. Bus. L.) Every pawnbroker must keep a book in writing with entries made at time of pawn, including description of the things pawned, the amount of money loaned, time of pledging, rate of interest to be paid on the loan, and the name and address of the person pawning the articles (Genl. Bus. L. Sec. 43). The book must be open at all reasonable times to the inspection of the mayor, criminal courts, judges, superintendents, inspectors and captains of police and police justices or any person duly authorized in writing for that purpose by any of them, and who shall exhibit such written authority to such pawnbrokers (Genl. Bus. L. Sec. 45).

1. Books must be retained for six years (Sec. 45 Genl. Bus. L.).

SALE OF UNCLAIMED PLEDGES: No pawn or pledge can be sold prior to six months from the date pledged. In New York City, no pawn or pledge may be sold prior to one year from the date pledged, and after due notice to the pledgor. All sales must be at public auction by licensed auctioneers (Sec. 48, Genl. Bus. L.).

PAWNBROKER'S CHARGES: No pawnbroker may ask or receive any rate of interest greater than 3% per month or fraction of a month (for the first six months) and greater than 2% per month thereafter, for loans of $100 or less.

On loans over $100, the maximum rates are 2% per month for the first six months and 1% per month thereafter.

A minimum interest charge of 25¢ per month may be made on any loan. No interest at all may be charged after 15 months (Genl. Bus. L. Sec. 46).

PENALTIES FOR VIOLATIONS OF PAWNBROKER LAWS: Any person, partnership, corporation, company or association who or which wilfully violates any of the General Business Law provisions relating to pawnbrokers is guilty of an Unclassified misdemeanor, punishable by fine not more than $500, imprisonment not over one year or both (Genl. Bus. L. Sec. 54). In addition, the mayor or local licensing authority may suspend licenses and impose fines (Genl. Bus. L. Sec. 51).

INVESTIGATIONS

Officers who handle investigations of theft of valuable personal property should develop a working relationship with the pawnbrokers in their jurisdictions. In some municipalities pawnbrokers are required to inform police of certain categories of things received in pawn on a regular basis. Officers should be aware of their own local ordinances or regulations in this regard.

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95. PEDDLERS

A peddler is one who goes from place to place selling small articles, an itinerant trader, selling at retail.

LICENSING AND REGULATING PEDDLING: A Town Board may provide by ordinance for licensing and other regulating of peddling, (except peddling of meats, fish, fruit and farm produce by farmers and persons who produce such commodities.) (Town Law Sec. 136).

The Board of Trustees of a village may by ordinance prohibit (Village Law Sec. 91) peddling without a license within the village (except peddling of meats, fish, fruit and farm produce by farmers and persons who produce such commodities). Also, no such ordinance can prohibit peddling by an honorably discharged member of the armed forces of the United States

who is crippled as a result of injuries received in the armed forces, or is the holder of a license granted pursuant to section 32 of the General Business Law.

Cities may, by ordinance, require anyone to be licensed to peddle (Genl. City L. Sec. 20, subd. 13). No municipality may have any ordinance which in any manner prevents a veteran who is crippled by injuries received in service from peddling, with a hand-driven vehicle or no vehicle, on the streets of any municipality (Genl. Bus. L. Sec. 35).

LICENSES TO VETERANS AND WIDOWS (General Business Law): Every honorably discharged member of the armed forces of the United States who is a war veteran or served overseas and the widows of such veterans, when residents of New York, are entitled to a free license to "hawk, peddle, vend and sell" goods, wares or merchandise or to solicit trade on the streets and highways of their county of residence. The license must be obtained from the County Clerk. It is not transferable and is not valid for the State Fair Grounds. (Genl. Bus. L. Sec. 32).

Any discharge of a veteran, other than a dishonorable discharge, should be accepted by a County Clerk for the purpose of Section 32 of the General Business Law (1964, Op. Atty. Gen. page 149). Honorable discharges of Veterans who served during the Viet Nam war should be accepted by County Clerks under Section 32 (1966, Op. Atty. Gen., March 18).

Any city, village or town may, by local ordinance, require a licensed veteran or veteran's widow to file a further application with the local municipality for a local license to peddle and may forbid veterans or veteran's widows from peddling without a local license (Genl. Bus. L. Sec. 32, subd. 8).

If any person uses a dog for drawing or helping to draw a vehicle for peddling or any business purpose in a city or incorporated village, he must obtain a license to do so from the mayor or president of the village and must have the license number and owner's residence painted on the vehicle (Genl. Bus. L. Sec. 36).

No ordinance may prohibit, or require licensing for, the peddling of farm products (except hay and straw) when peddling by the farmer or his servants or employees (Genl. Munic. L. Sec. 81).

LOITERING (P.L. Sec. 240.35, sub. 7 — violation): It is a violation for any person to loiter or remain in any transportation facility, unless specifically authorized to do so, for the purpose of soliciting or engaging in any business, trade or commercial transactions involving the sale of merchandise or services (P.L. Sec. 240.35, subd 7). A transportation facility means any conveyance, premises or place used for or in connection with public passenger transportation (P.L. Sec. 240.00, subd. 2).

CHILDREN UNDER 16: It is a Class A misdemeanor to employ children under 16 in peddling. This law applies only outside cities with more than one million population. (Educ. L. Sec. 3216-C).

PEDDLING FORBIDDEN: It is a Class A misdemeanor to peddle spectacles, eyeglasses or lenses or to practice optometry or ophthalmic dispensing from house to house or on the street (Educ. L. Sec. 7109). All prosecutions are required to be by the Attorney General. Courts of Special Sessions have jurisdiction (Educ. L. Sec. 7111, subd. 64).

The commanding officer of any unit of the organized militia performing military duty in or at any armory, arsenal, camp, range, base or other facility of the organized militia or any other place may prohibit peddling within limits he may prescribe up to one mile from the military place (Mil. L. Sec. 239, subd. 2).

PEDDLING ALCOHOLIC BEVERAGES: It is a Class A misdemeanor for a licensee or any of his or its agents, servants or employees to peddle any liquor and/or wine from house to house by means of a truck or otherwise, where the sale is consumated and delivery made concurrently at the residence or place of business of a consumer. This does not prohibit delivery by a licensee to consumers, pursuant to sales made at the place of business of the licensee (Secs. 102, subd. 4, 130, ABC).

It is a Class A misdemeanor for a licensee to employ any canvasser or solicitor for the purpose of receiving an order from a consumer for any liquor and/or wine at the residence or place of business of such consumer, or to accept an order so solicited (except wholesalers soliciting orders from licensees) (Secs. 102, subd. 5, 130, ABC).

No retail licensee of liquor and/or wine for off-premises consumption may sell or deliver them to any person with knowledge or reason to believe that the person to whom sold or delivered has acquired them for the purpose of peddling them from place to place, or of selling or giving them away in violation of the ABC Law or rules and regulations of the Liquor Authority (Sec. 105, subd. 12, ABC). Offenses are Class A misdemeanors.

INVESTIGATION

Officers must be aware of their local ordinances as to peddling. If there is no local prohibition against peddling, no arrest may be made for ordinary peddling without a license.

In many instances, the offense occurs out of the presence of the officer. In such cases he may have the complainant or other person who witnessed the peddling make the arrest, assisting such person in doing so, or he must secure a warrant.

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96. PERJURY AND SWORN FALSE STATEMENTS

PERJURY IN THE THIRD DEGREE: A person is guilty of Perjury in the Third Degree when he swears falsely (P.L. Sec. 210.05).

Perjury in the Third Degree is a class A misdemeanor.

PERJURY IN THE SECOND DEGREE: A person is guilty of Perjury in the Second Degree when he swears falsely, and his false statement is:

1. Made in a subscribed written instrument for which an oath is required by law; and

2. Made with intent to mislead a public servant in the performance of his official functions; and

3. Material to the action, proceeding or matter involved (P.L. Sec. 210.10).

Perjury in the Second Degree is a Class E felony.

PERJURY IN THE FIRST DEGREE: A person is guilty of Perjury in the First Degree when he swears falsely, and when his false statement (a) consists of testimony, and (b) is material to the action, proceeding or matter in which it is made (P.L. Sec. 210.15).

Perjury in the First Degree is a Class D felony.

DEFINITIONS: To "swear" means to state under oath (P.L. Sec. 210.00, subd. 2). "Oath" includes making an affirmation and every other method authorized by law of attesting to the truth of that which is stated or sworn to (P.L. Sec. 210.00, subd. 1).

"Testimony" means an oral statement made under oath in a proceeding before any court, body, agency, public servant or other person authorized by law to conduct such proceeding and to administer the oath or cause it to be administered (P.L. Sec. 210.00, subd. 3).

"Oath required by law." An affidavit, deposition or other subscribed written instrument is one for which an "oath is required by law" when without an oath or swearing thereto it does not or would not, according to statute or appropriate regulatory provisions, have legal efficacy in a court of law or before any public or governmental body, agency or public servant to whom it is or might be submitted (P.L. Sec. 210.00, subd. 4).

"Swear falsely." A person "swears falsely" when he intentionally makes a false statement which he does not believe to be true (a) while giving testimony, or (b) under oath in a subscribed written instrument (P.L. Sec. 210.00, subd. 5).

A false swearing in a subscribed written instrument is not deemed complete until the instrument is delivered by its subscriber, or by someone acting in his behalf, to another person with the intent that it be uttered or published as true (P.L. Sec. 210.00, subd. 5).

"Attesting officer" means any notary public or other person authorized by law to administer oaths in connection with affidavits, depositions and other subscribed written instruments, and to certify that the subscriber of such an instrument has appeared before him and has sworn to the truth of the contents thereof (P.L. Sec. 210.00, subd. 6).

"Jurat" means a clause wherein an attesting officer certifies, among other matters, that the subscriber has appeared before him and sworn to the truth of the contents thereof (P.L. Sec. 210.00, subd. 7).

MAKING AN APPARENTLY SWORN FALSE STATEMENT IN THE SECOND DEGREE: A person is guilty of Making an Apparently Sworn False Statement in the Second Degree when:

1. He subscribes a written instrument knowing that it contains a statement which is in fact false and which he does not believe to be true and

2. He intends or believes that such instrument will be uttered or delivered with a jurat affixed thereto, and

3. Such instrument is uttered or delivered with a jurat affixed thereto (P.L. Sec. 210.35).

Making an Apparently Sworn False Statement in the Second Degree is a Class A misdemeanor.

MAKING AN APPARENTLY SWORN FALSE STATEMENT IN THE FIRST DEGREE: A person is guilty of Making an Apparently Sworn False Statement in the First Degree when he commits the crime of Making an Apparently Sworn False Statement in the Second Degree, and

1. the written instrument involved is one for which an oath is required by law, and

2. the false statement contained therein is made with intent to mislead a public servant in the performance of his official functions, and

3. such false statement is material to the action, proceeding or matter involved (P.L. Sec. 210.40).

Making an Apparently Sworn False Statement in the First Degree is a Class E felony.

MAKING A PUNISHABLE FALSE WRITTEN STATEMENT: A person is guilty of Making a Punishable False Written Statement when

he knowingly makes a false statement, which he does not believe to be true, in a written instrument bearing a legally authorized form notice to the effect that false statements made therein are punishable (P.L. Sec. 210.45).

Making a Punishable False Written Statement is a Class A misdemeanor.

CORROBORATION: In any prosecution for Perjury (except a prosecution based upon inconsistent statements), or in any prosecution for Making an Apparently Sworn False Statement, or Making a Punishable False Written Statement, falsity of a statement *cannot* be established by the uncorroborated testimony of a single witness (P.L. Sec. 210.50).

DEFENSE TO PERJURY: In any prosecuton for perjury, it is an affirmative defense that the defendant retracted his false statement in the course of the proceeding in which it was made, before such false statement substantially affected the proceeding, and before it became manifest that its falsity was or would be exposed (P.L. Sec. 210.25).

An affirmative defense is one which the defendant must establish by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

LACK OF COMPETENCE OR MISTAKE: It is no defense to a prosecution for perjury that:

1. The defendant was not competent to make the false statement alleged (P.L. Sec. 210.30, subd. D); or

2. The defendant mistakenly believed the false statement to be immaterial (P.L. Sec. 210.30, subd. 2).

IRREGULARITIES: It is no defense to a prosecution for perjury that:

1. The oath was administered in an irregular manner; or

2. The oath was taken in an irregular manner; or

3. The authority or jurisdiction of the attesting officer who administered the oath was defective, if the defect was excusable under any statute or rule of law (P.L. Sec. 210.30, subd. 3).

CONFLICTING SWORN STATEMENTS: When a person makes two statements under oath which are inconsistent to the degree that one of them is necessarily false, and the circumstances are such that each statement, if false, is perjuriously so, and each statement was made within the jurisdiction of this state and within the period of the statute of limitations for the crime charged, the inability of the prosecution to establish specifically which of the two statements is the false one does not preclude a prosecution for perjury, and the prosecution may be conducted as follows:

1. The indictment or information may set forth the two statements and, *without designating either,* charge that one of them is false and perjuriously made.

2. The falsity of one or the other of the two statements may be established by proof, or by a showing of their irreconcilable inconsistency.

3. The highest degree of perjury of which the defendant in such cases may be convicted is determined by hypothetically assuming each statement to be false and perjurious. If under such circumstances perjury of the same degree would be established by the making of each statement, the defendant may be convicted of that degree at most. If perjury of different degrees would be established by the making of the two statements, the defendant may only be convicted of the lesser degree (P.L. Sec. 210.20).

INVESTIGATIONS

Perjury and false statement violations are not confined to judicial proceedings. These crimes may be committed on any occasion when an oath is authorized or required. They can thus be committed on such occasions as departmental trials, in documents submitted in civil cases (including civil service applications where an oath is required by law), by jurors swearing falsely to their qualifications or lack thereof, by false swearing before election inspectors at polling places, and so on.

Under the old Penal Law, inducing another to commit Perjury was called Subornation of Perjury (old P.L. Sec. 1632, 1632-a).

Inducing another to commit Perjury makes one guilty of Perjury itself, under Section 20.00 of the current Penal Law. Section 20.00 provides that when one person engages in conduct constituting an offense another person is criminally liable for that conduct when, acting with the mental culpability required for the commission of the offense, he solicits, requests, commands, importunes, or intentionally aids the offender to engage in the conduct.

A basic consideration in Perjury or sworn or punishable false statement investigations is that the violation cannot be established by the testimony of one witness (except where prosecution is for two conflicting statements).

The first step in a Perjury investigation is determination of the exact words of testimony or obtaining exact copies of the false statements which are the basis for the complaint. The next step is establishing that an oath was administered, and all pertinent circumstances relating to the propriety and correctness of the oath and that it was authorized or required by law. Where the oath was administered in connection with testimony in a criminal trial, the propriety and correctness of the oath are clear.

Perjury cannot be committed unknowingly or unintentionally. It is basic, by definition in the law, that the offender must intentionally make a false statement which he doesn't believe to be true. A key element of proof, therefore, always is that the falsity was wilful and knowing, that it was intended and was not inadvertent. Such proof is ordinarily found in the circumstances of the case. Specific and direct proof of intent, such as by an admission, may not be obtainable.

When possible, all information from prospective witnesses should be obtainable in the form of signed statements.

Care must be taken that all necessary Scientific Laboratory document examinations are conducted in cases where a document is either the thing by which the crime was committed or is evidence of the perjurious nature of the testimony or the falsity of the document. Examination for alterations, obliterations, erasures, age and other pertinent characteristics should be considered, depending on the circumstances of the case. In addition, proof of identity by handwriting, typewriting or printing comparisons may be necessary, depending on the facts.

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97. PHYSICIANS AND DENTISTS

PHYSICIANS: Licenses to practice medicine are granted by the Department of Education on certification of the State Board of Medical Examiners. To take such examination, the candidate must have completed four years of medical school and/or other background required by the rules of the Education Department (Educ. L. Secs. 6506-6509). All licensed physicians must re-register with the Department biennially, in the odd years (Educ. L. Sec. 6510).

The Department also issues licenses to persons to practice physiotherapy and to practice osteopathy.

VIOLATIONS: It is an Unclassified misdemeanor to practice medicine, physiotherapy or osteopathy without a license (Educ. L. Sec. 6513). The display of a sign or advertisement bearing one's name as a practitioner of medicine, physiotherapy or osteopathy is presumptive evidence of the practice of medicine (Educ. L. Sec. 6513, subd. 6).

WHAT PRACTICE OF MEDICINE INCLUDES: The practice of medicine includes holding one's self out as being able to diagnose, treat, operate on or prescribe for any human disease, pain, injury, deformity or physical condition and either offering or undertaking (by any means or method) to diagnose, treat, operate on or prescribe for any human disease, pain, injury, deformity or physical condition.

ACCIDENTS, OTHER EMERGENCIES: A licensed physician or surgeon who (1) voluntarily, and (2) without expectation of monetary compensation, renders first aid or emergency treatment at the scene of an accident or other emergency to a person who is unconscious, or ill or injured, is not liable for damages for injuries alleged to have been sustained or for death claimed to have occurred because of an act or omission on the part of the doctor in giving first aid or emergency treatment. The doctor is liable only if gross negligence can be proven (Educ. L. Sec. 6513, subd. 10).

INTOXICATION OF DOCTOR: Acts performed by a physician or surgeon while intoxicated, which result in the death of the person treated, could be Manslaughter in the Second Degree. Voluntary intoxication could permit finding that the physician "recklessly" caused the death (P.L. Sec. 125.15, subd. 2; 15.05, subd. 3).

If the intoxicated act endangers the life of the person or seriously affects his health, but there is no death, the physician may be guilty of Assault or Reckless Endangerment. Voluntary intoxication may constitute the recklessness required for these crimes.

WOUNDED PERSONS TREATED: It is a Class A misdemeanor for any physician attending or treating certain wound cases to fail to report them at once to the police authorities of the municipality.

The cases which must be reported are: (1) every case of a bullet or gunshot wound, (2) every case of a powder burn or any other injury arising from or caused by discharge of a firearm, (3) every case of a wound likely to or which may result in death, when actually or apparently inflicted by a knife, icepick or any other sharp or pointed instrument (P.L. Sec. 265.25).

DENTISTS: It is an Unclassified misdemeanor to practice dentistry without a license (Educ. L. Sec. 6612, subd. 1). Licenses are granted by the Department of Education on certification of the State Board of Dental Examiners, after examination, to those having the required qualifications, including graduation from a 4 year dental school, or from medical school plus 3 years of dental school, or having been licensed to practice in another state or country (Educ. L. Secs. 6608, 6609). All licensed dentists must re-register with the Department of Education every 2 years in the even years (Educ. L. Sec. 6610).

The Department also issues licenses to persons to act as Dental Hygienists and they are permitted only to remove lime deposits, etc., from the exposed surfaces of the teeth, under the general direction or supervision of a licensed dentist (Educ. L. Sec. 6614, subd. 5).

WHAT PRACTICE OF DENTISTRY INCLUDES: A person practices dentistry who holds himself out as being able to diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity or

physical condition of human teeth, alveolar process (the parts of the upper and lower jaw including the teeth sockets), gums or jaws and adjacent tissues and who shall either offer or undertake by any means or method to diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity or physical condition of the same (Educ. L. Sec. 6601, subd. 3).

It is also practicing dentistry to directly or indirectly by mail, carrier, personal agent or any other method, furnish, supply, construct, reproduce or repair prosthetic dentures, bridges, appliances or other structures to be used and worn as substitutes for natural teeth, or to place such substitutes in the mouth and or adjust the same, except on the written dental prescription of a duly licensed and registered dentist and by the use of impressions or casts made by a duly licensed and registered dentist (Educ. L. Sec. 6601, subd. 3).

SPECIAL VIOLATIONS: Section 6612 of the Education Law specifies certain additional offenses in respect to required display of dentist's name, display of name by dentists' chairs when more than one chair is used, preparation and filing of prescriptions, employing unlicensed persons, dealing in alleged degrees and licenses, using another's name to practice, assuming unauthorized degrees, personating another at examinations, etc.

ADVERTISING: Persons engaged in the dental business relating to dentures and bridges are forbidden to advertise on radio or television or in any publication or newspaper except in professional and trade publications. They are forbidden to directly solicit the patronage of the general public for any dental service, material or appliance. Violations are Class A misdemeanors (Genl. Bus. L. Sec. 396, subd. c).

INVESTIGATIONS

The Department of Education has investigators who are specialists in this type of case and their cooperation should be sought in the early stages of any dentistry case. They may be contacted by telephone or mail at the Division of Professional Conduct, Department of Education, New York City (Manhattan).

Full details should be obtained from any complainant, including name and address of subject, date or dates of illicit activity and specific details of work done or things dispensed.

DOCTORS' AND DENTISTS' RECORDS: Unless the patient waives the privilege, a doctor or dentist may not disclose any information which he acquired in attending a patient in a professional capacity, except that the doctor or dentist is required to disclose information necessary for identification of a patient and information indicating that a patient under the age of 16 has been the victim of a crime (CPLR Sec. 4504, subd. a, b).

INJURIES TO CHILDREN UNDER 16: Doctors and dentists are required by the Social Welfare Law (Sec. 383-b) to make a report whenever they have reasonable cause to suspect that a child under 16 who has come before them for examination, care or treatment has had serious physical injury inflicted other than by accident, or whose condition gives any indication of serious abuse or maltreatment. The report must be oral, followed by a written report within 48 hours. It must be made to the public welfare official of the city or county, except that if the doctor or dentist is acting on the staff of a hospital or similar institution at the time he or she sees the child, the report must be made to the head of the institution, who in turn is required to report. Wilful failure to report when required is a Class A misdemeanor (Soc. Welf. L. Sec. 389, P.L. Sec. 55.10, subd. 2).

JURISDICTION AND PROSECUTION. Courts of Special Sessions have jurisdiction over all misdemeanors concerning physicians and dentists but prosecutions are required to be by the Attorney General (Educ. L. Sec. 6513, subd. 5-a,b; 6612, subd. 10-a).

98. PRIVATE INVESTIGATORS

Anyone engaging in business as a private investigator, or a watch, guard or patrol agency, must be licensed by the Department of State. This requirement does not include the business of reporting on the financial rating and credit responsibility of individuals or firms, or insurance adjusters or corporations authorized to operate a central burglar or fire alarm protection business (Genl. Bus. L. Sec. 70, 83).

The Department of State issues a pocket identification card and a license to licensed persons. The card carries their photograph, name and address. It is an Unclassified misdemeanor for a licensee to permit another person to use such card, or for any unlicensed person to use such card. Licenses must always be prominently displayed in the licensee's office.

Formerly, the Department of State also issued a badge or shield — this is no longer permitted and the law currently forbids and makes it an Unclassified misdemeanor for a licensee to possess or show a badge or shield. As an exception to the law, personnel performing watch, guard or patrol duties may wear a metal or woven insignia on their outer clothing. (Genl. Bus. L. Sec. 80, 84).

It is unlawful for any licensee to make any statement which would reasonably cause another person to believe the licensee is a police officer or official investigator of the state or of any political subdivision of the state (Genl. Bus. L. Sec. 84).

INVESTIGATIONS

The General Business Law specifically calls for enforcement of this law by the Department of State and requires that the Attorney General shall prosecute all criminal violations. The Secretary of State has the statutory authority to investigate complaints and to subpoena any persons or the books and records of the licensed agencies, as necessary (Genl. Bus L. Secs. 73, 85, 87).

Complaints should be promptly reported to the Department of State. In taking complaints, identity of offender is of primary importance. Officers should be certain to obtain not only the alleged identity of the offender but also a detailed physical description, together with full details of the action complained of, including time, place, words and acts believed in violation, and case or activity concerned, if known to the complainant. Where possible, it is recommended that complaints be reduced to signed statements.

99. PROSTITUTION

The new Penal Law has created the specific crimes of "Prostitution" and "Patronizing a Prostitute" and has realigned the former Penal Law provisions relating to prostitution activities.

PROSTITUTION: A person is guilty of prostitution who:

1. Engages or agrees or offers to engage,
2. In sexual conduct,

3. With another person,
4. In return for a fee (P.L. Sec. 230.00).

Prostitution is a violation.

PATRONIZING A PROSTITUTE: A person is guilty of patronizing a prostitute who:

1. Pursuant to a prior understanding,
2. Pays a fee to another person,
3. As compensation for such person (or a third person) having engaged in sexual conduct with him (P.L. Sec. 230.05, subd. 1).

A person is also guilty of Patronizing a Prostitute who:

1. Pays or agrees to pay a fee,
2. To another person,
3. Pursuant to an understanding or agreement that in return for the fee,
4. Such person or a third person will engage in sexual conduct with him (P.L. Sec. 230.05, subd. 2).

Patronizing a Prostitute includes a soliciting offense and one is guilty of patronizing a prostitute who:

1. Solicits or requests,
2. Another person
3. To engage in sexual conduct with him,
4. In return for a fee (P.L. Sec. 23.05, subd. 3).

Patronizing a Prostitute is a violation.

SEXUAL CONDUCT AND SEX OF OFFENDERS: Conduct is defined in the Penal Law as any act or omission and its accompanying mental state (P.L. Sec. 15.00, subd. 4). The word sexual is not specifically defined in the law and so has its usual meaning. Sexual conduct is thus not restricted merely to sexual intercourse between male and female.

In any prosecution for either Prostitution or Patronizing a Prostitute, the sex of the two parties or prospective parties to the sexual conduct is immaterial and it is no defense that they were both of the same sex (P.L. Sec. 230.10, subd. 1).

It is also no defense that the person who received, agreed to receive or solicited was a male and the person who paid or agreed or offered to pay the fee was a female (P.L. Sec. 230.10, subd. 2). A prostitute in other words, can now be either male or female.

PROMOTING PROSTITUTION IN THE THIRD DEGREE: A person is guilty of Promoting Prostitution in the Third Degree who:

1. Knowingly
2. Advances prostitution, or
3. Profits from prostitution (P.L. Sec. 230.20).

Promoting Prostitution in the Third Degree is a Class A misdemeanor.

ADVANCES PROSTITUTION: A person advances prostitution when:

1. Acting *other than* as a prostitute or a patron of a prostitute,
2. He knowingly:
   a. Causes (or aids) a person to commit or to engage in prostitution, or
   b. Procures or solicits patrons for prostitution, or
   c. Provides persons or premises for prostitution purposes, or

d. Operates or assists in the operation of:
(1) A house of prostitution, or
(2) A prostitution enterprise, or
e. Engages in any other conduct designed to institute, aid or facilitate:
(1) An act of prostitution, or
(2) An enterprise of prostitution (P.L. Sec. 230.15, subd. 1).

PROFITS FROM PROSTITUTION: A person profits from prostitution when:

1. Acting *other than* as a prostitute receiving compensation for personally rendered prostitution services,
2. He accepts or receives money or other property,
3. Pursuant to an agreement or understanding with any person,
4. Whereby he participates or is to participate in the proceeds of prostitution activity (P.L. Sec. 230.15, subd. 2).

PROMOTING PROSTITUTION IN THE SECOND DEGREE: A person is guilty of Promoting Prostitution in the Second Degree who:

1. Knowingly,
2. Advances or profits from prostitution by:
a. Managing, or
b. Supervising, or
c. Controlling or owning (either alone or in association with others),
d. Any:
(1) House of Prostitution, or
(2) Prostitution business involving prostitution activity by two or more prostitutes, or
(3) Prostitution enterprise involving prostitution activity by two or more prostitutes (P.L. Sec. 230.25, subd. 1).

It is also Promoting Prostitution in the Second Degree to knowingly advance or profit from prostitution of any person less than 19 years old (P.L. Sec. 230.25, subd. 2).

Promoting Prostitution in the Second Degree is a Class D felony.

PROMOTING PROSTITUTION IN THE FIRST DEGREE: A person is guilty of Promoting Prostitution in the First Degree who:

1. Knowingly advances prostitution by compelling a person by force or intimidation to engage in prostitution, or
2. Knowingly profits from another's compelling a person by force or intimidation to engage in prostitution (P.L. Sec. 230.30, subd. 1), or
3. Knowingly advances prostitution of a person less than 16 years old, or
4. Knowingly profits from prostitution of a person less than 16 years old (P.L. Sec. 230.30, subd. 2).

Promoting Prostitution in the First Degree is a Class C felony.

WHEN CORROBORATION IS REQUIRED: A person cannot be convicted of promoting prostitution or of an attempt to commit such a crime solely on the uncorroborated testimony of a person whose prostitution activity he is alleged to have advanced or attempted to advance, or from whose prostitution activity he is alleged to have profited or attempted to profit (P.L. Sec. 230.35).

As a practical matter, many such prosecutions do rely on testimony of the prostitute involved. If there is more than one prostitute, each can

corroborate the other (Peo. vs. Guardino 290, N.Y. 749). If there is only one, additional evidence tending to establish the crime will be needed. If a solitary witness is not the prostitute involved, the law does not specifically require corroboration of such witness, although to establish guilt beyond a reasonable doubt might, merely as a matter of good proof, require additional evidence.

PERMITTING PROSTITUTION: A person is guilty of Permitting Prostitution who:

1. Having possession or control of premises,
2. Which he knows are being used for prostitution purposes,
3. Fails to make reasonable effort to:
   a. Halt such use, or
   b. Abate such use (P.L. Sec. 230.40).

Permitting Prostitution is a Class B misdemeanor.

PROSTITUTION — MULTIPLE DWELLINGS: The Multiple Dwelling Law applies to Buffalo and New York City and may apply to any other city, town or village which desires to adopt it by local law or ordinance (Mult. Dw. L. Sec. 3). A multiple dwelling is one occupied as the residence or home of 3 or more families living independently of each other (Mult. Dw. L. Sec. 4, subd. 7). Officers should know whether the Multiple Dwelling Law has been made applicable to their own jurisdiction, since if it has been, the part adopted must include the law relating to prostitution in connection with multiple dwellings (Mult. Dw. L. Sec. 3, subd. 2).

A multiple dwelling is subject to a penalty of $1000 if it or any part of it is used as a house of prostitution or assignation with the permission of the owner. This penalty is a lien on the property (Mult. Dw. L. Sec. 351). If such use is with permission of a lessee or his agent, the owner can recover the premises by a summary proceeding. (Mult. Dw. L. Sec. 352).

A multiple dwelling is deemed to have been used as a house of prostitution or assignation, with the permission of the owner, (and to be subject to the $1000 fine) if summary proceedings to terminate the lease and recover the premises are not begun within five days after notice of unlawful use is served by the municipal department responsible for administering multiple dwelling laws and ordinances. If they are commenced they must be diligently prosecuted in good faith (Mult. Dw. L. Sec. 353, subd. 1).

Such a dwelling is also deemed to have been used as a house of prostitution or assignation with the permission of the owner if there are two or more convictions for activities in it within a period of six months under Penal Law Sections 230.00 (Prostitution), 230.25 (Promoting Prostitution in the Second Degree), or 230.40 (Permitting Prostitution) (Mult. Dw. L. Sec. 353, subd. 2).

VENEREAL DISEASE CONTROL: The common venereal diseases are gonnorrhea, syphilis and chancroid (also called soft chancre or non-syphilitic chancre). They are diseases transmitted by "venery", which is a name for sexual intercourse. There are other venereal diseases which do not occur frequently. All are covered by the Public Health Law.

Whenever a county, city, town, village or district Health Officer, state or local, or a county Commissioner of Health has reasonable grounds to believe that any person within his jurisdiction is infected with a venereal disease, he may cause a medical examination of the person and may isolate the person until the results of the examination are known (Publ. H.L. Sec. 2300, subd. 1, 4, 6). The Health Officer or County Commissioner may obtain a court order to force the examination (Publ. H.L. Sec. 2301).

Any person found infected with a venereal disease which is or may be communicable may be required by the Health Officer or County Commissioner to submit to treatment, or isolation, or both, and the health officer or county commissioner can define the place and the limits of the area within which the person shall be isolated (Publ. H.L. Sec. 2302).

EXAMINATION OF PROSTITUTES AND OTHERS FOR VENEREAL DISEASE: Every person arrested charged with a violation of Sections 230.00 (Prostitution) or 230.40 (Permitting Prostitution) of the Penal Law, and every person arrested for failure to comply with a court order (under Public Health Law Section 2301) to be examined for venereal disease, and any person arrested for frequenting disorderly houses or houses of prostitution must be reported by the magistrate before whom arraigned to the local health officer, and must be examined for venereal disease under Section 2300 of the Public Health Law (Publ. H. L. Sec. 2302, subd. 1).

For the purposes of examination and diagnosis a person so arrested can be detained until the results of examination are known (Publ. H. L. Sec. 2302, subd. 2). No such arrested person, if convicted, can be released from jurisdiction of the court or magistrate until the person has been examined as provided by Section 2300 of the Public Health Law (Publ. H. L. Sec. 2302, subd. 3).

SEXUAL INTERCOURSE BY DISEASED PERSONS: Any person who, knowing, him or herself to be infected with an infectious venereal disease, has sexual intercourse with another, is guilty of a Class A misdemeanor (Pub. H.L. Sec. 2307).

TRANSPORTING WOMEN — FEDERAL LAW (WHITE SLAVE TRAFFIC ACT): Title 18 United States Code, Sections 2421, 2422, 2423, generally known as "The White Slave Traffic Act," are handled by the FBI. The local FBI office or Resident Agent should be notified of possible violations, which basically consist of transporting women or girls across state lines, or into or out of the country, for prostitution. It is aimed primarily at commercial vice.

It is a Federal crime, punishable by fine not over $5,000, imprisonment not more than five years, or both, to knowingly transport, in interstate or foreign commerce any woman or girl for the purpose of prostitution or debauchery or any other immoral purpose.

It is also a Federal violation (with the same penalty) to knowingly procure any travel tickets or transportation to be used by any woman or girl in interstate or foreign commerce in going anywhere for the purpose of prostitution, debauchery or for any immoral purpose (Title 18 U.S. Code, Sec. 2421).

The crime is also committed by such transporting or procuring of tickets or transportation with intent to induce, entice or compel the woman or girl to become a prostitute or give herself up to debauchery or to engage in any immoral practice (Title 18, U.S. Code, 2421).

It is specifically a separate crime to transport a woman or girl or to cause her to be transported by common carrier in interstate or foreign commerce (Title 18, U.S. Code 2422). If the female is under 18 years of age and is transported by common carrier, the penalty is increased (Title 18, U.S. Code, Sec. 2423).

INVESTIGATIONS

In patrol, officers should be alert for premises which do no public business but have numbers of callers or cars parking, particularly in late afternoon or during the night.

Hotels and motels where women without baggage are seen frequently entering or leaving should be noted. Avoid open investigation of such establishments, since open inquiries by officers (except of trusted sources) may alert any violators to the police interest and prevent effective police action.

If a complaint is received or a source of information advises that a house exists, they should be questioned in detail to determine hours of operation, methods of obtaining admission, telephone number or other means of contact, identity of madam or proprietor, identities of girls and pimps and identities of panderers or "steerers." Determine whether the complainant or source has access to the premises as a customer and if so, whether he will assist an officer posing as customer to gain admission.

Whether an illicit establishment is identified initially by police patrol or by information from a complainant or source, a discreet physical surveillance should be instituted and other investigation should be conducted to determine peak hours, volume of business, identities of madam or operator and of "girls." Customers should be identified by noting license numbers or other ready means, for later questioning. The physical layout should be determined for raid use. Municipal building authority offices may have plans of the building on file.

Eavesdropping should be considered and an order may be obtained as a result of initial investigation outlined in the preceding two paragraphs.

Consider a visit by an officer posing, as a customer. The officer should not engage in sex activity while on the premises.

It should be borne in mind that a house of prostitution may be operated in an apartment building or other establishment which also houses non-violators and care must be taken to establish identities of madam, girls and customers.

Raids should be planned after necessary preliminary surveillances and investigation. Warrants to arrest and search should be obtained where possible.

A frequent technique is to use one plainclothes officer entering as a customer. He should proffer marked money (paper money, the numbers of which have been previously recorded) to the prostitute and when she begins to disrobe should make the arrest and signal the raiding party to enter. He should not engage in sex activity. Care must be taken to plan a proper signal which will be clear and positive. Detailed and thorough questioning of madam or operator, girls, pimps, and customers should follow immediately after the raid, including previously identified customers, where deemed of value. A thorough search for things used in the business and indecent things forbidden by law should always be made under a warrant or as incident to the arrest.

CALL GIRLS AND OTHER PROSTITUTION: "Call" girls are those who receive requests for prostitution through telephone services, hotels or other contact points. Their availability is only made known to prospects on a semi-confidential basis. They may frequent a particular hotel or other place for their "dates". The initial step is ordinarily to secure the identity of, and eavesdrop on, their "contact" telephone. This should be supplemented by prompt surveillance as the eavesdropping develops the activity. The call business is frequently operated by a madam who maintains no girls on her premises but merely arranges assignations, on telephoned requests, from among the group of prostitutes who work with her. Surveillances of girls and their "johns," "dates" or "tricks" are ordinarily required. The technique of posing as a customer and arranging a date may also be considered in this type of case.

In any type of prostitution, regular attention to developing as informants known madams, prostitutes and pimps will save much laborious investigation to determine identities and activities. However, the actual evidence to convict must ordinarily be obtained by the officer.

Street walkers and bar hustlers are frequent types of prostitutes. The street walker may be identified by her habit of strolling while apparently window shopping and occasionally talking to a man. Street walkers may also frequent park or other benches and may use automobiles. Basically such cases are begun by surveillance while the prostitute is with a trick, followed by a raid or by posing as a customer, proffering marked money and making arrest when she begins to disrobe.

Bar hustlers are usually known to the bartenders of places frequented, who may also act as panderers or steerers of customers to the hustler. The hustler may be identified by her attendance alone at the bar, her attention to men without escort and her lack of attention to her drink. A surveillance or other investigative steps are of course required for a positive identification of a suspect as a prostitute. A usual technique is to pose as a customer and make an arrest as previously stated.

The most useful arrests are felony arrests for dealing in prostitution, and for violations other than individual violations by prostitutes themselves. Cases of this kind depend on good investigation and should not be hurried nor should any preliminary arrests of individual prostitutes be made which might jeopardize the arrests of the higher-ups. It will be found that good informant coverage is a great asset in this type of work.

ARRESTS: Officers should assume the responsibility of ensuring that the local Health Officer is immediately informed of pertinent arrests so that medical examination may be had in accordance with the Public Health Law.

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100. PUBLIC HEALTH

The public health laws are administered by the Department of Health (Publ. H. L. Secs. 10, 201), in conjunction with the Public Health Council (Publ. H. L. Sec. 225, subd. 1).

The Public Health Council has authority to establish and amend The Sanitary Code for the entire state (Publ. H. L. Sec. 225, subd. 3, 4).

Violations of the Public Health Law are Unclassified misdemeanors, punishable by imprisonment not more than 1 year, fine not over $2000 or both (Publ. H. L. Sec. 12-b). Violations of the State Sanitary Code are also misdemeanors, punishable by imprisonment not more than 6 months, fine not over $50 or both for a first offense and imprisonment not more than 1 year, fine not over $250, or both, for subsequent offenses (Publ. H. L. Sec. 229).

The Public Health Law covers, among other things, the operation of laboratories, state aid for public health and disease work, public water supplies, water pollution, air pollution, sanitation in various kinds of establishments and businesses, insect control, communicable diseases, tuberculosis control, venereal disease control, maternal and child care, human blood and blood donations, narcotic control, funeral directing, handling of dead bodies, vital statistics and rehabilitation of the physically handicapped.

The Public Health Law is supplemented by The Sanitary Code, and by local ordinances.

The Sanitary Code contains rules, regulations and specifications covering the following:

Communicable diseases (Secs. 2.1 – 2.54)
Milk and Milk Products (Secs. 3.1 – 3.190)

Pathogenic Microorganisms, Laboratories, Human Blood and its Derivatives (Secs. 4.1 – 4.40)
Drinking Water Supplies (Secs. 5.1 – 5.41)
Swimming Pools and Bathing Beaches (Secs. 6.1 – 6.42)
Temporary Residences (Secs. 7.1 – 7.31)
Nuisances Which May Affect Life and Health (Secs. 8.1 – 8.6)
Health Hazards and Warning Labels (Secs. 9.1 – 9.26)
Barber Shops and Beauty Parlors (Secs. 10.1 – 10.31)
Maternal and Child Health (Secs. 12.1 – 12.52)
Transportation of Dead Bodies (Sec. 13.1)
Service Food Establishments (Secs. 14.1 – 14.11)
Farm Labor Camps (Secs. 15.1 – 15.22)
Ionizing Radiation (Secs. 15.1 – 15.22)
Refuse Disposal (Secs. 19.1 – 19.5)

Much of The Sanitary Code is the primary responsibility of health officers and local Boards of Health (Publ. H.L. Secs. 242, 308), who issue permits and perform other duties in respect to it. However, police and peace officers should be aware of the general provisions of the Health Law and The Sanitary Code, so that appropriate action may be taken when complaints are received or violations are otherwise brought to their attention.

For example, it is an Unclassified misdemeanor for anyone other than a storekeeper to sell or deliver milk or milk products to consumers or storekeepers, without a permit (San. Code, Sec. 3.10).

It is a misdemeanor for a laboratory to report the result of any test, examination or analysis of a specimen submitted for evidence of human disease, directly to the patient concerned, except with written authorization of his physician or an authorized official (San. Code, Sec. 4.14).

It is an Unclassified misdemeanor to fail to have a lifeguard at any public swimming pool or bathing beach and a lifegurd must be present at all times when the facility is officially open (San. Code, Sec. 6.33).

It is an Unclassified misdemeanor to provide a common towel in the lavoratory or washroom of any hotel, lodging house, restaurant, factory, school, store, office building, railway or trolley station (San. Code, Sec. 9.5).

It is a misdemeanor to spit on the floor of any public building or building used for public assemblage or on the floors, platforms or any part of any railroad or trolley car or ferry boat or any other public conveyance (San. Code, Sec. 9.4).

It is an Unclassified misdemeanor to sell certain hazardous substances without properly labelling the containers (San. Code, Sec. 9.21).

It is an Unclassified misdemeanor to fail to provide convenient handwashing facilities with hot and cold running water, soap, and sanitary towels, for employees of any eating or drinking establishment. It is also a misdemeanor for an employee in such establishment to resume work after using the toilet without first washing his or her hands (San. Code, Sec. 14.10-g). Garbage and trash must be kept in suitable, covered containers in such establishments (San. Code, Sec. 14.10-k).

There are many other possible criminal violations of the Health Law and The Sanitary Code, and many possible violations of local ordinances relating to similar things. The officer must be informed of his local ordinances and the main provisions of the Sanitary Code. Where technical questions arise, the advice of the local Health Officer may be sought.

NOXIOUS SUBSTANCES: It is an Unclassified misdemeanor, to deposit, or leave or keep, on or near any highway or route of public travel, on land or in the water, any noisome or unwholesome substance. It is also a misdemeanor

to establish, maintain or carry on, on or near a public highway or route of public travel, on land or in the water, any business, trade or manufacture, which is noisome or detrimental to the public health (Publ. H.L. Sec. 1300A).

It is an Unclassified misdemeanor to throw or deposit gas tar, or the refuse of a gas house or gas factory, or offal, or refuse, or any other noxious, offensive or poisonous substances in any public waters, or any sewer or stream running into public waters (Publ. H.L. Sec. 1300-B).

It is an Unclassified misdemeanor to oppose a Health Officer or physician charged with enforcement of the health laws, in performing any legal duty (Publ. H.L. Sec. 12-C).

PENAL LAW VIOLATIONS

POISON IN FOOD OR DRINK: It is a Class A misdemeanor to recklessly engage in conduct which creates a substantial risk of serious physical injury to another person (P.L. Sec. 120.20).

It is a Class D felony to, under circumstances evincing a depraved indifference to human life, recklessly engage in conduct which creates a grave risk of death to another person (P.L. Sec. 120.25).

FALSE LABELS: It is a Class A misdemeanor to substitute or falsely label when putting up any drug, medicine, food or preparation used in medical practice, or in filling any prescription, except that it is permissible to recommend or sell the purchase of an article other than that ordered, required or demanded, but of a similar nature, with the knowledge and consent of the purchaser (Educ. L. Sec. 6808-a).

SAMPLES: It is an Education Law Violation to distribute, or cause to be distributed, free or trial samples of any medicine, drug or chemical compound, by leaving them exposed on the ground, sidewalk, porch, doorway, letterboxes or in any other manner so that children might become possessed of the things so left (Educ. L. Sec. 6808-a).

AGRICULTURE AND MARKETS LAW

SKIMMED MILK: A person who sells or offers skimmed milk without disclosing the fact by label or mark, affixed to every can or vessel containing the same, under circumstances not constituting an offense for the punishment of which provision is otherwise specially made by statute, is guilty of an Unclassified misdemeanor (Agr. & Mrkts. L. Sec. 64-a).

UNLAWFUL SALE OF TUBERCULOUS CATTLE: A person who knowingly sells, except under supervision of Commissioner of Agriculture and Markets, any bovine animal in which tuberculosis is indicated by test is guilty of an Unclassified misdemeanor (Agr. & Mrkts. L. Sec. 73-a).

SPRAYING FRUIT TREES OR CROPS: It is a violation to spray with or in any way apply poison or any poisonous substances to fruit trees or any alfalfa and clovers grown as field crops, while in blossom (Agr. & Mrkts. L. Sec. 169-a).

DISPOSING OF TAINTED FOOD: A person who, with intent the same shall be used as food, drink, etc., sells or offers for sale any article which to his knowledge is tainted, or spoiled, or unfit to be used, is guilty of an Unclassified misdemeanor (Agr. & Mrkts. L. Sec. 199-c).

ADULTERATION OF NATURAL FRUIT JUICES: A person who shall knowingly sell, offer for sale, give away, any compound, composed in whole or in part of any unwholesome, deleterious or poisonous acid,

etc., as a substitute for the pure unadulterated and unfermented juice of natural fruits, or knowingly uses the same in place of natural fruits, is guilty of an Unclassified misdemeanor (Agr. & Mrkts. L. Sec. 204-d).

GENERAL BUSINESS LAW

TOBACCO: It is a violation punishable by fine of not over $50, for any person, firm, etc., operating a place of business where cigarettes, cigars or tobacco products are sold, to fail to post a sign in red letters at least ½ inch high on a white card, reading: "SALE OF CIGARETTES, CIGARS. OR OTHER TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED". If the selling is done through a vending machine, the notice must be prominently displayed on the machine (Gen. Bus. L. Sec. 399-e).

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101. PUBLIC LEWDNESS AND EXPOSURE

The Public Lewdness law is derived from a former Penal Law section on "Exposure of Person" (old P.L. Sec. 1140), which included willful and lewd exposure or procuring another to expose him (or her) self. The new law is somewhat different.

PUBLIC LEWDNESS: A person is guilty of Public Lewdness who:

1. In a public place,
2. Intentionally:
   a. Exposes:
      (1) The private or intimate parts of his (or her) body,
      (2) In a lewd manner, or
   b. Commits any other lewd act (P.L. Sec. 245.00).

Public Lewdness is a class B misdemeanor.

By the terms of the law, Public Lewdness cannot be committed unintentionally or by accident. It must be intended, and where the crime is exposure, the exposure must be in a lewd manner. "Lewd" means in a sexually unchaste, obscene, or sexually licentious way.

It should be borne in mind that in addition to the exposure type of crime (usually committed by individual men exposing themselves to females or females exposing themselves for hire) there is a "lewd act" type of crime prohibited. This could include a number of offenses other than mere lewd exposure, including theatrical type indecent shows of all kinds, if what is done in them can reasonably be considered a "lewd" act. A common-sense viewpoint must be taken by the officer.

PUBLIC PLACE: Public place is not specifically defined by the Penal Law in respect to Public Lewdness, and may be taken to be any place to which the public resorts, as well as such obviously public places as streets, roads, parks, bus terminals, hotel lobbies, etc. Under the former law it was held that women who indecently exposed their bodies in the presence of men, for hire, were guilty of exposure in a "public place," even though in fact the exposure was in a house of prostitution in a private house, with the doors and windows closed and the blinds closed (Peo. vs. Bixby, 4 Hun 636). A similar rule of good sense will undoubtedly be used in respect to the new law. In case of doubt, officers should consult the District Attorney before making an arrest or "raid" in the "show" for hire type of case.

EXPOSURE OF A FEMALE: A female is guilty of exposure when:

1. In a public place,
2. She appears clothed or costumed in such manner that,
3. The portion of her breast below the top of the aureola,
4. Is not covered with a fully opaque covering.

This subdivision does not apply to any female entertaining or performing in a play, exhibition, show or entertainment (P.L. Sec. 245.01).

Exposure of a Female is a Violation.

PROMOTING THE EXPOSURE OF A FEMALE: A person is guilty of promoting the exposure of a female when:

1. He knowingly conducts, maintains, owns, manages, operates or furnishes,
2. Any public premises or place where,
3. A female appears clothed or costumed in such a manner that,
4. The portion of her breast below the top of the aureola,
5. Is not covered with a fully opaque covering.

This subdivision does not apply where such a female is entertaining or performing in a play, exhibition, show or entertainment.

Promoting the Exposure of a Female is a Violation.

The introduction (by restaurants, taverns and similar places) of "topless waitresses" as employees resulted in enactment of Penal Law Sections, 245.01 and 245.02, on Exposure of a Female. The law is designed to thwart this type of promotional "gimmick." It makes the owners or sponsors, as well as the female employee, liable to arrest. The law is specific in its application — females who are engaged in entertaining or performing in a play, exhibition, show or entertainment are excluded from its prohibitions.

INVESTIGATIONS

The violations usually handled under Public Lewdness involve men exhibiting their sex parts to strange girls or women and indecent performances for hire, generally featuring women.

In the usual cases of male exposure, the exposure may be taken to be a manifestation of some abnormal sex desire. Such acts occur frequently on the street or highway, and the girl or woman victim (or victims) are usually complete strangers to the offender.

Successful handling of such cases is of considerable importance, in view of the possible serious consequences of unchecked activity by males with such sex drives.

Very detailed statements should be initially obtained from complainants, with painstaking care devoted to fully exploring the victim's recollections of the offender's personal description, clothing and the exact direction and circumstances of approach. If a car is used, full descriptive data should be obtained, taking care to obtain as much license plate data as possible, including partial numbers, plate and number colors, etc., where the full plate cannot be recalled. Prompt radio and teletype alarms will be of value in these cases.

A false sense of shame, or modesty, or over-protective feeling of parents, must often be overcome when the victims of the exposure are children. A selling point of value in obtaining access to the children for full interview is the harm to be anticipated to other children if the offender is not identified and apprehended. In the usual case of child victims, the interview should be out of the presence of the parent, for best results.

Speed in police action is of importance, keeping in mind the desirability of identifying the male offender before he can leave the vicinity, get off the highway, etc.

In the "stag" show or other professional or semi-professional exposure for profit, successful police action will ordinarily depend upon having previously developed sufficiently good sources and informants to be advised of the event before its occurence, so that appropriate plans can be made. Where the violation is controversial and the "exposure" or "lewd act" is in fact a part of a claimed bona fide theatrical venture, the advice of the District Attorney should be previously sought as to whether or not the matter would better be handled by seeking an injunction in the civil courts instead of awaiting the event and conducting a raid or mass arrest.

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102. PUBLIC SAFETY

The 'Public Safety" article of the old Penal Law (Secs. 1890–1924, old P.L.) has disappeared from the law and the individual laws which made it up have largely merged into new Penal Law sections. A few are treated individually in the new law (laws relating to Firearms, Fireworks, containers, etc.).

A number of the old law's sections have disappeared completely and a crime such as "Overloading Passenger Vessel" (Sec. 1890, old P.L.) would now be prosecuted as a crime of Reckless Endangerment. Crimes like "Abandonment of Containers Attractable to Children at Play," (Sec. 1920, old P.L.) have been included in the new law as part of "Creating a Hazard" (P.L. Sec. 270.10). There is thus no longer any "Public Safety" article in the Penal Law. The following laws, however, relate generally to safety matters and so have been grouped under the title of "Public Safety" in this Manual article.

PETROLEUM STORAGE: Crude petroleum (earth or rock oil) or any of its products, cannot be kept on sale or stored in any place or building within the corporate limits of any city (except in New York City) unless in detached and properly ventilated warehouses, with stone, brick or iron outer walls and raised sills at least two feet high, or a ground floor at least two feet below the level of the street or adjoining land, to prevent overflow.

No part of such a warehouse can be occupied as a dwelling, and if it is less than fifty feet from an adjacent building, the warehouse must be separated from it by a brick or stone wall at least ten feet in height and sixteen inches thick.

No such article can be allowed to remain on the sidewalk beyond the front line of any building, or in the street, a longer time than is actually necessary for storage, shipment or delivery of the same, nor after sunset. The law applies only within cities (except New York City) (Genl. Bus. L. Sec. 302). Violations are Class A misdemeanors (Genl. Bus. L. Sec. 304-a; P.L. Sec. 55.10, subd. 3).

REFINED PETROLEUM AND KEROSENE OIL: Refined petroleum (including gasoline) or kerosene oil cannot lawfully be kept on sale or stored in any such city, if it fire tests at less than one hundred and ten degrees Fahrenheit, as determined by authorized inspectors. Barrels or packages containing such material must be legibly marked with an inspector's official stamp or mark. If stored above the cellar or basement of any building and in barrels of not over forty-five gallons each, or in metallic vessels or tanks for the convenience of retailing, the quantity

stored must not exceed the contents of ten barrels. If packed in hermetically sealed metallic packages, the quantity can be not over one hundred barrels. If stored in cellars or basements surrounded by walls of brick or stone, and at least two feet below the level of the sidewalk, street or adjacent land the quantity must not exceed the contents of one hundred and fifty barrels, unless stored in warehouses specially adapted for the purpose. No more than five barrels can be kept or stored in any building occupied wholly or in part as a dwelling.

Not more than ten barrels of benzine or naptha may be kept or stored in any building, and not more than three barrels in any building any part of which is occupied as a dwelling (Genl. Bus. L. Sec. 303). Violations are Class A misdemeanors (Genl. Bus. L. Sec. 304-a; P.L. Sec. 55.10, subd. 3).

ILLUMINATING OILS (STANDARDS AND STORAGE): No person may manufacture or have in his possession or sell or give away for illuminating or heating purposes in lamps or stoves any oil or burning fluid wholly or partly composed of naptha, coal, oil, petroleum or products thereof, or other substances or materials emitting an inflammable vapor which will flash at a temperature below one hundred degrees Fahrenheit.

No such oil or fluid which will ignite at a temperature below two hundred and ninety-five degrees Fahrenheit may be burned or carried as freight in a car or boat moved by steam or electric power, or in any stage or street car, however propelled, except when securely packed in barrels or metallic packages, in passenger boats propelled by steam when there are no other public means of transportation. Naptha and other illuminating products of petroleum which will not stand the flash test required by this section, may be used for illuminating or heating purposes only in the following cases:

1. In street lamps and open air receptacles apart from any building, factory or inhabited house in which the vapor is burned.

2. In dwellings, factories or other places of business when vaporized in secure tanks or metallic generators made for that purpose, in which the vapor so generated is used for lighting or heating.

3. For use in the manufacture of illuminating gas in gas manufactories situated apart from dwellings and other buildings.

This section does not apply to the city of New York, and does not supersede but is in addition to the ordinances or regulations of any city or village made pursuant to law for the inspection or control of combustible materials therein (Genl. Bus. L. Sec. 304). Violations are Class A misdemeanors (Genl. Bus. L. Sec. 304-a; P.L. Sec. 55.10, subd. 3).

RETAIL SALE AND DELIVERY OF CERTAIN FLAMMABLE LIQUIDS: A "flammable liquid" under this law is any liquid which has a flash point of seventy (70) degrees Fahrenheit, or less, as determined by a Tagliabue or equivalent closed cup test device (Genl. Bus. L. Sec. 308).

1. No person engaged in the retail sale of flammable liquids may lawfully deliver any such liquids from bulk storage into portable containers of five gallons capacity or less unless the container is of sound metal or other unbreakable material construction, has a tight closure with screwed or spring cover and is fitted with a spout or so designed that the contents can be poured without spilling (Genl. Bus. L. Sec. 308, subd. 2).

2. The provisions of this section do not apply to the sale, purchase or delivery of bona fide commercial packs of household products sold in the original sealed container as put up for package, sale or

distribution by the manufacturer or packager, including (but not limited to) packs of medicinals, beverages or food.

3. The provisions of this law do not apply in cities having a population of one million or more (Genl. Bus. L. Sec. 308).

4. Any failure to comply with this law is a "violation," punishable by fine not less than $10 nor more than $25 (Genl. Bus. L. Sec. 308, subd. 5).

ICE CUTTING: A person or corporation cutting ice on any waters in New York State for sale or use must surround the cuttings and openings with fences or guards of boards or other material sufficient to form an obstruction to the free passage of persons into the place where ice is being cut. They must be erected at or before the time of commencing the cuttings or openings, and must be maintained until ice has again formed in the cuts to a thickness of at least three inches, or until the ice has melted or broken up. Offenses against this section are Class A misdemeanors (Genl. Bus. L. Sec. 265).

GAS PIPE LINES: It is unlawful to blast or excavate in any street, highway or public place without giving 72 hours notice to the person, corporation or municipality which distributes gas in the territory. Municipal employees regularly engaged in street or highway maintenance and repair need not give such notice to excavate (Genl. Bus. L. Sec. 322-a). Offenses against this law are Class A misdemeanors (Genl. Bus. L. Sec. 323).

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103. RAILROADS AND RAILROAD POLICE

In the old Penal Law there was an entire article on "Railroads." The specific statutes of that article have been omitted from the new Penal Law, which now has no "railroad law" as such.

The wrongful acts relating to railroads and their cars, tracks, etc., which could formerly have been prosecuted under the railroad article of the Penal Law, can still be prosecuted, but under new statutes.

Section 1991 of the old Penal Law ("Injuring Railroad Property and Appurtenances; Obstructing Tracks":) for example, covered injuries to railroad property, tampering with tracks, cars, etc. property and various other offenses, all of which may now be prosecuted as offenses of Assault (P.L. Sec. 120.00–120.10), Reckless Endangerment (P.L. Sec. 120.20, 120.25), Criminal Mischief (P.L. Sec. 145.00–145.10), Criminal Tampering (P.L. Sec. 145.15, 145.20) and Reckless Endangerment of Property (P.L. Sec. 145.25). The exact statute chosen for prospective purposes will depend on the particular facts of the matter and whether any personal injury occurred. If there is a human death involved, then charges of Criminally Negligent Homicide (P.L. Sec. 125.10), Manslaughter (P.L. Sec. 125.15–125.20) or Murder (P.L. Sec. 125.25) must be considered in light of the facts of the case.

THEFT OF SERVICES (TRANSPORTATION): A person who, with intent to obtain railroad, subway, bus, taxi or any other public transportation service without payment, or to avoid payment for transportation service rendered, obtains or attempts to obtain the service, or avoids or attempts to avoid payment, by force, intimidation, stealth, deception or mechanical tampering, or by unjustifiable failure or refusal to pay is guilty of Theft of Services, a Class A misdemeanor (P.L. Sec. 165.15, subd. 3).

USE OF FORCE: If any passenger on a railroad refuses to pay his fare the conductor of the train and railroad employees may put such pas-

senger and his baggage off the train. They may use no unnecessary force and must stop the train. It may be stopped at any station or near any dwelling house, as the conductor decides (Railroad L. Sec. 61).

Any person responsible for the maintenance of order in a common carrier of passengers (or a person acting under his direction) may use physical force when and to the extent that he reasonably believes it necessary to maintain order. He may use deadly physical force only when he reasonably believes it necessary to prevent death or serious physical injury (P.L. Sec. 35.10, subd. 3).

PEDDLING AND LOITERING ON RAILROAD PROPERTY: A person who loiters or remains in any transportation facility, unless authorized, for the purpose of soliciting or engaging in any business, or for entertaining by singing, dancing or playing a musical instrument (P.L. Sec. 240.35, subd. 7); or who loiters or remains in or is found sleeping in any transportation facility, and is unable to give a satisfactory explanation of his presence (P.L. Sec. 240.35, subd. 8), is guilty of the "violation" of Loitering.

DISCHARGING A FIREARM AT RAILWAY OR TRAIN: It is a felony to wilfully discharge a loaded firearm or gun, at a railway or street railroad train, locomotive, car, or vehicle, whether standing or moving. It is a Class D felony if the safety of any person is endangered, and in any other case a Class E felony (P.L. Sec. 265.35, subd. 3).

BELL AND WHISTLE AT CROSSING; OBSTRUCTING HIGHWAY: A person acting an engineer, driving a locomotive on any railway in the state who fails to ring the bell or sound the whistle at least eighty rods from a crossing on the same level (except in cities) or to continue ringing and sounding until the train has completely crossed the road or street is guilty of a Class A misdemeanor (Railroad Law, Sec. 53-b; P.L. Sec. 55.10, subd. 3).

Any officer or employee in charge of a train, who wilfully obstructs any farm or highway crossing with the train for a period longer than five consecutive minutes is guilty of a Class A misdemeanor, except where he has no control over the situation causing the obstruction or cannot move the train without danger to passengers, public or freight. (Railroad Law Sec. 53-b; P.L. Sec. 55.10, subd. 3).

MILITARY OR NAVAL MATERIALS: It is a felony to wilfully or maliciously injure or destroy any railroad engine or car or any vehicle or vessel used or intended for use in the transportation of military or naval equipment, supplies, or facilities for producing them, including power lines and machine tools.

It is also a felony to tamper with any such engine, car, vehicle or vessel with intent to lessen its efficiency in the transportation of any such article or to hinder, delay or obstruct any military or naval operation or defense preparation.

This statute includes military or naval matters of not only New York State but also the United States or any foreign government with which the United States maintains diplomatic relations (Mil. L. Sec. 238-b).

RAILROAD, EXPRESS, STEAMBOAT POLICE: Any corporation owning or operating a railroad, or express company operating over a railroad or any steamboat company may apply to the Superintendent of State Police to have any person appointed as a policeman. If appointed, such person has all the powers of a policeman in cities and villages for the preservation of order and public peace and the arrest of persons committing offenses on the land of, or on any property in the custody or control of such corporations or companies (Railroad L. Sec. 88, subd. 1).

The firm applying must have the prospective appointee fingerprinted and his or her fingerprints checked by the FBI Identification Division in Washington and the State Bureau of Identification at the New York Indentification and Intelligence System, in Albany. No person may be appointed who has committed a crime in New York or a violation anywhere which would have been a crime if committed in New York. In addition, a personnel type investigation into the character, qualifications and fitness of the proposed officer must be conducted in a manner satisfactory to the Superintendent of State Police. No person may be appointed who is found to be other than of good moral character. The investigation is the responsibility of the firm desiring the person's appointment (Railroad L. Sec. 88. subd. 3, 4).

Persons appointed must receive police training and firearms training either before appointment or within six months after appointment, as specified in the law (Railroad L. Sec. 88, subd. 6, 7, 8).

All appointees must be American citizens. No appointee can be actively engaged in the operation and movement of any train, car or set of cars (Railroad L. Sec. 88, subd. 10, 11).

Persons designated and appointed cannot act until they have received a license from the Secretary of State. When on duty, every such policeman must wear in plain view a metallic shield identifying him as "railroad police" or "steamboat police" or "express police" and identifying his company. If working as a detective he need not wear such shield (Railroad L. Sec. 88, subd. 12, 13).

When any corporation or company employing such police no longer requires their services, it must file notice to this effect with the Department of State, and the officer's appointment then ceases and is at an end (Railroad L. Sec. 88, subd. 16).

The Superintendent of State Police may revoke any appointment at his pleasure, by filing a revocation with the Department of State and mailing a notice of such filing to the corporation or company, and to the appointee (Railroad L. Sec. 88, subd. 17).

JURISDICTION OF CRIME ON TRAIN: When an offense is committed in New York State on board any railway engine, train, or car making a trip over any railway in New York (or on board any omnibus, truck, airplane or common carrier in the state) jurisdiction is in any county through which or any part of which the vehicle passes or has passed in the course of the same trip, or in any county where the trip terminates or would terminate if completed (CCP Sec. 137).

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104. REFUSING TO AID A PEACE OFFICER

A person is guilty of Refusing to Aid a Peace Officer who:

1. Upon command by a peace officer,
2. Identifiable as such, or
3. Identified to him as such,
4. Unreasonably fails or refuses to aid such peace officer in:
   a. Effecting an arrest, or
   b. Preventing the commission by another person of any offense (P.L. Sec. 195.10).

Refusing to Aid a Peace Officer is a Class B misdemeanor.

Section 169 of the Code of Criminal Procedure requires every person to aid any officer in the execution of a warrant of arrest, if the officer requires his aid and is present and acting to execute the warrant.

INJURY OR DEATH OF PERSON AIDING: If a person is killed or injured, after having been lawfully commanded to aid a peace officer in effecting an arrest or preventing the commission by another of any offense, and his death or injury arises from aiding the offender, he or his estate may recover from the municipality.

The same is true if his property or property of his employer is damaged, if the damage arises out of his aiding the officer (Genl. Mun. L. Sec. 71-a).

LIABILITY, ACTS OF PERSONS ASSISTING POLICE OFFICERS: The State must protect any person who, upon being lawfully commanded, renders assistance to a police officer in the performance of his duties, from any financial loss arising out of any claim, demand, suit or judgment by reason of alleged negligence (other than gross negligence), or an alleged tortious act of a person rendering the assistance which results in bodily injury or property damage.

1. The person who rendered assistance must within ten days of the time he is served with any summons, complaint, process, notice, demand or pleading, deliver the original or a copy thereof to the chief legal officer of the State or the agency or political subdivision which employed the officer.

2. The law includes as a "police officer," any member of a duly organized police force or department of any county, city, town, village, municipality, authority, police district, regional state park commission when employed full time in the enforcement of the general criminal laws of the State, or any member of the State Police, or a Sheriff, Undersheriff or Deputy Sheriff, other than a Special Deputy Sheriff (Civ. Rts. L. Sec. 79-f).

INVESTIGATIONS

The Court of Appeals has stated that "The citizenry may be called upon to enforce the justice of the State . . . honestly and bravely with whatever implements and facilities are convenient and at hand" (Matter of Babington vs. Yellow Taxi Corp., 250 NY 14).

In charging violations of Refusing to Aid a Peace Officer, a key element is proof of a clear command by the officer. Eye witnesses should be promptly interviewed to determine what evidence may be available on this point, in addition to the officer's testimony.

The law penalizes only "unreasonable" failure or refusal to aid. Common sense must be used in considering charges under this law, carefully considering in each instance whether it was "unreasonable" for the citizen to have failed or refused to aid the officer. In doubtful cases the advice of the District Attorney should be sought.

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105. RAPE

Rape and its associated crime, Sexual Misconduct without the female's consent, can only be committed by a male upon a female. A female, by statute, is any female human who is not married to the defendant (P.L. Sec. 130.00, subd. 4).

SEXUAL MISCONDUCT: It is a crime of Sexual Misconduct for a male to engage in sexual intercourse with a female, without her consent (P.L. Sec. 130.20, subd. 1). This is a class A misdemeanor.

RAPE IN THE THIRD DEGREE: A male is guilty of Rape third when he engages in sexual intercourse with a female under either of the following circumstances:

1. The female is incapable of consent by reason of some factor other than being less than 17 (P.L. Sec. 130.25, subd. 1); or

2. The male is 21 or older and the female is less than 17 (P.L. Sec. 130.25, subd. 2).

Rape third is a Class E felony.

RAPE IN THE SECOND DEGREE: a Male is guilty of Rape second when he is 18 or older and engages in sexual intercourse with a female less than 14 (P.L. Sec. 130.30).

Rape second is a Class D felony.

RAPE IN THE FIRST DEGREE: A male is guilty of Rape first when he engages in sexual intercourse with a female under any of the following circumstances:

1. By forcible compulsion (see definition under "Consent") (P.L. 130.35, subd. 1); or

2. The female is incapable of consent by reason of being physically helpless (see definition under "Consent") (P.L. Sec. 130.35, subd. 2); or

3. The female is less than 11 (P.L. Sec. 130.25, subd. 3).

Rape first is a Class B felony.

CONSENT: It is an element of every such crime that it be committed without the consent of the female (P.L. Sec. 130.05, subd. 1). In addition to those cases where there is an actual lack of consent, a lack of consent is conclusively presumed, by law, from any of the following:

1. Forcible compulsion (P.L. Sec. 130.05, subd. 2-a),
   a. Forcible compulsion means:
      (1) Physical force that overcomes earnest resistance; or
      (2) A threat (express or implied) that places a person in fear:
         (i) Of immediate death; or
         (ii) Of serious physical injury to herself or another; or
         (iii) That she or another will immediately be kidnapped (P.L. Sec 130.00, subd. 8).
2. Incapacity to consent (P.L. Sec. 130.05, subd. 2-b).
   a. A person cannot consent who is:
      (1) Under 17 (P.L. Sec. 130.05, subd. 3-a);
      (2) Mentally defective (P.L. Sec. 130.05, subd. 3-b);
         (i) Mentally defective means that a person suffers from a mental disease or defect which renders her incapable of appraising the nature of her consent (P.L. Sec. 130.00, subd. 5).
      (3) Mentally incapacitated (P.L. Sec. 130.05, subd. 3-c);
         (i) Mentally incapacitated means that a person is rendered temporarily incapable of appraising or controlling her conduct owing to the influence of a narcotic or intoxicating substance administered to her *without her consent,* or to any other act committed upon her *without her consent* (P.L. Sec. 130.00, subd. 6).
      (4) Physically helpless (P.L. Sec. 130.05, subd. 3-d);
         (i) Physically helpless means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act (P.L. Sec. 130.00, subd. 7).

SEXUAL INTERCOURSE: For Subdivision 1 of Sexual Misconduct and for Rape, "sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight (P.L. Sec. 130.00, subd. 1).

Under the old Penal Law, where the defendant was under age 14, he could not be convicted of Rape unless his physical ability to accomplish penetration was proved as an independent fact, beyond a reasonable doubt (old P.L. Sec. 2012). This requirement has been completely eliminated from the new law.

EVIDENCE REQUIRED: No conviction can be had for Sexual Misconduct or Rape, or of an attempt, solely on the uncorroborated testimony of the alleged victim (P.L. Sec. 130.15).

The supporting (corroborating) evidence must be evidence tending to establish that a criminal rape was in fact committed by someone and also tending to establish that the defendant was the criminal (Peo. vs. Masse, 5 NY 2d 217; Peo. vs. Croes, 285 NY 279). The supporting evidence may be circumstantial. A physician's examination establishing torn hymen or injured vaginal tract, with blood and semen, is a usual means of corroboration of the crime of rape, to which must be added some evidence tending to corroborate the fact that the defendant is the responsible male.

INVESTIGATIONS

In any rape case a very prompt medical examination of the claimed victim should be had. If previously a virgin, a torn hymen and other tissue, blood, semen, etc., may usually be found by the examining physician. If not a virgin, much evidence may still be present, including semen. The earlier the examination is had after the offense the better chance of finding evidence of spermatozoa, which deteriorate fairly quickly. It is well to have examinations conducted separately by two physicians, and to obtain signed statements from each, where this can be done.

Because of the statutory requirement that there be supporting evidence for the story of the victim to sustain a conviction, it is essential that a very careful crime scene search and a detailed neighborhood inquiry be made as soon as possible after the event. When the offense occurred in a vehicle, the search should include not only the vehicle, but the place where it was stopped when the offense occurred, if this can be precisely determined. Eyewitness corroboration is seldom available in these cases, while the results of scientific laboratory examination are persuasive circumstantial evidence.

The investigator should secure all possible evidence in the form of hairs, fibers, secretions, blood and other matter, for examination in the scientific laboratory.

The victim's clothing worn at the time of the crime should be immediately secured and not only the undergarments, but also the outer clothing, which may bear traces of evidence establishing physical contact with the defendant, or with the vehicle or place claimed to be the scene of the crime. Care should be taken to obtain all evidence at the scene, including soil samples from outdoor scenes, for scientific laboratory matching with soil on the clothing of both victim and defendant.

Neighborhood investigation should include not only persons immediately present or known to have been in the area such as nearby residents, but also those who may pass through the area regularly, such as milkmen, guards, salesmen, etc.

In all cases, the initial interview with the victim should be in sufficient detail to determine all investigative steps logical to be taken and the scientific evidence to be sought. Fingernail scrapings of the victim (to establish that flesh was lodged under her nails) may be overlooked until too late, for example, if the interview does not bring out the fact that the victim clawed the criminal.

In cases where the identity of the offender is unknown to the victim, prompt steps should be taken to broadcast as detailed a description of the offender and his vehicle, if any, as is possible. In addition, officers assigned to cover the neighborhood and the crime scene must bear in mind the need to consider not only evidence corroborating the crime but evidence tending to establish the identity of the criminal and his vehicle, if any.

Where the offender is not known, immediate checks should be made in the law enforcement agency's sex offender and rape files, in efforts to identify suspects who have previously offended in the same area, or at the same time of day, or with the same type of victim, etc. These checks should be extended to the files of surrounding law enforcement agencies as required, and should be considered a useful investigative technique, offering a good chance of success.

It must be constantly borne in mind that evidence to support the victim's story is required not only to establish the sexual penetration but also to establish the identity of the male offender. In cases where there is no compulsion or struggle and age is the determining factor, it will frequently be necessary to conduct extended investigation and to utilize the Scientific Laboratory to provide the corroboration required. It is unwise for the investigator to rely solely upon the results of interview of the alleged offender, since a simple denial on his part suffices to make the case non-prosecutionable unless circumstantial evidence or third-party evidence is available for corroboration.

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106. REPORT WRITING AND HANDLING

This section deals with written reports.

A report is an official record of a police activity, usually an investigation. It is designed to convey factual information and to provide a permanent record of such facts.

A police report should include all facts pertinent to the matter reported and should set them out in the most accurate way. It should contain conclusions or opinions of the report writer only when they are included for a specific purpose and are clearly labelled as conclusion or opinion.

FORM OF REPORTS: Every law enforcement agency should have a printed report form on which its officers may prepare reports. A first page is sufficient, and plain paper may be used for second and later pages.

A report form should include at the top the full name of the law enforcement agency and a place for the date of the report. Under these should be spaces or blocks for the title of the report, the complainant and date of complaint, the character of the matter reported, the period of investigation or other activity covered in the report and the rank and name of the report writer.

The body of the report may be set out in straight narrative style immediately below and on attached plain sheets as required. It is not necessary to provide other printed material on the form, such as "height," "weight," for descriptions, "charge" or "disposition" for the crime involved etc. Such detailed forms are frequently used by law enforcement and serve a valid purpose. They are not essential.

A variety of report forms is not essential to any department. The form suggested herein may be used for varied purposes merely by showing the proper title and character of investigation in the blocks provided. Many departments have varied and detailed forms for reports of different kinds and the form herein suggested is not intended to replace such forms. It is

set out only as an adequate form for general police use by departments which have not developed detailed forms or which desire to simplify their use of forms.

1. Example: (the parts to be printed on the forms are in italics)

REPORT

Afton Police Department, Afton, N.Y.

Date: May 1, 1967

Title:	John R. Doe, also known as "Whitey" Doe
Complainant and Date of Complaint:	Harry Afterwell, 4 So. Glen St. Afton, N.Y. April 25, 1967
Character:	Burglary
Period of Investigation:	4/25–30/67
Report By:	Det. Sgt. George A. Roe
Details:	(first paragraph of material to be reported begins here)

2. The suggested form may be used for any type of report of investigation or police activity, whether criminal or other type of matter, merely by use of proper title and character.

a. Examples: If form used in Missing Person case, use name of person missing as the title and the character "Missing Person." If used to report on guard detail at Board of Supervisors Meeting, title "Guard Detail, Board of Supervisors," April 25, 1967 and character "Meetings Patrolled" or similar designation would suffice.

3. In general, reports should be required to be typed. If handwriting is permitted, it should be mandatory to block print all names for clarity and accuracy.

TITLE OF REPORT: The title should include the true name and known aliases or nicknames of the subject of the investigation or activity. Where more than one person is a subject, the names should be listed in alphabetical order.

If the subject is not a person, the title should be an accurate description of the subject matter, such as "Traffic Control Light, 1st. & Main Sts., Request for" or "Payroll Guard Assignments, Analysis of."

Where the subject is not identified, as in the beginning stages of most burglary cases, the title should be "Unknown Subject" followed by a description of the matter (e.g. "Unknown Subject, Burglary at 14 So. Main St., Afton, 4/26/67").

CHARACTER: The "character" of a report denotes its classification (what kind of a matter it is). This permits putting reports on the same things in the same place in file, for later use.

It is necessary that each department set up its own system of classification of cases. This should be a typed or printed list permanently available to filing personnel and to all officers writing reports. A proper "character" must be assigned to each report.

It is suggested that as to crimes, the basic articles of the Penal law are a sufficient classification in themselves and the non-penal law crimes are sufficiently distinctive in name to give their own proper classification (i.e. Abortion, Adultery, Alcoholic Beverage Control Law, Assault, Conservation Law are all adequate classifications).

In non-criminal matters, it is incumbent upon each department to determine what classifications will be of value to it. Too detailed a breakdown is cumbersome and of little value.

A correct use of case classification ("character") is of major value in correct routing of reports for supervision and in filing. Filing by classification simplifies file searches to locate individual cases if specific names in the cases are not recalled. It permits analyses of particular kinds of work, police problems, etc. by review of past cases in the particular classification of interest, whether to analyze surveys on "Traffic Control Lights," to determine what areas have been most prone to burglary violations, to pinpoint where most thefts from automobiles have occurred and at what time of day or any other problem.

All officers writing reports must, of course, use the same character for the same kind of matter. No variations can be permitted and adequate training should be provided to ensure that officers are able to assign proper "characters" to their reports.

PERIOD OF INVESTIGATION: The period of investigation should show all dates on which work or investigation set out in the report was done. This includes the date on which the complaint was received. The "period" is of major importance to any supervision or review of the report, particularly in regard to timeliness of investigation, and delays.

REPORT BY: The rank and full name of the officer who prepares the report should be set out on the form. If reporting by more than one officer is included in the report, the name to be set out is that of the officer who prepared the major part of the report or who has the responsibility for the case and who prepared some of the report.

DETAILS: In a major number of reports, it is most satisfactory to merely begin a narrative of the material to be reported, in chronological order, immediately after "Details." However, if the report is lengthy and complex, it will be found of value to begin with a brief statement or synopsis, in a few sentences, of the essential elements of what is being reported.

FILING REPORTS: All reports should be filed with other reports of the same character, in chronological order. By this means, the entire experience of the department in connection with any particular classification can be readily located for review and analysis as desired. In addition, it simplifies locating reports when the names involved are unknown or have been forgotten.

A usual system for filing is to assign each report an unvarying classification number, and an individual case number. It is usual to assign numbers to classifications in alphabetical order—thus, Abortion might be classification "1," Family Court Matters classification "18," Homicide classification "28" and so on, depending on the number of classifications used. In preparing a list of classifications it must be borne in mind that each department will have to have a number of classifications for non-criminal matters and that its list should cover all its needs, including correspondence as to all phases of its operations. Case numbering should be in strict chronological order.

Initial reports in cases should be numbered as they are received in the file room or as numbers are requested by or assigned to the report writers. The number assigned to each report must be controlled by the file room (or by case opening procedures) to prevent duplicate numbers being assigned.

The full file number of every case should be two numbers: the number for the character ("classification number") and the number for the case itself. Thus, following the examples mentioned, all Abortion cases would

have a classification number of "1" and a case number. It is usual to hyphenate the number. Thus, the fifteenth Abortion case in file would have file number "1-15" and would be referred to as "one dash fifteen."

INDEXING REPORTS: In order to locate reports and the information in them and to make information in file available at any later time it is necessary to maintain an alphabetical index in connection with the report files.

Each name or item in a title and the names of all complainants should be indexed. It is useful to also index names indicated as important by the officer submitting the reports. The indication may be given by red underlining of pertinent names or data.

The index cards are most convenient if approximately 3x5 inches in size. They should contain the name, very brief identification of the person named (such as birthdate or address) and the case file number.

1. Where more than one report or other document will go into a file, a usual system of providing ready access to the information in the file is to give each document in the file a number in addition to the file number—this is usually referred to as a "serial" number. Thus, in the fifteenth Abortion case in file, the first thing in file (perhaps a letter) would be numbered 1-15-1, the next thing (perhaps a report) would be numbered 1-15-2 and so on. The serial number should always be shown on the index card, and if the file or document is bulky, it may be convenient to add the page number where the name or thing indexed may be found in the particular "serial."

a. Example of Index Card:

Doe, John Henry 1-15-2 pg. 14
born 8/12/24

b. Index cards should be filed in straight alphabetical order, by last names, then surnames, then initials. They should never be removed from file, except to add file and serial numbers.

c. In addition to names of individuals, index cards should be prepared covering the subject matter of investigations other than ones with individual name subjects, and also property stolen, recovered and similar information which may be of value at a later time.

SUPERVISING REPORTS: It is essential to have an established procedure for review and supervision of reports and the activity reported. Every report should be reviewed by a supervisory officer, to ensure that proper investigation was conducted and to correct any incorrect handling.

1. Regular review of reports affords an accurate and practical method of determining the quality of officers' work and the training needs not only of individual officers but of the department as a whole.

WRITING THE REPORT: The basic technique of writing a report is not hard. It consists of assembling one's notes, refreshing one's recollection, preparing the title, assigning the character, listing the dates on which work was done and then writing down in the same order as they occurred, the interviews and the pertinent information. If the investigation consisted of activity other than an interview, it is described and facts set out in the order of occurrence.

1. Only in rare instances should a report be written in other than chronological order. These instances will be in detailed and complicated cases which may require grouping of interviews or investigative acts under headings related to particular parts of the investigation. By the time an officer is assigned to report an investigation of this complexity he should have had sufficient report writing experience to handle it. In doing a complex report it is well to prepare an outline

before any writing is done. The outline is not included in the writing of the report but is merely used to guide the report writer as he progresses.

WRITING TECHNIQUE: Good writing depends on clear thinking rather than on how much schooling and how many English courses an officer has had. Think first, then write is a basic, simple rule for good reports.

Officers should avoid use of police slang in reports, because of the inaccuracy of such slang and its varying meanings.

Officers should carefully avoid the use of "big" or "fancy" words. One of America's most famous authors (Mark Twain) laid down the basic rule: "I never write metropolis when I can get the same price for city."

Officers should try to write short sentences—one thought to one sentence. And short paragraphs. Long paragraphs are tempting and often seem impressive, but are much less clear. A police report must have clarity. A conscious effort to avoid need for commas and semi-colons will help to make both sentences and paragraphs shorter.

Spelling is a simple matter. The rule is: check a dictionary when in doubt.

In choosing words officers must avoid exaggerated words and instead select neat and simple words. For example, "mob" is exaggerated when the fact is there were "about eight people." "Drove off" is usually more accurate than "raced away," "hungry" instead of "starved" (unless actual starvation is meant) is usually more suitable. These examples show the type of words to avoid.

Officers should also avoid words that are so simple that a bad taste creeps in—perspire is better than sweat, gives off odor is better than stinks, infested with lice is better than lousy, and young, ignorant boy is better than punk.

FACTUAL WRITING: All information in an officer's report comes to him in one of three ways: (a) an individual told him: (b) he read it in some file, communication, document, etc., or (c) he saw, heard, touched or smelled it directly. He should therefore specify precisely his means of knowledge as to every item reported.

1. Examples:

a. "John Henry Doe, 14 South Main St., Afton, owner of the Esso Gas Station, same address, on September 14, said . . . . ."

(1) The full name, address and occupation of the person interviewed should always be set out, together with the date of the interview.

b. "Teletype message #2832, Pistol Permit Section, NYSP, Albany, states Colt .38 revolver, serial 562234 registered to John Henry Doe, 14 South Main St., Afton . . . ."

(1) The document, book, paper, etc., which furnished the information reported should be clearly identified and accurately summarized.

c. "On April 14, 1967 at approximately 2:22 PM, Detective John R. Jones observed subject George L. Roe reach into blue Cadillac sedan parked . . . . . ."

(1) The officer who conducted the activity reported should always be specifically identified.

CONCLUSIONS AND OPINIONS: Continued care in writing is required to make reports factual and to keep out unwanted conclusion or opinion.

As an example, if an officer obtains conflicting information from two persons interviewed and gives major place in the report to the information

of the one he believes most truthful, he is thereby putting substantial personal opinion of his own in the report. It is more factual to report what each said and then what facts indicate one or the other is more truthful. It is permissible to express the officer's opinion and his factual basis for his opinion as to the truthfulness of a person interviewed (so long as it is made clear that it is an opinion).

In all reporting, it should be made certain that the phrasing used sets out a fact and not a conclusion. Thus, if an officer's only knowledge of ownership of a car is what is contained in a teletype from the Motor Vehicle Department as to registration, he is stating a conclusion if he reports that "The car is owned by . . . ." since the actual owner and the owner registered may not be the same at all. He reports a fact if he writes: "Records, Motor Vehicle Department, reflect the registered owner is . . . . .".

As another example, officers should not report that "the victim can identify her assailant." This is a personal opinion of the officer. It would be better to report the facts that "The victim said she got a good look at her attacker's face under the light. She said she could identify him." The officer could then add his labelled opinion that "The victim seemed in possession of her mental faculties. She is a mature woman. She seems sensible. She should be able to make a good identification, in my opinion."

OTHER CONSIDERATIONS: Negative data should not be left out of a report. Each interview or other investigative act should be reported even if it developed no pertinent or material information.

Negative investigation may of course be summarized. If a number of neighbors are interviewed in a burglary and none furnish any information of value, it should be reported that: "The following neighbors said they were home the night of the burglary. None furnished any pertinent information:" and their names and addresses should be listed.

Rumor or gossip may occasionally have pertinence to an investigation and may properly be included in a report in such instances, if clearly identified as rumor or gossip and if the exact source is shown. This sort of information might be of value in a wanted person investigation, for example.

Where statements or other documents will be attached to and accompany a report, it is best to merely include a brief summary of them or their key parts in the report. It is not necessary and is time-consuming to include the full text of a signed confession when a copy of the confession can be attached to the report.

In all reporting it is important that the date when each interview was conducted or each investigative act was performed be set out.

BREVITY: Reports should always be as brief as possible while still containing all pertinent material. It is not necessary that a report be wordy or voluminous to contain all necessary information. Brevity is achieved by careful selection of (1) what must be reported and (2) the words used to report it.

Selection of what must be reported is a matter of good judgment. As a basic consideration, the reporting officer must keep in mind the specific objective of the report. In a criminal case, what is pertinent is information establishing the elements of the crime, the identity of the criminal and the witnesses. There is thus no purpose in relating how the officer travelled to the scene, what the weather was, what action was taken to hold back aggressive friends or spectators, and so on. Brevity is achieved by pinpointing what is actually needed.

Brevity is also achieved by choice of words. A criminal mischief case report could say, for example: "Officer observed that the residence of Mr.

and Mrs. John A. Jones, across the street from the damaged premises, had a good view of the area damaged. Accordingly, officer proceeded to these premises, located at 11 Main Street, Afton and interviewed Mrs. Jones, as Mr. Jones was at work. He is employed in the Afton Creamery. Mrs. Jones. . . ."

This could be more briefly reported as "Mrs. John A. Jones, 11 Main Street, Afton (her house overlooks damaged premises) said. . . ."

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107. RIOTS AND UNLAWFUL ASSEMBLY

RIOT: A person is guilty of riot when with other persons, he engages in tumultuous and violent conduct and intentionally or reckless causes or creates a grave risk of public alarm. Riot is in two degrees.

RIOT IN THE SECOND DEGREE: A person is guilty of riot in the second degree when simultaneously with four or more other persons, he engages in tumultuous and violent conduct and thereby intenionally or recklessly causes or creates a grave risk of causing public alarm (P.L. Sec. 240.05).

Riot in the Second Degree is a Class A misdeameanor.

RIOT IN THE FIRST DEGREE: A person is guilty of riot in the first degree when simultaneously with ten or more other persons he engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm, and in the course of and as a result of such conduct, a person other than one of the participants suffers physical injury or substantial property damage occurs (P.L. Sec. 240.06).

Riot in the First Degree is a Class E felony.

INCITING TO RIOT: A person is guilty of inciting to riot when he urges ten or more persons to engage in tumultuous and violent conduct of a kind likely to create public alarm (P.L. Sec. 240.08).

Inciting to Riot is a Class A misdemeanor.

UNLAWFUL ASSEMBLY: A person is guilty of Unlawful Assembly when he assembles with four or more other persons for the purpose of engaging or preparing to engage with them in tumultuous and violent conduct likely to cause public alarm, or when, being present at an assembly which either has or develops such purpose, he remains there with intent to advance that purpose (P.L. Sec. 240.10).

Unlawful Assembly is a class B misdemeanor.

CHANGES FROM THE OLD LAW: Experienced officers will recall that under the old Penal Law, three or more persons were required for Riot or Unlawful Assembly. The new law increased this minimum to four, or ten.

The old law dealt with "disturbing the peace" or "breach of the peace" in regard to these crimes, but the new law has discarded these phrases and speaks only of "tumultuous and violent conduct" and of "grave risk of causing public alarm." It is evident that to have a risk of public alarm, there must be some members of the public in a position to be alarmed. This is a key point of proof to bear in mind when applying the new law to situations where there is not a crowd gathered. Pertinent proof on the point should be collected and preserved from the outset, including live testimony and, if practicable, photographs.

The former crime of Lynching has been eliminated from the law. This type of offense is now prosecuted as an Assault or a Homicide, depending on injury or death occurring.

DUTY OF SHERIFF AND OTHER OFFICIALS: When five or more persons armed with dangerous weapons or ten or more persons, armed or not are unlawfully or riotously assembled, the Sheriff, Undersheriff, deputy sheriff, mayor and alderman (if a city), supervisor (if a town) chief executive (if a village) and the justices of the peace or police justices of the municipality or such of them as can forthwith be collected, must go among the people assembled and command them, in the name of the people of the state, immediately to disperse (Code of Criminal Procedure Sec. 106). Any official having notice of such assembly who is required to taken action under Code of Criminal Procedure Section 106, and fails to do so, is guilty of a Class A misdemeanor (Code of Criminal Procedure Sec. 109).

Authority is given by Chapter IV of the Code of Criminal Procedure to the Sheriff and the mentioned officials to make summary arrests for rioting and resisting execution of process and they may require any citizen to assist them (CCP, Sec. 107 et seq).

GOVERNOR'S AUTHORITY: The Governor is authorized, under certain circumstances, to declare any county in a state of insurrection and may call out the militia as he deems necessary (Code of Criminal Procedure Secs. 115, 116). He may also call out the militia in cases of rioting, breach of the peace or danger thereof (Military Law Secs. 6, 7).

STATE POLICE: The New York State Police have a general law enforcement jurisidiction throughout the state of New York and are empowered to co-operate with any other department of the state, or with local authorities. However, they cannot exercise any authority within the limits of any city to suppress rioting and disorder except by direction of the Governor or upon the request of the Mayor of the city, with the approval of the Governor (Exec. L. Sec. 223).

Thus, in any riot situation in a city, assistance of the State Police may be had only with approval of the Governor. His approval, of course, may be on his own initiative or upon the request of the city's Mayor, in exact accordance with the Executive Law.

CITIZEN TO ASSIST OFFICER: Any person present at an unlawful assembly or riot may be commanded by a peace officer identifiable or identified to him as such, to aid the officer in effecting an arrest or in preventing the commission by another person of any offense. If the person so commanded unreasonably fails or refuses to aid the peace officer, the person is guilty of Refusing to Aid a Peace Officer, a Class B misdemeanor (P.L. Sec. 195.10).

"The citizenry may be called upon to enforce the justice of the State . . . honestly and bravely with whatever implements and facilities are convenient and at hand" (Chief Judge Cardozo, Court of Appeals, Matter of Babington vs. Yellow Taxi Corp. 250 NY 14).

KILLING OR INJURING RIOTER: A person is justified in using physical force on another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by the other person. He may use a degree of force which he reasonably believes to be necessary. Deadly physical force may be used only if the user reasonably believes that the other person is using it or is about to use it (P.L. Sec. 35.15, subd. 1).

A peace officer is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary:

1. To effect an arrest of a person whom he reasonably believes to have committed an offense; or

2. To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest (P.L. Sec. 35.30, subd. 1).

A peace officer is justified in using *deadly* physical force upon another person only when he reasonably believes it is necessary:

1. To defend himself or a third person from the use or imminent use of deadly physical force; or

2. To effect an arrest or to prevent the escape from custody of a person whom he reasonably believes,

a. has committed or attempted to commit a felony involving the use or threatened use of deadly physical force, or

b. is attempting to escape by the use of a deadly weapon, or

c. otherwise indicates that he is likely to endanger human life or to inflict serious physical injury unless apprehended without delay (P.L. Sec. 35.30, subd. 2).

A person who has been directed by a peace officer to assist him in effecting an arrest or to preventing an escape from custody is justified in using physical force when and to the extent that he reasonably believes such to be necessary to carry out the peace officer's direction (P.L. Sec. 35.30, subd. 4).

A person who has been directed to assist a peace officer may use deadly physical force to effect an arrest or to prevent an escape from custody when:

1. He reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

2. He is directed or authorized by the peace officer to use deadly physical force (P.L. Sec. 35.30, subd. 5).

HANDLING AND INVESTIGATIONS

The most successful way to handle a riot-type situation, from the police viewpoint, is to prevent it. Departments must maintain close contacts with all segments of the population which might become involved in riots. An active intelligence program and informants as required, to stay abreast of all developments, should be included in planning. This is true whether the segment in question is one race, one age-group, or one economic group. Only good intelligence will permit taking active and effective steps to prevent a riot, unlawful assembly, or mob action.

If the prevention is not possible, a major problem for law enforcement will be mobilization of personnel and materials. This should be planned in advance, not only as to the agency's own police personnel but as to outside agencies in a position to assist. Means of alerting individual officers and moving them from point to point after they report for duty must be worked out in advance.

Experience has indicated the need for protective helmets and other safety equipment for officers on riot duty and planning should include procurement and means of handling and issuing such equipment.

It will be found that communications present a problem at riot scenes. Advance planning is needed to ensure an adequate supply of mobile equipment.

Liaison with the fire department, local hospitals and local courts should be the subject of pre-planning. Liaison plans should be put into immediate effect with these agencies when the riot, etc., becomes a fact.

ACTION AT THE SCENE: When a riot is acutally occurring the senior officer present must determine whether sufficient officers are then available to disperse the rioters, considering the size of the rioting group and the temper of the rioters. If not, steps must be taken to contain the riot, and to seal off the area until sufficient force is available to quell the riot.

Detectives not in uniform, infiltrating among rioting groups, perfrom valuable service in singling out and identifying agitators and leaders for arrest. Photographs are always of considerable value. It should also be borne in mind that photographs and news-reel motion pictures taken by press and TV representatives may frequently furnish valuable evidence and identifications.

It will be found most useful and efficient to assign an experienced officer who knows the press and public relations to act as on-the-scene Press Officer. He should coordinate as much as possible the furnishing of all law enforcement announcements or information to the press.

Arrests, when undertaken, should be made on the most provable specific grounds. As an example, a person at a riot who is helping himself to a quart of whiskey through a broken store window while screaming threats at the police may be engaged in rioting. He is certainly engaged in an easily provable larceny. Larceny is the logical charge to place. Burglary, Larceny, Assault, Disorderly Conduct, and Criminal Mischief, Endangerment and Harassment will ordinarily be the main kinds of charges used and are charges which can be proved with the most ease and certainty.

Proof of the occurence of Riot and of engaging in tumultuous and violent conduct is more difficult. Proof of actual participation as a rioter, including proof of reckless or intentional causing grave risk of public alarm will be much more difficult. Arrests for rioting should be made only where there is clearly admissible evidence of specific acts by the one arrested constituting assembling with 4 or 10, or more others and doing in concert with them one of the acts prohibited by Penal Law Section 240.05 or 240.06. Such proof is often difficult or lacking while proof of an assault or theft by the same subject will often be comparatively easy.

Care must be taken, in making arrests, to immediately record identities of arresting officers and officers who can testify to the elements of the crime and can identify the person arrested. The need for prompt action, the multiplicity of arrests and the tumultuous conditions of a riot make additional care in this regard mandatory.

Where rioters are warned to disperse (CCP Sec. 106, 107) an essential element of proof against each subject arrested is establishing that the warning was given and that it was a proper warning. It should be clear enough and loud enough to be understood and in a language which could be understood. It will be found well to prepare a brief warning in writing which can be read and preserved. In some areas reading in some other language or languages in addition to English may be advisable. The warning should be given over amplifying equipment of a volume determined by the factual situation (not less than the usual battery-powered "bull-horn"). If in addition, a recording of the warning and a sound level measurement can conventiently be made there should be ample proof available.

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108. ROAD BLOCKS

New York has no specific law which authorizes law enforcement officers to install a road block on a public highway or road. Officers and their

municipalities are liable to civil suit for any injury to motorists or travellers on the highways which the officers negligently cause through use of road blocks.

Road blocks are usually not actual, physical blocking of a road but are surveillance points maintained by officers at strategic points on a highway. Physical blockage of a highway should be used only when essential to stop and apprehend specific wanted persons, and only if complete safety to members of the public can be assured. Any actual blocking of a highway, because of today's high speed of vehicles on highways, offers risk of killing or severely injuring innocent travellers.

BASIC CONSIDERATIONS: In considering whether to set up road blocks or to request other agencies to cooperate by setting up road blocks, two key things should be borne in mind: (1) the time element and (2) reduction of other police activity.

TIME ELEMENT: In cases involving serious crime or escape, where vehicles are known to be or are likely involved, it should be considered that mile-a-minute travel by vehicle is commonplace. Thus, if a road block cannot be installed ten or twenty miles from the point of occurrence, within ten or twenty minutes, as the case may be, it is likely of no value to install one. The wanted person will likely have escaped by travelling out of the area. Mile-a-minute travel means that most municipal law enforcement agencies will have to depend on help from other agencies for effective road blocks, since wanted persons can be out of the requesting agency's territory within minutes.

REDUCTION OF OTHER POLICE ACTIVITY: Effective road blocks require large amounts of manpower, which must be mobilized on the spur of the moment. This requires that officers be withdrawn on a moment's notice from almost all other kinds of law enforcement work for the duration of the road block.

EFFECTIVE ROAD BLOCKS: Road blocks may be expected to be effective where the wanted person is known or reasonably believed to be in a particular vehicle on a particular highway, such as the situation where an officer is in direct pursuit. Road blocks set up on that highway on telephoned or radioed requests will be effective. Other road blocks require careful consideration before being ordered. The likelihood is that they will be set up too late. The certainty is that they will disrupt other police activity because of their manpower requirements. Orders for road blocks should therefore be restricted to serious crimes, such as homicide, robbery, hit-and-run involving death or serious injury, or to escapes of importance.

PRE-PLANNING: It is not possible to have an effective roadblock outside the confines of one agency's territory without considerable pre-planning and some practice. The pre-planning includes working out means of rapid communication by either telephone or common-frequency radio broadcasts of sufficient range. It also includes careful terrain review to ensure that the most practicable points are established for each block, leaving a minimum of escape routes from the blocks.

ESTABLISHING AND MANNING ROAD BLOCKS: The place at which any road block is established should be one which does not permit a turning-off at any point within sight of the road block.

If there is any physical obstruction of the road, adequate and clear warnings must be established a considerable distance before the block to prevent killing or injuring innocent travellers. A quarter-mile from the road block is not too remote for first warning signs.

Where the block does not involve a physical blocking of the road, adequate warning signs and identification of the agency are still necessary.

A road block should have a minimum of two officers, one to approach cars, the other to cover the approach officer with an adequate firearm. A shotgun is most intimidating and most effective at the ranges involved in roadblocks.

Clear instructions should be issued as to the procedure to be followed by the roadblock officers when a vehicle is observed to turn around and seeks escape from the roadblock. If the officers at the block chase such vehicle the block becomes unmanned and if they do not its escape becomes likely. It may, of course, have no connection at all with the immediate object of the roadblock. Decision as to action in such cases should be part of the pre-planning. Seldom will it be possible to man roadblocks with sufficient officers and equipment to provide men and cars for appropriate chase from the block.

It is essential that officers manning road blocks be trained and instructed in two major safety aspects: (1) injury by vehicles approaching the blocks and (2) injury by assault, including gunfire, from occupants of vehicles approaching or stopped at the road blocks.

BASIS FOR BLOCK—DISSEMINATING DATA: When the seriousness of the crime or importance of an escape justify a road block, the facts of the crime or escape must be initially verified by an officer of the agency in whose jurisdiction it occurs. Accurate descriptive information must be obtained as soon as possible for dissemination to officers moving to roadblock posts.

Information as to firearms or other weapons in the possession of the wanted person must always be disseminated.

SEARCHING AT ROAD BLOCK: The business of an officer at a road block is proper and safe vehicle search and interview of occupants. Searches should include interior of both vehicle and trunk. Approach to each vehicle should be cautious.

PUBLIC RELATIONS AT ROAD BLOCK: Innocent persons (which is almost everyone stopped) at all road blocks are both curious as to the reason for a block and irked at the delay caused. They may not display either curiosity or irritation. In every case, it is advisable to give frank information as to the reason for the block. If the wanted person or his vehicle is readily identifiable, the points of identification should be mentioned, so that each member of the public passing the block will be aware of the identification and may be able to give (either then or later) information of value in locating the wanted person.

CONTACTS ALONG HIGHWAY: Whenever a roadblock is to be established consideration should be given to informing cooperative individuals on pertinent highways and roads of the facts as to the wanted person, to increase the segment of citizenry who will be alert and will advise the law enforcement agency if seen. Officers enroute to road block posts cannot properly delay to give such notice. Pre-planning must include means of giving such notice and the persons and places to which it should be given.

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109. ROBBERY

The new Penal Law makes considerable changes in the elements of Robbery. It no longer requires a taking from the person or presence of

another, nor is there any need of "fear" or violence. In addition, the elements of each degree of Robbery are very different from the old law.

ROBBERY DEFINED: Robbery is forcible stealing (P.L. Sec. 160.00). A person forcibly steals property and commits Robbery when:

1. In the course of committing a Larceny,
2. He uses or threatens the immediate use of,
3. Physical force upon another person,
4. For the purpose of:
   a. Preventing or overcoming resistance to:
      (1) The taking of the property, or
      (2) The retention of the property immediately after taking, P.L. Sec. 160.00, subd. 1); or
   b. Compelling the owner of the property or any other person to:
      (1) Deliver up the property, or
      (2) Engage in any other conduct which aids in the commission of the robbery (P.L. Sec. 160.00, subd. 2).

PROPERTY: Robbery is no longer limited to personal property. Property includes money, personal property, real property, things in action, evidences of debt or contract, or any article, substance or thing of value (P.L. Sec. 155.00, subd. 1).

ROBBERY AND LARCENY BY EXTORTION DISTINGUISHED: Larceny by extortion no longer requires obtaining property from the victim "with his consent" (old P.L. Sec. 850). Also, the kind of extortion involving a threat of physical injury must be a threat of physical injury "in the future" (P.L. Sec. 155.05, subd. 2-e-i) (see Section 60, "Extortion and Coercion," this Manual).

Robbery, on the other hand, requires actual use of physical force or a threat of the immediate use of physical force.

ROBBERY IN THE THIRD DEGREE: A person is guilty of Robbery Third when he forcibly steals property (P.L. Sec. 160.05).

Robbery in the Third Degree is a Class D felony.

ROBBERY IN THE SECOND DEGREE: A person is guilty of Robbery Second when he forcibly steals property and he is aided by another person actually present (P.L. Sec. 160.10).

Robbery in the Second Degree is a Class C felony.

ROBBERY IN THE FIRST DEGREE: A person is guilty of Robbery First when he forcibly steals property and when:

1. In the course of the commission of the crime, or
2. In the course of immediate flight from the crime,
3. He or another participant in the crime:
   a. Causes serious physical injury to any person who is not a participant in the crime, or
   b. Is armed with a deadly weapon, or
   c. Uses or threatens the immediate use of a dangerous instrument (P.L. Sec. 160.15).

Robbery First is a Class B felony.

DEFINITIONS FOR ROBBERY FIRST:

1. Serious Physical injury means physical injury which creates a substantial risk of death or which causes death or serious and protracted loss or impairment of the function of any bodily organ (P.L. Sec. 10.00, subd. 10).

2. A deadly weapon is any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, gravity knife, billy, blackjack, or metal knuckles (P.L. Sec. 10.00, subd. 12).

3. A dangerous instrument is any instrument, article or substance, including a "vehicle" which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury (P.L. Sec. 10.00, subd. 13).

4. A "vehicle" means a motor vehicle as defined in the Vehicle and Traffic Law, or any aircraft, or any vessel equipped for propulsion, by mechanical means or by sail (P.L. Sec. 10.00, subd. 14).

FEDERAL CRIMES INVOLVING ROBBERY: It is a Federal felony to obstruct, delay or affect interstate commerce (commerce into or out of New York) or the movement of goods in such commerce by robbery, or extortion, or physical violence, whether actual or only attempted (Title 18 U.S. Code, Sec. 1951). This law is entitled "Interference with Commerce by Threats or Violence." The Federal definitions of robbery or extortion are similar to those in the New York Penal Law.

Robbery of another, of any kind of personal property belonging to the United States, is a felony (Title 18 U.S. Code, Sec. 2112).

Robbery and larceny violations in respect to banks and similar institutions are also covered by Federal law (Bank Robbery and Incidental Crimes, Title 18 U.S. Code, Sec. 2113).

It is a Federal felony to rob a bank, savings and loan association or Federal credit union. All banks which are members of the Federal Reserve System, or were organized under the laws of the United States or are insured by the FDIC are covered, as are all Federal or federally insured savings and loans and all Federal credit unions.

The same law covers larcenies from any of the named institutions, making it a felony if over $100 is stolen and a misdemeanor if $100 or less is taken (Title 18 U.S. Code, Sec. 2113, subd. e).

The FBI has responsibility for investigations of violations of the Federal robbery laws, except those involving U.S. Post Offices, their employees and vehicles. These are the responsibility of U.S. Post Office Inspectors.

INVESTIGATIONS

Not only the elements of a Larceny but also the element of physical force to accomplish the Larceny must be proved for Robbery Third. If there is more than one robber, the crime is automatically Robbery Second. A physical injury, possession of a deadly weapon, or use of or threat to use a dangerous instrument constitute Robbery First.

Note that there is no need for the robber to display a deadly weapon—he may keep it hidden in a back pocket and still be in violation. But the dangerous instrument must be actually used, or its immediate use must be threatened (i.e., if a robber has a bottle of nitro-glycerin, a dangerous instrument, and keeps it hidden and never mentions it, the crime is not Robbery First. If he shows it and says "Give me the money or I'll drop the bottle," it is Robbery First).

Street patrol is important in robbery enforcement. Certain areas are obvious danger points and require special attention, such as "lovers lane" in the suburbs and rural areas, commercial districts in the city in the daytime and transportation, residential and nightlife sections after dark.

Upon receipt of a complaint that a robbery has occurred it is a useful technique to immediately broadcast available details to all units, with

advice that the broadcast is an "alert" or "notice" and that the alleged robbery is being verified. False complaints of robbery are often made to cover misappropriation of funds by employees.

The first officer at the scene should briefly verify the robbery and telephone or radio in pertinent details and descriptive data as soon as possible.

The prime victim should be interviewed to obtain full descriptions of the robbery, details as to the robber's modus operandi, description of any vehicle used by or associated with the robber and description of weapons possessed by the robber, if any. All other witnesses should be promptly interviewed and the neighborhood should be canvassed to locate additional witnesses to the robbery or persons who saw the robber or the robber's vehicle.

The robber's mode and route of escape should be determined very early in the investigation and inquiry conducted along the indicated route, interviewing persons on the route who may have observed the escape.

The victim and all eye witnesses should be specifically questioned as to words spoken by the robbers with attention to not only what was said but the accent and choice of words.

In all cases, a careful search of the crime scene should be made for evidence left by the robber. Scientific investigation of the crime scene should be performed as indicated by the facts, whether merely for possible latent fingerprints on a cash register and counter in a store robbery or a full-scale examination at the scene of a "Lovers Lane" robbery-rape.

Where the robbery involves a commercial establishment or business firm of any kind, specific inquiry should be made to identify prior employees at the particular place, and their length of service as well as recent job applicants who could be suspects.

It is of value to obtain and exhibit photographs of known robbers or "hold-up" men to all eye witnesses.

If the robbery involves a bank, or other institution protected by the Federal robbery statutes, the FBI (or the U.S. Post Office Inspector in Post Office cases) should be immediately advised.

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110. SABBATH LAWS

General Business Law Section 2 provides: "The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community." The first day of the week is Sunday.

Violation of the mentioned prohibitions is "Sabbath breaking" (Genl. Bus. L. Sec. 3). Sabbath breaking is a violation punishable by fine not less than $5 and not over $10 or imprisonment for not more than 5 days, or both. Second or later offenses are Unclassified misdemeanors (fine not less than $10 and not over $20, imprisonment not less than 5 nor more than 20 days, or both) (Genl. Bus. L. Sec. 4, P.L. Sec. 55.10, subd. 3).

The acts prohibited on Sunday are:

WORK: All labor except works of necessity and charity is prohibited. Works of necessity or charity include whatever is needful during the day for the good order, health or comfort of the community (Genl. Bus. L. Sec. 15). In cases of doubt as to whether work is of necessity the advice of the District Attorney should be sought.

NOISE: All noise unreasonably disturbing the peace is prohibited (Genl. Bus. L. Sec. 7).

SPORTS AND SHOWS: All public sports, exercises or shows are prohibited, except after five minutes past one o'clock in the afternoon and then only if permitted by local ordinance (Genl. Bus. L. Sec. 7).

There is no prohibition against private sports, games or recreational activities engaged in primarily for personal enjoyment, recreation and health, if in a manner which does not constitute a serious interruption of the repose or religious liberty of the community (Genl. Bus. L. Sec. 7).

TRADE AND EMPLOYMENTS: All trades, manufactures, agricultural or mechanical employments are prohibited, unless works of necessity (Genl. Bus. L. Sec. 8).

SELLING OR OFFERING FOR SALE: All kinds of public selling or offering for sale of any kind of property is prohibited, with the following exceptions (Genl. Bus. L. Sec. 9).

1. Food (any time before 10:00 A.M.)
   a. Uncooked flesh foods or fresh or salt meats cannot be sold at any time.
2. Meals to be eaten on premises, any time.
3. Caterers may serve meals to patrons at any time.
   a. Delicatessen dealers cannot be considered caterers.
4. The following may be sold by any one:
   a. prepared tobacco,
   b. bread, milk, eggs, ice, soda water, fruit,
   c. flowers,
   d. confectionery, souvenirs, newspapers, magazines,
   e. gasoline, oil, tires,
   f. cemetery monuments,
   g. drugs, medicines and surgical instruments.
5. In cities and villages having a population of 40,000 or more cooked and prepared food, by grocers, delicatessen dealers and bakers only, before 10:00 A.M. and between 4:00 P.M. and 7:30 P.M.
6. Outside cities and villages having a population of 40,000 or more, any merchandise usually sold, by delicatessen dealers, bakeries, and farmers' markets or roadside stands selling fresh vegetables and other farm produce.
7. Outside cities and villages having a population of 40,000 or more, fishing tackle and bait stores may sell merchandise usually sold by them.
8. Licensees who may sell beer at retail can sell only before 3:00 A.M. or after 1:00 P.M. on Sunday, for off-premises consumption.

In addition to penalty for Sabbath breaking, all property and commodities unlawfully exposed for sale on Sunday in violation of Sabbath law, are forfeited. On conviction of an offender by a justice of the peace, police justice or magistrate, such justice or magistrate must issue a warrant for the forfeited articles, which must be sold and the proceeds paid to the overseers of the poor (Genl. Bus. L. Sec. 12).

PROCESSION OR PARADES: No procession or parade is permitted on Sunday in any city up to 2:00 P.M. They may be held after 2:00 P.M. only if permitted by local ordinance. Offenses are violations punishable by fine not over $20, imprisonment not more than 10 days or both (Genl. Bus. L. Sec. 14).

Funeral processions for the actual burial of the dead and processions to and from a place of worship in connection with a religious service are permitted. For other regulations, including when music may be played in

processions, etc., Section 14 of the General Business Law should be consulted.

PUBLIC ENTERTAINMENT: All theatrical performances, concerts, recital dances, motion picture exhibitions or any other public exhibition, exhibit, show or entertainment on Sunday is prohibited except after 1:05 P.M. and then only if authorized by local ordinance (Genl. Bus. L. Sec. 15).

BARBERS: Barbering at any time on Sunday is prohibited. Offenses are violations punishable by fine of not over $5; second and later offenses are punishable by not less than $10 and not over $25, or imprisonment not less than 10 days nor more than 25 days, or both (Genl. Bus. L. Sec. 16).

PERSONS OBSERVING SABBATH OTHER THAN SUNDAY: For most faiths, the Sabbath is Sunday. Members of the Hebrew faith and some other faiths observe their Sabbath on Saturday. Some faiths may observe other days of the week as the Sabbath.

The General Business Law forbids certain activities on Sunday only, not on any other day of the week. It makes two exceptions. If a person keeps a day other than Sunday as the Sabbath, he may show this as a defense to a prosecution for working or laboring on Sunday, if the Sunday labor he did was done in such a manner as not to intrrupt or disturb other persons on Sunday (Genl. Bus. L. Sec. 6). In other words, a person who observes Saturday or some other day as the Sabbath is permitted to work on Sunday if he doesn't disturb anyone.

The other exception relates to trade, business or public selling or offering for sale on Sunday. It is a defense to a prosecution for violation of the Sabbath laws as to such activity that the violator uniformly keeps another day as the holy time and closes his business on that day and does not himself labor on that day and on Sunday conducts his business by himself and members of his immediate family. It is also required that his business on Sunday be conducted so as not to disturb the religious observances of the community (Genl. Bus. L. Sec. 10).

SERVICE OF PROCESS ON SATURDAY: It is a Class A misdemeanor to maliciously serve civil process or to procure the service of such process on Saturday, on any person who keeps Saturday as holy time and does not labor on Saturday (Genl. Bus. L. Sec. 13).

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111. SCHOOL AND SCHOOL BUSES

COMPULSORY EDUCATION: No person may lawfully be refused admission into or be excluded from any public school in this State on account of race, creed, color, or national origin (Educ. L. Sec. 3201).

ATTENDANCE: In each school district of the state every minor from seven to sixteen years of age must attend upon full time day instruction, except those who have completed a four year high school. A minor for whom application for a standard employment certificate has been made and who is eligible, though unemployed, may be permitted to attend part-time school not less than twenty hours per week instead of full-time school (Educ. L. Sec. 3205). A minor is required to attend upon instruction only if in proper mental and physical condition (Educ. L. Sec. 3208).

INDIGENT CHILDREN: Public welfare officials are required by the Education Law (Section 3209) to furnish indigent children with suitable clothing, shoes, books, food, and other necessaries to enable them to attend school.

ABSENCE: Absence from required attendance is permitted only for causes allowed by the general rules and practices of the public schools. Absence for religious observance and education is permitted under the rules of the Commissioner of Education (Educ. L. Sec. 3210).

No person can lawfully induce a minor to absent himself from attendance upon required instruction or harbor him while he is absent or aid or abet him in violating any provision of the attendance laws. (Educ. L. Sec. 3212, subd. 5).

All persons are prohibited from interfering with an Attendance Officer in the lawful pursuit of his duties, and cannot neglect or refuse to answer his lawful inquiries. A first offense is a Violation and any later offense an Unclassified misdemeanor. (Educ. L. Secs. 3212, subd. 5, 3233).

TRUANT OFFICERS: A Supervisor of Attendance or Attendance Officer may arrest without a warrant any minor who is unlawfully absent. He may enter during business hours, any factory, or other establishment in which he believes a minor is employed, within the city or school district in which he is employed, and shall be entitled to examine on demand the employment certificate and vacation work permit of the minor. He may also enter any public place during the hours in which the public have access thereto, to ascertain if any minor is therein who is required to attend school (Educ. L. Sec. 3213).

SCHOOL BUS DEFINITION: A school bus is any motor vehicle owned by a public or governmental agency or private school and operated for the transportation of pupils, teachers and other persons acting in a supervisory capacity, to or from school or school activities or privately owned and operated for compensation for the transportation of pupils, teachers and other persons acting in a supervisory capacity to or from school or school activities (V & T Sec. 142).

OTHER VEHICLES SUBJECT TO SCHOOL BUS LAW: All provisions of the Vehicle and Traffic Law relating to school buses, apply with equal force to buses used in transporting children and instructors to and from child care centers maintained for children of migrant farm and food processing laborers and in transporting children to and from camp or camp activities (V & T Sec. 375, subd. 20-d).

SCHOOL BUS REGISTRATION: School buses must be registered with the Department of Motor Vehicles, as required for other motor vehicles, as buses. A vehicle not of omnibus type, used only to transport pupils or pupils and teachers to and from school and not otherwise used to transport passengers for hire, need not be registered as a bus and other appropriate registration is sufficient (V & T Sec. 401, subd. 11).

SCHOOL BUS DRIVERS: A person must have a Class 1 or a Class 2 Chauffeur's License to operate any bus (V & T Sec. 501, subd. 1-a (a)), including school buses.

Motor vehicles having a capacity of less than eleven passengers in addition to the driver operated elsewhere than in a city for the purpose of transporting pupils or pupils and teachers to and from school may be operated by a person licensed only as an operator. A chauffeur's license is not required for such operation (V & T Sec. 501, subd. 6).

A passenger motor vehicle having a seating capacity of not more than 7 passengers used for transporting school children on a contract or fee basis, but not used in the business of transporting passengers for hire generally, is a bus, not a taxicab and comes within the exemption of the preceding paragraph. (A chauffeur's license, any class, is required to drive a taxicab) (Commissioner's Regulations, Department of Motor Vehicles, Sec. 3.2, 3.12 (f), V & T Sec. 501, subd. 1-a (a), 6).

The driver of any school bus in a city or entering a city must have a chauffeur's license, Class 1 or Class 2.

Section 3624 of the Education Law authorizes the Commissioner of Education to make rules and regulations governing the operation of all transportation facilities for pupils. The following rules and regulations of the Commissioner of Education concern school bus drivers. Violations of these rules and regulations are neither crimes nor infractions. No arrests may be made for these violations, but they should be called to the attention of the pertinent School Superintendent or Principal:

1. Drivers must be at least 21 years of age and not over 70 (Commissioner's Regulations, Sec. 156.13 (b)).

2. Drivers must be physically fit and must be given a physical examination prior to beginning service to be reported on forms prescribed by the Commissioner (Commissioner's Regulations, Sec. 156.13 (c)).

3. Drivers must be of good moral character and thoroughly reliable (Commissioner's Regulations, Sec. 156.13 (e)).

4. Drivers shall not allow pupils to enter or leave the bus while in motion, or to thrust their heads or arms out of open windows. Drivers are responsible for the reasonable behavior of pupils in transit (Commissioner's Regulations, Sec. 156.13 (f) 1,2,3).

5. Gas tanks of school buses cannot be filled while pupils are in the bus (Commissioner's Regulations, Sec. 156.13 (f) 5).

6. Drivers must not leave school buses while children are inside except in case of emergency and then only after stopping motor, removing ignition key, setting auxiliary brake and leaving transmission in gear (Commissioner's Regulations, Sec. 156.13 (g) 4).

7. Drivers must bring bus to full stop at state highways before crossing (Commissioner's Regulations, Sec. 156.13 (g) 2).

V & T VIOLATIONS BY DRIVERS: School bus drivers are required to obey all Vehicle and Traffic Laws, and regulations of the Commissioner of Motor Vehicles.

School buses are required to stop at railroad crossings (V & T Sec. 1171).

Drivers are required to keep their flashing red signal lights lighted whenever passengers are being received or discharged (V & T Sec. 375, subd. 20-a).

Drivers when discharging pupils who must cross the highway must instruct such pupils to cross in front of the bus and must keep the bus halted with red signal lights flashing until such pupils have reached the opposite side (V & T Sec. 1174, subd. b.).

SCHOOL BUS EQUIPMENT: A school bus must have all the equipment required of other motor vehicles and in addition, any school bus having a seating capacity of more than 7 passengers must be marked outside the bus as follows:

1. At least one flashing red lamp in front and one in the rear, not less than 6 inches in diameter, mounted no more than 6 inches below the top of the bus (V & T Sec. 375, subd. 20-a).

2. On top of bus, outside, one sign in front and one in rear with words "SCHOOL BUS" in black letters at least 8 inches high (each line or stroke of letters must be one inch wide) on a background of color known as "national school bus chrome." Such sign must be visible for 200 feet in the day and illuminated to be visible for 500 feet from one-half hour after sunset to one-half hour before sunrise.

3. If owned by a school or municipal corporation, bus must be painted color known as "national school bus chrome" (V & T Sec. 375, subd. 21).

4. If a bus so equipped, marked and painted ceases to be used to transport pupils or pupils and teachers, the equipment, markings and paint must be removed and changed within 15 days after relicense (V & T Sec. 375, subd. 21).

5. **Buses Seating More Than Twelve:** Any school bus with seating capacity for more than twelve children and with the engine located ahead of the driver, must have a convex mirror, at least 8 inches in diameter, firmly mounted at hood, windshield or fender height, in the front of the bus, located so that the driver, while seated, can see the road from the front bumper of the bus to a point where direct observation of the road is possible (V & T Sec. 375, subd. 20-f).

SEAT SAFETY BELTS: Any motor vehicle having a seating capacity of not more than eleven adults or twelve school children, used primarily for the transportation of children to or from public or private school, must have seat safety belts of a type approved by the Commissioner of Motor Vehicles for each occupant. Registering or causing to be operated such a vehicle not so equipped is punishable by fine not over $50, imprisonment not more than 15 days or both (V & T Sec. 383, subd. f).

WIDTH OF SCHOOL BUSES: A school bus used solely for the transportation of children to and from school may not be more than 98 inches wide. Other buses must conform to statutory requirement of eight feet width (V & T Sec. 385, subd. 1).

EDUCATION COMMISSIONER'S REGULATIONS: The Commissioner's Regulations, subchapter J, part 156, Sections 156.1 through 156.10, contain detailed specifications and requirements as to school bus chassis, body and equipment. Violations should be brought to the attention of the Commissioner, Department of Education, Albany and local school authorities. No arrests may be made for violations of such rules and regulations. They are of concern to school authorities, and manufacturers and converters of buses for school bus use.

STOPPED SCHOOL BUS: It is a traffic infraction to fail to stop any vehicle before *meeting or overtaking* a school bus which has stopped on any highway outside New York City to take on or discharge any school children, if the bus is properly marked and its visual signal is operating. It is also a violation to proceed after stopping, until the bus resumes motion, or until signalled to do so by the bus driver or a police officer (V & T Sec. 1174, subd. a). The law applies equally to single and divided highways.

The law does not require that the bus be passed to constitute the violation. Vehicles must stop before either meeting or overtaking the school bus.

To establish the violation it is sufficient to establish that the bus was a school bus with its proper color and sign and flashing red lights. It is not necessary to prove the exact ownership of the bus, the school contract, the elements of Section 142 of the Vehicle and Traffic Law, etc., (Peo. vs. Skolnick, 200 Misc. 389, affd. 303 NY 630; Peo. vs. Praete, 32 Misc. 2d.595). It is not necessary to prove detailed compliance with the equipment law (i.e., that the sign letter strokes are exactly 1 inch wide, that expert evidence exists that the sign was visible at 200 feet, etc., (Peo. vs. Geiselman, 26 Misc. 2d. 34).

INVESTIGATION AND PATROL

Departments covering school bus areas should insure that all school bus routes are known and that assignments are made to follow such buses whenever practicable to arrest violators of Section 1174, "Overtaking and

Passing School Bus." Officers should be alert to make arrests for such violations, in view of the possible serious consequences to local school children, who must in a large measure depend on the officer for protection.

When following school buses, officers must exercise caution to remain far enough behind to avoid any possibility of rear end collision with the school bus. They should drive in such position as to be most clearly visible to motorists proceeding in either direction, in order to obtain the greatest benefit provided by other motorists seeing the police vehicle on the highway.

Officers should also be alert for violations of the law on the part of school bus drivers.

All bus drivers in a department's territory should be instructed to note license numbers and descriptions of drivers who violate Section 1174, and in such cases arrest on information sworn by the bus driver should always be considered. Bus drivers must be cautioned, however, to take no action which would jeopardize the safety of the children on their buses, in order to get license plate numbers and descriptions.

Officers may receive complaints that a school bus driver has refused to allow a pupil to board a school bus because of the pupil's misconduct. Officers should inform such complainants of the Education Commissioner's regulation making the bus driver responsible for the conduct of pupils on the bus and should refer the complainant to the pertinent School Superintendent or Principal.

Officers should bear in mind that a summons issued for a second or subsequent violation of Section 1174 cannot be handled by written waiver (CCP Sec. 335, subd. 2).

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112. SEARCH AND SEIZURE

POLICY REGARDING SEARCHES AND SEIZURES: Officers should abide by the spirit of the law relating to searches and seizures, as well as the letter of the law. All searches should be made with a search warrant where the law specifically requires the issuance of a warrant. In all other searches, where time and circumstances permit, it is advisable to obtain a search warrant.

Officers' efforts to obtain a warrant, whether successful or not, should be included in their reports of investigation.

The law on searches and seizures is not exact. It is based primarily on the fourth amendment to the Constitution which provides that "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized." In Mapp. vs. Ohio, (367 U.S. 643) the Supreme Court of the United States said that "all evidence obtained by searches and seizures in violation of the Constitution is by that same authority inadmissible in a State Court." This decision (in June, 1961) overturned the rule on the admissibility of evidence which had been followed in New York. The New York rule had permitted the use of evidence obtained by an illegal search by officers.

WHAT IS NOT A SEARCH: It is not a search for an officer to observe something from a place where he is legally entitled to be and if it is contraband (its possession is a crime or is forbidden), he may thereupon seize the thing or things observed (Peo. vs. Sullivan, 18 App. Div. 2d. 1066). Thus, where an officer was in a place at the invitation of the owner and looked through an opening between garage doors and saw stolen goods, he was held entitled to break into the garage and seize the goods.

Where a police officer entered an apartment through a door opened by firemen who were there on a fire complaint, it was held a proper entry. The court pointed out that entries into private premises by public officers under authority of law, to protect life or property or for the purpose of eliminating a hazard immediately dangerous to health or public safety are constitutionally valid if circumstances make them immediately necessary. In this case, firemen entered because of a strong smell of gasoline. The police came to the scene because of a practice of responding to fire calls, to preserve law and order. (Peo. vs. Johnson, 48 Misc. 2d. 907).

SEARCHES PERMITTED: A search may be of a place, of a person or of a thing, (e.g. a truck, passenger automobile, boat, airplane, etc.).

All searches must be made in one of three ways:

1. By consent.
2. Incident to lawful arrest.
3. Under authority of a search warrant.

The law permits searches for the following kinds of things:

1. Stolen or embezzled property (CCP Sec. 792, subd. 1).
2. Property the possession of which is unlawful (contraband) (CCP Sec. 792, subd. 2).
3. Property used or possessed with intent to be used as the means of committing a crime or offense (CCP Sec. 792, subd. 3).
4. Property concealed to prevent a crime or offense from being discovered (CCP Sec. 792, subd. 3).
5. Property constituting evidence of crime or tending to show that a particular person committed a crime. (CCP Sec. 792, subd. 4).

SEARCH BY CONSENT: A constitutional right may be waived by a consent, but courts are most suspicious of any waiver and insist that the consent be voluntary. The consent given must be a true consent. A mere acquiescence to the demands of a law enforcement officer is not enough (Kovach vs. United States 53 F2d 639). Fraud, subterfuge, duress or misrepresentation void the consent.

The consenting person must have known what he was asked to consent to was a search, and that he was not compelled by law to allow same. A consent obtained by trick or deception is invalid (Gatewood vs. United States, 209 F2d 789).

A consent should be obtained in writing, where possible. The following form is suggested:

August 28, 1967
Alton, N.Y.

I, JOHN R. DOE, *having been informed of my constitutional right not to have a search made of the premises hereinafter mentioned without a search warrant and of my right to refuse to consent to such a search, hereby authorize* RICHARD A. ROE, *and* HARRY A. SMITH, *members of the Alton, New York Police Department, to conduct a complete search of my residence located at 14A Main Street, Alton, New York. These officers are authorized by me to take from my residence any letters, papers, materials or other property which they may desire.*

This written permission is being given by me to the above named officers voluntarily and without threats or promises of any kind.

Signature: JOHN R. DOE

Witnesses: Det. Richard A. Roe, Alton, N.Y., P.D.
Mrs. Flora A. Jones, 12 Main St., Alton, N.Y.

Whenever possible, the signatures of witnesses should include those of respectable individuals other than the officers. A written consent is more desirable than an oral consent, but the fact that a consent is in writing will not in itself sustain the voluntary nature of the consent. Respectable witnesses who are not police add greatly to the proof of the voluntary nature of the consent.

Courts will readily decide that duress, threats, or coercion were used in situations where officers acted in a stern, demanding or officious manner, particularly where the officers were in uniform and obviously armed (Amos vs. United States, 255 U.S. 313).

The voluntariness of a consent is a question of fact and whenever a defendant alleges that the consent was involuntary, the burden of establishing that it was valid is placed upon the prosecution. This burden is heavy in cases when the consent was given while the defendant was in custody. There is a very strong feeling among the courts, that intimidation and duress are implicit in such situations (Judd vs. United States, 190 F2d 649; Peo. vs. Logan, 39 Misc. 2d. 593; Higgins vs. United States, 209 F2d 819; United States vs. Gregory, 204 F Supp. 884.

A defendant who is in custody may give consent that will not be questioned by the courts where the circumstances are such as not to indicate illogical conduct, such as where he has made a confession prior to giving consent, or where he is not going to worsen his position as a result of the consent (United States vs. Mitchell, 322 U.S. 65). The consent will be less open to question where the articles found were cleverly concealed or the person granting consent was unaware of their presence.

WHO MAY GIVE CONSENT: The only one who may consent to a search of premises is the one having the right of possession and control of the premises. A rule of thumb to apply is to consider who the person is who has such possession and control of premises as to direct and regulate their use. Thus where a friend was living rent free, the owner of the house could consent to a search of the room (Calhoun vs. United States, 172 F2d 457, cert. den. 337 U.S. 938).

In Sartain vs. United States (303 F2d 859, cert. den. 371 U.S. 894) the defendant, prior to arrest, had turned over a brief case to an associate, with the key. After the defendant's arrest, the associate voluntarily turned the brief case over to the police. A police search of the brief case was held valid. Since the defendant voluntarily gave possession of the brief case and the key to another, he had surrendered his right of privacy to a large degree and the search was held not unreasonable in such circumstances.

LANDLORD AND TENANT: A landlord cannot consent to a search of property occupied by tenant that would be valid against the tenant (Klee vs. United States, 53 F2d 58). However, the tenant can consent to a search of the premises he rents which would be valid against the landlord, based on the logical application of the possession-control rule. The tenant has the possession and control. It is his privacy that is invaded.

CUSTODIAN: Where multiple dwellings or office buildings are involved, a building superintendent or manager cannot give valid consent for the search of an occupied apartment or office. Such a person could validly consent to a search of common hallways, common storage rooms, or common bathrooms, which would be valid against an individual tenant (Reszutek vs. United States, 147 F2d, 142).

EMPLOYER-EMPLOYEE: When consent is desired to conduct a seach of a business place that would be valid against the owner, the owner's consent must be obtained if he is present or readily available.

Where the owner is not present or readily available, or where the owner is a corporation, the consent of a managerial employee who exercises control over the premises would be valid against the owner. However, care must be taken to determine that the employee is truly a manager. Titles such as "General Manager," "Plant Superintendent," "Director," "President," usually include sufficient authority and control to justify a consent from the person having that title. Caution should be exercised where titles such as "Foreman," "Supervisor," or "Assistant Manager," are involved.

Factors which should be considered in determining if the particular person is in a position of control or authority are authority to hire and fire, to sign checks, to spend money without prior approval, and to regulate hours of work and assignment of employees. In no instance should a consent be requested from an employee other than the highest ranking employee present or readily available (United States vs. Antonelli Fireworks Co., 155 F2d 631, cert. den. 329 U.S..742; United States vs. Maryland Baking Co., 81 F. Supp. 560).

LOCKERS, DESKS, ETC. OF EMPLOYEES: Employees often have some area assigned for their use, on their employer's property, such as a desk, or locker. In many large companies company rules require that employees agree in writing, that such areas will be subject to search at the pleasure of the employer. When such a waiver has been executed, the employer can validly consent to a search of the locker or desk, but not to a search of property within the locker or desk, unless that property also belongs to the employer. Where the employee's handbag, purse or lunch box is in the desk or locker, it cannot be searched without the employee's consent (United States vs. Blok, 188 F2d 1019).

COMMON USE PREMISES: The common use situation occurs when consent is desired to search the common basement, garage or bathroom of a multiple dwelling. As long as the area to be searched is truly common to all, and has not been set aside for the sole use of a particular tenant, any person having the right to use the area may give consent that would be valid against any other person having a similar right.

HUSBAND AND WIFE: When the husband and wife are living together in normal family relationship, both have equal right of possession and control and either one could give consent that would be valid against the other. The courts have invoked the same rule where common-law relationships were involved (United States vs. Walker, 190 F2d 481; United States vs. Best, 76 F. Supp 857; United States vs. Sergio, 21 F. Supp 553; Roberts vs. U.S., 332 F2d 892).

Where the husband or the wife has an area of the premises which is forbidden ground for the other, or is solely used by one, such as a workshop or office, consent would have to be obtained from the one who is the sole user or occupant of the space. This is also true when the search is to be made of personal effects that are not the kind over which a spouse would normally exercise control, such as a jewel case, diary, purse or wallet (State vs. Evans, 372 Pacific Reporter, Second Series, pg. 365).

AREA WHICH MAY BE SEARCHED: The area of the search which may be conducted pursuant to consent is limited by the terms of the actual consent. When more than one area is involved, such as a store or other business place attached to the residence, the consent should be specific as to the area for which consent was given (Karwicki vs. United States, 55 F2d 225).

LIMITED CONSENTS: In cases where a limited invitation or consent is given, the officer may act only within the limitations of the invitation or consent. For example, if a subject told an officer to come to his house

and he would show him a bill of sale for property which he was suspected of having stolen, the officer would not be justified in searching the house.

A SEARCH INCIDENTAL TO LAWFUL ARREST: Although the wording of the Fourth Amendment states that searches will be allowed only by warrant based upon probable cause, the courts allow officers to search without a search warrant the person of one lawfully arrested and the place where the arrest occurred (Agnello vs. United States, 269 U.S. 20).

This is one of the most valuable tools available to law enforcement. Officers should make every effort to preserve it and to avoid abuses which might result in its removal by the courts. It is important to be aware of the reasoning that resulted in the rule's existence. The courts feel that it should be allowed:

1. To protect the arresting officer from harm.
2. To deprive the prisoner of potential means of escape.
3. To avoid destruction of evidence by the prisoner.

CONTEMPORANEOUS SEARCH REQUIRED: A search incident to arrest must be conducted as soon as possible following the arrest. Even short delay, unless emergency circumstances require it, voids the search.

The right to search incidental to a lawful arrest is not an absolute right. It must be justified by the presence of the dangers it was designed to prevent. Therefore, the officer should view each situation in the light of the reasoning the courts will apply, to determine whether or not he should conduct the search. He should always search where there is any question of his personal safety if he does not.

PROPERTY SUBJECT TO SEIZURE FROM THE PERSON: Anything and everything on the person may be seized (United States vs. Kirschenblatt, 16 F2d 202).

In addition to property concealed on the person of the subject, any property that he is carrying and property which he has been carrying, but has put down and which is still within arm's length of the person is considered to be on the person. This covers situations where a subject sees an officer approaching, and drops or puts down something under circumstances not amounting to abandonment, such as putting it on a baggage counter or placing it outside a telephone booth he might be using.

SEARCH OF BODY CAVITIES: When the human body is the site of a search, courts are strict in the requirement that the means used be in proportion to the ends sought. No more force may be used than is absolutely necessary.

Searches of body cavities, when the subject objects and/or denies the presence of unnatural items in such cavities are not unreasonable when the defendant is under lawful arrest, there is probable cause for believing items are concealed in a cavity, competent medical personnel perform the examination in sanitary surroundings, and only necessary force is employed to conduct the examination. In no instance will the courts allow a brutally executed search (Rochin vs. California, 342 U.S. 165; Breithaupt vs. Abrams, 352 U.S. 432; Blackford vs. United States, 247 F2d 745).

SEARCH OF PREMISES INCIDENT TO ARREST: A search of premises where arrest takes place must meet two standards:

1. The search must take place as soon as possible after the arrest.
2. It must be at the place where the arrest occurred.

When a delay occurs, a search warrant should be obtained to avoid the contention that the search was not contemporaneous (Kremen vs. United States, 353 U.S. 346; Clifton vs. United States, 224 F2d 329).

The Supreme Court of the United States has held that a search can be incident to an arrest only if its substantially contemporaneous with the arrest and confined to the immediate vicinity of the arrest. Thus, a search of an arrested person's home two blocks from the place of arrest was not permitted to stand as a valid search "incident to arrest" (James vs. Louisiana, 15 L. Ed. 2d 30).

AREA WHICH MAY BE SEARCHED: The general rule is that the area "within the immediate control of the person," is subject to search incidental to a lawful arrest.

This rule has been interpreted to allow a search of subject's entire living quarters. If he occupies a house, the entire house may be searched. If he only occupies a room in the house, only the room may be searched. When a place of business is involved, the search can extend to the entire premise, if the subject arrested is the owner or manager; but it would be limited to a particular area, if the subject is an employee who only exercised "immediate control" over a limited space such as a work bench or desk. (Harris vs. United States, 331 U.S. 145; United States vs. Rabinowitz, 339 U.S. 56).

The extent to which a thorough and exhaustive search of the entire premises under the control of the arrested person may be made depends on the nature and type of the property sought. (e.g., in conducting a search incidental to a lawful arrest for the purpose of finding large objects, such as outboard motors, the officer would not be justified in opening small lockers, suitcases, etc.). Also the time spent in actually conducting the search should depend on the size and type of property sought. More time may be taken to search a house for jewels or heroin than for a slot machine or a bass saxophone.

PROPERTY SUBJECT TO SEIZURE: All property that would be subject to seizure under a search warrant can be seized in a search incidental to a lawful arrest, (Peo. vs. Logan, 39 Misc. 2d. 593).

UNREASONABLE SEARCHES INCIDENT TO ARREST: Exploratory searches or general searches are looked upon by the courts as "fishing expeditions." In any case where a search covers a large area on the premises, the officer should be prepared to explain to the court that there was probable cause to believe that property subject to seizure was present (United States vs. Lefkowitz, 285 U.S. 452).

ARREST OUTSIDE PREMISES: A person arrested at some place other than his office, home, or other place of business or abode may not (without his full consent to search) be taken into such premises for the purpose of conducting a search incidental to lawful arrest.

PLACE TO CONDUCT SEARCH: The search for and seizure of items found at the place of arrest must be completed at that place. It is not lawful to take all the material to another place for further examination to determine what is subject to seizure and what is not. Such a wholesale transfer and later examination violates the rule that the search and seizure must be contemporaneous with the time and place of arrest and also indicates that the search is "exploratory" and thus illegal.

DELAYING ARREST TO PERMIT SEARCH OF PREMISES: If it can be proved that officers delayed an arrest until the subject reached a place the officers desired to search, the search will be void as an abuse of the right to search incidental to lawful arrest (Gilbert vs. United States, 291 F2d 586; Carlo vs. United States, 286 F2d 841).

A stake-out or surveillance of the premises where the subject could reasonably be suspected to appear will not void a search incident to arrest

since when the subject appears at the premises and is arrested, the arrest is made at the first opportunity and is not delayed.

NECESSITY FOR LAWFUL ARREST: Searches incident to arrest are only valid if incidental to an actual lawful arrest. The courts have interpreted "incidental" to mean that the arrest must precede the search. A search conducted prior to an arrest, without a search warrant, is invalid (Henry vs. United States, 361 U.S. 98; Giordenello vs. United States, 357 U.S. 480; Johnson vs. United States, 333 U.S. 10; Peo. vs. Estrialgo, 37 Misc. 2d. 264; Oritz vs. United States, 317 F2d 277).

In determining the validity of arrest the federal courts refer to state law. It is most important that police officers be familiar with the New York statutes governing arrest.

SUSPICIOUS PERSONS—SEARCH BEFORE ARREST: The laws of New York do not include statutes authorizing the arrest of a person on such charges as "Suspicious Person," "Hold for Investigation," "Open Charge," etc. The nearest thing is a provision of the Vehicle and Traffic Law, under which the operator of a motor vehicle is required to exhibit his operator's license and the vehicle registration to any peace officer. Failure to do so is prima facie evidence that the operator is unlicensed and/or that the vehicle is unregistered (V&T Sec. 401, subd. 4; 501, subd 1-e, Peo. vs. Russo, 38 Misc. 2d. 957). There is no limitation on the officer's right to stop a vehicle and request production of the license and registration. An arrest and search incident to arrest may follow when the license or registration is not produced.

In addition, decisions indicate that the courts will, whenever possible, unhold the officer's right to approach, interrogate and conduct a street search of a suspicious person (Peo. vs. Rivera, 14 NY 2d. 441).

There is no conflict between the Fourth Amendment prohibition against unreasonable search and seizure and the crime prevention pre-arrest practices of police agencies charged with the duty of patrolling the community and preserving the peace and maintaining law and order therein. Such practices must be confined to the reasonable bounds of request for identification in suspicious circumstances and inquiries as to what a person is doing in suspicious areas at suspicious times. (Peo. vs. McErlean, 38 Misc. 2d. 634; Peo. vs. Russo, 38 Misc. 2d. 957; CCP, Sec. 180-a).

Since July 1, 1964, Section 180-a of the Code of Criminal Procedure, known as the "Stop and Frisk Law," has permitted a police officer to stop any person at any time and demand his name, address and an explanation of his actions, under the following circumstances:

1. The person is abroad in a public place, and
2. The police officer reasonably suspects the person:
   a. Is committing, or
   b. Has committed, or
   c. Is about to commit,
3. Any felony, or
4. Any of the offenses specified in Section 552 of the Code of Criminal Procedure.

OFFENSES SPECIFIED IN SECTION 552, CCP: The offenses specified in Section 552 are set out there in terms of both the old Penal Law, (which was repealed effective 9/1/67) and the current Penal Law, which became effective on that date. Any offense committed up to midnight of 8/31/67 comes under the old law, and any offense from one moment after midnight 8/31/61 on (i.e., any offense on 9/1/67 or thereafter) comes under the new Penal Law (P.L. Sec. 500.10):

1. UNDER THE OLD PENAL LAW:

a. Illegally using, carrying or possessing a pistol or other dangerous weapon.

b. Making or possessing burglar's instruments.

c. Buying or receiving stolen property.

d. Unlawful entry of a building.

e. Aiding escape from prison.

f. Disorderly Conduct as defined in subdivision 6 of Section 722, old Penal Law (interfering with a person by jostling, unnecessarily crowding, placing hand in proximity of pocket, accosting or stationing for purpose of obtaining money or property by trick, artifice, swindle, confidence game or illegal manner).

g. Disorderly Conduct as defined in subdivision 8 of Section 722, old Penal Law (frequenting or loitering about any public place soliciting men for purpose of crime against nature or other lewdness).

h. Endangering life or health of child, old Penal Law section 483.

i. Carnal abuse of a child over 10 and less than 16, old Penal Law Section 483-b.

j. Exposing minor to harmful materials, old Penal Law section 484-h.

k. Indecency violations, including exposure of persons, obscene prints and articles, etc., etc., as set out in Article 106 of the old Penal Law, sections 1140, "Exposure of Person," through 1148, "Person Living on Proceeds of Prostitution."

l. Sodomy or rape designated as a misdemeanor under the old Penal Law.

m. Sale or Possession of Hallucinogenic Drugs, old Penal Law section 1747-d.

n. Sale and Possession of Hypodermic Syringes and Hypodermic Needles; Possession of Certain other Instruments, old Penal Law section 1747-e.

o. Any violation of any provision of Article 33 of the Public Health Law relating to narcotic drugs which was defined as a misdemeanor by Section 1751-a of the old Penal Law.

p. Any violation of any provision of Article 33-A of the Public Health Law relating to depressant and stimulant drugs which was defined as a misdemeanor by Section 1747-b of the old Penal Law.

2. UNDER THE CURRENT PENAL LAW:

a. Illegally using, carrying, or possessing a pistol or other dangerous weapon.

b. Possession of Burglar's Tools (P.L. Sec. 140.35).

c. Criminal Possession of Stolen Property in the Third Degree (P.L. Sec. 165.40).

d. Escape in the Third Degree (P.L. Sec. 205.05).

e. Jostling (P.L. Sec. 165.25).

f. Fraudulent Accosting (P.L. Sec. 165.30).

g. Loitering as defined in Penal Law Section 240.35, subd. 3 ("loiters or remains in a public place for the purpose of engaging or soliciting another person to engage, in deviate sexual intercourse or other sexual behavior of a deviate nature").

h. Endangering the Welfare of a Child (P.L. Sec. 260.10).

i. All offenses defined in Article 235, "Obscenity and Related Offenses," Penal Law (Penal Law Sections 235.05, "Obscenity," 235.20, "Disseminating Indecent Materials to Minors," 235.25, "Disseminating Indecent Comic Books," 235.30, "Failing to Identify a Comic Book Publication").

j. Issuing Abortional Articles (P.L. Sec. 125.60).

k. Permitting Prostitution (P.L. Sec. 230.40).

l. Promoting Prostitution in the Third Degree (P.L. Sec. 230.20).

m. All offenses defined in Article 130, 'Sex Offenses," Penal Law (sections 130.20, "Sexual Misconduct," 130.25-130.35, "Rape," (all degrees), 130.38, "Consensual Sodomy," 130.40-130.50, "Sodomy" (all degrees), 130.55-130.65, "Sexual Abuse" (all degrees).

n. All offenses defined in Article 220, "Dangerous Drug Offenses," Penal Law (sections 220.05-220.20, "Criminal Possession of a Dengerous Drug" (all degrees), 220.30-220.40, "Criminally Selling a Dangerous Drug" (all degrees), 220.45, "Criminally Possessing a Hypodermic Instrument").

A public place should be considered one to which the general public has a right to resort, not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public (Peo. vs. Whitman, 178 App. Div. 193). It would include the hall and stairs of a large apartment house (Peo. vs. Peters, 18 N.Y. 2d 228).

The reason to suspect required by the law is less than would be required to constitute reasonable grounds for arrest. When facts and circumstances existing at the time he approaches the person would make it not unreasonable for an alert officer to only suspect the person had committed, was committing or was about to commit one of the specified offenses, he may stop the person and interrogate him in detail as to his actions (CCP Sec. 180-a, subd. 1; Peo. vs. Peters, 18 N.Y. 2d 238).

In addition to the interrogation of such person, the officer may search the person for dangerous weapons, if the officer also reasonably suspects he is in danger of life or limb (i.e. in danger of being killed or physically hurt). If the officer, in such search, finds either a weapon or anything the possession of which may constitute an offense (narcotics, obscene items, fireworks, etc.), the officer may take such things and keep them until he completes questioning of the person. When the questioning is completed, the officer must return the things seized if the person possessed them lawfully and if not he must arrest the person (CCP Sec. 180-a, subd. 2).

Prime considerations as to the officer's danger are the apparent character and the actions of the person to be interrogated. The officer should also consider the neighborhood, the absence or presence of assistance, the time of day or night and similar factors, in determining whether he should have a reasonable suspicion he is in danger.

LOITERING: Officers should bear in mind that under Section 240.35 of the Penal Law, a person who is "Loitering" and subject to arrest, must be arrested first, before a search of his person can be legal without a search warrant. "Loitering", like the "Stop and Frisk," intends inquiry by the officer. The difference is that in Loitering cases an arrest must come before any search.

SEARCH INCIDENTAL TO ARREST—TRAFFIC VIOLATIONS: If an officer takes a subject into custody for a violation of the Vehicle and Traffic Law he may search the person, since the subject might be armed and this is a risk that the officer should not be forced to assume, no matter how slight a risk (Peo. vs. Isaac, 38 Misc 2d. 1018).

The vehicle and traffic arrest must be bonafide and not a pretext. When another crime is discovered as a result of the search incidental to the vehicle and traffic arrest, the defendant should always be also charged with the vehicle and traffic violation. A failure to do so might indicate to the court that the vehicle and traffic charge was merely used as a pretext to allow a search to be made.

Where the traffic arrest is made with intent to incarcerate or is such that it suggests a more serious violation (no plates, plates bent or obscure, no headlights, etc.) or where there are other suspicious circumstances involved (known criminals in the car, unsolved crimes in area, occupants resemble wanted persons) a search may be made of the vehicle.

An exploratory search is not automatically allowed following a Vehicle and Traffic Law violation arrest. Strict compliance with the requirements set out in preceding paragraph must be observed.

SEARCH WITH WARRANT: Statutes dealing with search warrants are strictly interpreted by the courts. The provisions of such statutes must be strictly complied with when obtaining and executing warrants.

There is no specific statute requiring that a copy of the warrant and supporting affidavit be given to the subject at the time of execution or thereafter.

To obtain a search warrant a peace officer must apply to a magistrate sitting in the county in which the premises to be searched are located (CCP Sec. 792). The application must be an affidavit in the form set out in Section 797-a, Code of Criminal Procedure, naming or describing the person and particularly describing the property and the place to be searched (CCP Sec. 793). In obtaining a search warrant for a house or dwelling, outbuildings should be included in the description of the premises to be searched when a search of outbuildings is desired.

The affidavit must set forth the actual "facts, information, and circumstances," which establish the probable cause for issuing the warrant. It is not sufficient to merely state that the officer is aware of the facts, information, or circumstances, or that the officer overheard or observed someone in the commission of a crime. These are conclusions or statements of opinion and are not "facts, information and circumstances." The affidavit must state the observed happenings or overheard words allowing the court to know the basic facts relied on to show probable cause (Peo. vs. Politano, 17 App. Div. 2d. 503, affirmed 13 NY 2d. 852; In the matter of 781 Midland Avenue, Yonkers, 39 Misc. 2nd. 802).

The proof supplied for the issuance of the warrant must be current. The affidavit must show that the information is not "stale." (Peo. vs. Kramer, 38 Misc. 2d. 889; Schoeneman vs. U.S., 317 F2d 173).

The "probable cause" sufficient to authorize issuance of a search warrant is knowledge of facts and circumstances such as would warrant a prudent and cautious man in believing an offense existed. It is reasonable grounds to suspect, supported by facts and circumstances strong enough to warrant a cautious man in believing a violation exists on the premises to be searched (Peo. vs. Politano, 17 App. Div. 2d. 503, aff'd. 13 NY 2d. 852; Peo. vs. Marshall, 13 NY 2d. 28).

FACTS FROM INFORMANTS: When an informant furnishes information to an officer and the officer relies on that information to obtain a warrant, the informant's reliability or lack of reliability should be stated in the affidavit (e.g., "informant of known reliability who has furnished reliable information in the past," or "Informant of unknown reliability," or "Informant who has furnished both reliable and unreliable information in the past"). Whenever an informant is a source of information, the officer must always corroborate the informant's information prior to seek-

ing a warrant. Corroboration will consist of evidence of past criminal history of the subject and some observations made by the officer which would indicate that the informant's information was correct.

The character of the informant's reliability will govern the degree of corroboration necessary. The informant of known reliability who has furnished reliable information in the past, would require less independent investigation by the officer to corroborate than informants who are characterized as less reliable.

Courts will protect the identity of a confidential informant on the grounds of public policy, but if it is absolutely essential to the defense, the court will require that the informant be identified. Such a situation will arise when an informant actively participated in the illegal act for which the defendant was arrested. To avoid disclosing the informant's identity, the arrest should be for an act in which the informant did not participate (Peo. vs. Coffey, 12 NY 2d. 443).

EXECUTING SEARCH WARRANTS: A search warrant may be executed by any of the officers mentioned in it (CCP Sec. 798). The officer executing a warrant (or those aiding the officer at his request, (CCP Sec. 798) may break open any outer or inner door or window or anything in a building to execute the warrant if, after he gives notice of his authority and purpose, he is denied admittance (CCP Sec. 779, subd. a). A search warrant must be executed within ten days or it is void (CCP Sec. 802).

BREAKING WITHOUT NOTICE, TO EXECUTE WARRANT: Since July 1, 1964, the law (often referred to as "the knock-knock law") has permitted an officer executing a warrant to break open any outer or inner door, etc., without giving notice, if permission to do so is included in the warrant. The magistrate may include such a direction in the warrant only after receiving proof to his satisfaction, under oath, that the property sought may be easily and quickly destroyed or disposed of or that danger to the life or limb of the officer or another may result if notice is given prior to breaking in (CCP Sec. 799, subd. b).

This section authorizing inclusion in search warrant of authority for officers to break open an outer or inner door or window or any part of a building without notice of his authority and purpose, if the judge has inserted a direction that officer shall not be required to give such notice, is constitutional. (Peo. vs. De Lago, 16 N.Y. 2d 289).

TIME OF DAY: If the affidavit or affidavits are positive that property sought is on the person or in the place to be searched the magistrate may insert a direction on the warrant that it be served at any time of the day or night; otherwise, the warrant must be served in the daytime (CCP Sec. 801). When a warrant is issued for daytime execution, it should be executed after sunrise and prior to sunset. People vs. Watson, (39 Misc. 2d 808) held that the legislative intent in requiring a specific direction in the warrant for its execution at night was to protect persons or premises from being searched during the hours of full darkness or rest. In this case, the Court applied the Federal test, namely that "daytime" does not end at the instant of sunset but continues for a reasonable time prior to complete darkness. In Federal cases a warrant served 23 minutes after sunset was held to have been properly executed, however, where the execution was one hour after sunset, it was held to be too late. Every effort should be made to avoid borderline execution of warrants and if there is a possibility that the execution will take place after sunset and prior to sunrise, the warrant should be endorsed for nighttime service.

SEARCHES OF VEHICLES: An automobile, truck, airplane, boat, or other vehicle may be searched by consent, incidental to arrest (either with

a warrant or without warrant), with a search warrant for the vehicle, and on "probable cause."

CONSENT TO SEARCH VEHICLE: When the owner of a vehicle is present or is readily available, the consent must be obtained from him, if the search is to be valid against him. When the owner lends the vehicle to another and does not impose any restrictions as to its use, the courts have held that the person in lawful possession can consent to a search valid against the owner (United States vs. Eldridge, 302 F2d 463). The owner of a vehicle which has been gratuitously loaned to another can consent to a search of that vehicle valid against the other, since the owner has the right to re-claim possession at any time and by granting such consent is in effect exercising that right.

VEHICLE SEARCH INCIDENT TO ARREST: In searching a vehicle incidental to arrest, the search must follow the arrest closely enough to be contemporaneous with it. Searches of automobiles incidental to arrest have been held illegal in the following circumstances: when the arresting officers made the search only after they had driven the car to a police parking lot and left it there, locked, for more than 9 hours (Rent vs. U.S., 209 F2d 893), when the lone officer who arrested two subjects in the car failed to search it at that time but took the keys, delivered the subjects to the custody of another officer at a justice of the peace court, and then returned to make a preliminary search, with the final search delayed about 5 hours after the arrest, (Shurman vs. U.S., 219 F2d 282, cert. den. 349 U.S. 921).

However, where officers arrested subjects, who were escaped convicts and bank robbers, at a motel on the outskirts of a small city and after the arrest the car was towed to a downtown garage and was then promptly searched, the court held that the search was "substantially contemporaneous with the arrests," pointing out that the status of the subjects as escaped convicts was a circumstance to be considered in determining the reasonableness of the action taken. (Bartlett vs. U.S., 232 F2d 135).

SEARCH OF VEHICLE WITH WARRANT: When there is no consent search or search incidental to arrest, and the vehicle is not in a mobile condition, search must be by search warrant. (Rent vs. U.S., 209 F2d 893; Shurman vs. U.S., 219 F2d 282). This rule would apply when the car is parked in a garage with no one in it or threatening to move it, and the owner is in jail (Hart vs. U.S., 162 F2d 64) or when the car is parked and locked and the owner, who has the keys, is in custody (U.S. vs. Kidd, 153 F. Supp. 605), or in similar situations.

SEARCH OF VEHICLE ON PROBABLE CAUSE: A search of a moving vehicle has been held to be valid upon a finding of probable cause since there is a necessity for fast action because of the inherent mobility of vehicles which can be moved out of the locality or jurisdiction where warrant must be sought. There may exist an insufficient amount of time in which to obtain a proper warrant, where the vehicle presents a means of flight, or where the transportation itself is a crime, or where the destruction of or disappearance of evidence is likely (Clay vs. U.S., 239 F2d 196).

In Carroll vs. U.S. (267 U.S. 132) the Court stated that "The Fourth Amendment does not prohibit the search, without a warrant, of an automobile. . . . if the search is upon probable cause, and the arrest for transportation or possession need not precede the search."

The Carroll decision falls short of establishing a doctrine that, without legislation, automobiles are subject to search without warrant in enforcement of all statutes. (U.S. vs. DiRi 332 U.S. 581).

There is, however, authority for the position that a vehicle may be searched without warrant, consent, or arrest when the seizing officer shall have reasonable or probable cause for believing that the automobile which he stops and seizes contains contraband goods which are being illegally transported. If possible, a warrant to search should always be secured (Ray vs. U.S., 255 F2d 473).

WHAT IS NOT A SEARCH OF VEHICLE: Mere observation of the contents of a vehicle, made by an officer standing outside, is not a search, even if he used a flashlight to illuminate the interior of an automobile or a searchlight to light up the deck of a boat (Haerr vs. U.S., 240 F2d 533; U.S. vs. Lee, 274 U.S. 559). When an officer ". . . approaches the driver's side of the car he has a right to flash his light about the back seat for his own self-protection if for no other reason." (Bell vs. U.S., 254 F2d 82).

If a subject or suspect throws evidentiary material from his vehicle and pursuing officers stop and pick it up, this is not a seizure (Haerr vs. U.S., 240 F2d 533).

ARTICLES SEIZED IN SEARCHES: All articles seized as evidence should be carefully marked for identification.

Detailed notes should be made describing the articles found, the place where found, the date found, the person who found them and the identification which was put on each. The original notes should be preserved in the investigative file of the case for later use of the officer at the trial.

If any of the evidence contains identifying numbers, such as found on guns or lottery tickets, these numbers should be recorded by the officer finding the article and the original notes preserved.

Whenever money, or other property consisting of numerous items, is seized, it should be independently counted by two officers and the results verified, for accuracy.

If anything is seized from a premises or person subjected to search, an itemized list of all things seized should be made. Extreme care should be taken to insure that the description of all items obtained is adequate and accurate.

The following certificate is suggested for inclusion at the end of the list. It should be witnessed by at least two officers (if the person from whom property, money, or other things were seized refuses to sign the certificate a notation should be made at the bottom of the list indicating the reason for refusal):

This is to certify that on _____ at _____, Alton Police Department officers, at the time of conducting a search of my person and/ or the premises at _____ obtained the above-listed items. I further certify that the above represents all that was obtained by them.

(SIGNED) _____

Witnessed: _____

When an officer takes property under a search warrant, he must give a receipt for the property taken, specifying the property in detail. The receipt must be given to the person from whom the property was taken and if no person is present the receipt must be left in the place where the property was found (CCP Sec. 803). The officer must also deliver to the magistrate a copy of a written inventory of the property (CCP Sec. 805).

The written list mentioned previously will serve as both receipt and inventory and an original and two copies should be made in cases where search is under warrant to provide original for magistrate, copy for subject and copy for the officer's records.

Where the search is made without warrant, it is suggested that a copy of the list be furnished to the person from whom the property is taken, even though there is no statutory requirement that this be done.

Whenever an officer conducts a lawful search under a search warrant, incidental to lawful arrest, or by consent and does not seize or obtain any property or anything else of value, the following certificate ought to be obtained from the subject:

This is to certify that on _____ at _____. Representatives of the Alton Police Department conducted a search of the premises at _____ occupied by me. I certify that nothing was removed from my custody by them.

(SIGNED) _____

Witnessed:

Property taken under a warrant must be brought before the magistrate to be dealt with according to law (CCP Sec. 796, 804, 810). The warrant should be returned to the magistrate with the original of the written inventory or list of property taken, verified by the officer's affidavit before the magistrate as follows:

"I _____ _____, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant" (CCP Sec. 805).

SPECIAL RULES, CONSERVATION LAW: Conservation officers, forest rangers and state police have power to search, without a warrant, any thing or place (except a dwelling house) for the purpose of seizing fish, birds or quadrupeds held in violation of the Conservation Law, or for determining whether the Conservation Law or any law for the protection of fish, birds, or quadrupeds has been or is about to be violated (380-4-1b Conservation Law).

This section of law has been held by the Attorney General to include power to signal persons to stop automobiles for the purpose of ascertaining if the Conservation Law is being violated. It is the duty of persons so signaled to obey and stop. The purposes of search under this section must be to determine whether the Conservation Law is being or is about to be violated. The officer must have some cause to believe or some reason for thinking that the Conservation Law might be the subject of violation by the persons concerned.

The term "cause to believe" should be interpreted as synonymous with reasonable grounds. It requires that facts and/ or circumstances be known which would warrant a prudent man in believing a violation of the Conservation Law had occurred or was occurring. Such facts or circumstances would include the character of the area (as to the presence of game) the time of year, the appearance of the subject and/ or reputation of the subject and whether or not violations had been occurring in the area. Each situation must be approached in the light of its own circumstances and no general rule can be stated.

This authority was granted by the legislature with the intent that it be used to prevent and detect violations of the Conservation Law. It cannot be used as a pretext to uncover violations of other laws. But where a valid search is being made under this authority and material is uncovered which constitutes an offense being committed in the presence of the searching officer or is unlawful contraband, an arrest should be made and the material should be seized incident to that arrest.

SEARCHING PRISONERS: Any magistrate who shall commit any person, charged with any offense, to prison, may cause such person to be searched for the purpose of discovering any property he may have; and if any property be found, the same may be taken and applied to the support of such person while in confinement (CCP Sec. 10-a).

ANIMALS OR IMPLEMENTS USED IN FLIGHTS: Any officer authorized by law to make arrests may lawfully take possession of any animals or implements, or other property used or employed, or about to be used or employed in the violation of any provision of law relating to fights among animals (CCP Sec. 117-e).

SUPPRESSION OF EVIDENCE: A person claiming to be aggrieved by an "unlawful" search and seizure and having reasonable grounds to believe that the property claimed to have been unlawfully obtained may be used as evidence against him in a criminal proceedings, may move for the return of such property or for the suppression of its use as evidence. The court must hear evidence upon any issue of fact necessary to determination of the motion (CCP Sec. 813-c).

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113. SEPULTURE (DEAD BODIES AND GRAVES)

BASIC LAW ON BODIES: Every body of a deceased person must be decently buried or incinerated (cremated) within a reasonable time after death. The only exception permitted is where a right to dissect the body is granted by law (Publ. H. L. Sec. 4200). After dissection the body must be buried or cremated (Publ. H. L. Sec. 4215).

It is permissible to carry the body of a deceased person through the state or remove from the state the body of a person who died in the state, for the purpose of burial elsewhere (Publ. H. L. Sec. 4200).

VIOLATIONS: Any wilful violation of any Public Health Law for which no punishment is specifically prescribed elsewhere in the law is an Unclassified misdemeanor, punishable by fine not over $2000, imprisonment not more than one year or both (Publ. H.L. Sec. 12-b).

PRE-ARRANGED DISPOSITION OF BODIES OR PARTS: Any person age 18 or over may direct how his body may be disposed of after death if such disposition is in writing and signed in the presence of two witnesses, age 18 or over (Publ. H. L. Sec. 4201). It is unlawful to receive remuneration for the disposition. The details of claiming a body or part where there has been such disposition, (such as to an eye bank or bone bank) are also set out in Section 4201. This section covers, in addition, disposition of parts of the body which become separated during a person's lifetime.

DISSECTION OR AUTOPSY: The right to dissect a body exists in the following cases:

1. All cases prescribed by special statutes (Publ. H. L. Sec. 4210, subd. 1).

   a. Medical colleges, schools and universities may receive unclaimed bodies for dissection, under the provisions of Sections 4211 and 4212 of the Public Health Law.

   b. The Director or person in charge of any hospital in which a person has died may order an autopsy on the body, after first giving notice of the death to the next of kin, unless the body is claimed or objection to autopsy is made within 48 hours or within 24 hours after notice of death (Publ. H. L. Sec. 4214, subd. 1).

2. When performed by coroner, coroner's physician or county medical examiner during the course of an investigation within their jurisdiction.

3. When performed at joint direction of coroner and coroner's physician, or on written request of county medical examiner, in an investigation within their jurisdiction.

a. Section 673, County Law, sets out the instances in which a coroner or county medical examiner has jurisdiction and authority to investigate.

4. When performed on written request of:

a. District Attorney, or
b. Sheriff, or
c. Chief of Police, (any city or county department), or
d. Superintendent of State Police, or
e. Commissioner of Correction (Publ. H. L. Sec. 4210, subd. 2).

5. Whenever (and only so far as) the husband, wife or next of kin responsible for burial may authorize for the sole purpose of ascertaining the cause of death (Publ. H. L. Sec. 4210, subd. 3).

6. Whenever (and only so far as) the husband, wife or next of kin may authorize by written instrument specifying the purpose and extent of dissection authorized (Publ. H. L. Sec. 4210, subd. 3).

UNLAWFUL DISSECTION: It is an Unclassified misdemeanor to make or cause or procure to be made, any dissection of a human body except by authority of law or pursuant to permission given by the deceased person (Publ. H.L. Sec. 4210-a).

BODY STEALING: It is a felony, punishable by fine not over $1000, imprisonment not more than 5 years, or both, without authority of law to remove a human body from a place where it has been buried (or from a vault) or from a place where it has been put to await burial, with intent to:

1. Sell the body, or
2. For the purpose of dissection, or
3. For the purpose of procuring a reward for its return, or
4. For malice or wantoness (Publ. H.L. Sec. 4216).

Any person who buys or receives (except for the purpose of burial) a human body or any part of one, with knowledge that it has been removed contrary to Public Health Law Section 4216 commits an Unclassified misdemeanor (Publ. H.L. Sec. 4217).

OPENING GRAVES: It is an Unclassified misdemeanor to, without authority of law, open a grave or any place of interment of a human body, or any building wherein a body is lying while awaiting burial, with intent to:

1. Remove the body or any part, for the purpose of:

a. Selling it, or
b. Demanding money for it, or
c. For dissection, or
d. From malice or wantoness, or

2. To steal or remove:

a. The coffin or any part of it or anything attached to it, or
b. Any vestment, or
c. Any other article interred or intended to be interred with the body (Publ. H.L. Sec. 4218).

EXHUMING (REMOVING FROM GRAVE): Whenever any district attorney in discharge of his official duties deems it necessary, he may, on order of any Supreme Court Justice or County Judge, have a body (or any part of a body) exhumed and subjected to physical or chemical examination to ascertain cause of death.

The District Attorney, in applying for such an order, need give no notice at all to relatives or others unless the court so directs. He has the power to direct the Sheriff, constable or any peace officer of the state to assist him (Publ. H. L. Sec. 4210, subd. 4).

ATTACHING BODY: It is a misdemeanor to arrest, attach, detain or claim the dead body of a human for any debt or demand whatever (Publ. H.L. Sec. 4219).

FUNERALS: It is a misdemeanor for any person, without authority of law, to obstruct or detain any one engaged in carrying or accompanying the dead body of a human to a place of burial (Publ. H.L. Sec. 4220).

BURIAL, CERTIFICATE AND PERMIT REQUIRED: The death of every person who has died in New York must be registered immediately and not later than 72 hours after either death or the finding of a dead body. Registration is accomplished by filing with the local District Registrar of Vital Statistics a certificate of death on forms prescribed by the Commissioner of Health (Publ. H. L. Sec. 4140, subd. 2). Basically each city, incorporated village and town is a registration district, although they may be combined by the Commissioner (Publ. H. L. Sec. 4120).

The death certificate must be filled out, as to personal and statistical particulars, by the funeral director, undertaker or person having charge of the body, who shall obtain the necessary data from any competent person acquainted with the facts. It must then be taken to the attending physician, who is required to fill out the medical certificate, or to the local health officer, or in a proper case, the coroner if no physician was in attendance (Publ. H. L. Sec. 4142).

Whenever a death occurs without medical attendance, the coroner or medical examiner must be notified (Publ. H. L. Sec. 4143).

The coroner or medical examiner should be notified of the death of every person in the county or whose body is found within the county, which is or appears to be:

1. A violent death (whether by criminal violence, suicide or casualty), or

2. A death caused by unlawful act or criminal neglect, or

3. A death occurring in a suspicious, unusual or unexplained manner, or

4. A death caused by suspected abortion, or

5. A death unattended by a physician or a death where no physician is able to certify the cause of death, or

6. A death of a person confined in a public institution other than a hospital, infirmary or nursing home (County L. Sec. 673).

A dead human body cannot be buried, cremated or removed from the registration district or otherwise disposed of unless a permit for burial (or removal or other disposition) is secured from the District Registrar of Vital Statistics, after filing of a complete and satisfactory certificate of death (Publ. H. L. Sec. 4144).

114. SEX OFFENSES (INCLUDING SODOMY)

Violations of Adultery, Bigamy, Incest, Prostitution, Public Lewdness and Rape are set out in other sections of this Manual under those specific titles.

SEXUAL ABUSE GENERALLY: The crime of sexual abuse is committed by subjecting another person to sexual contact without consent (P.L. Sec. 130.55, 130.60, 130.65, 130.05).

1. Sexual contact consists of (P.L. Sec. 130.00, subd. 3):
   a. Any touching,
   b. Of the sexual or other intimate parts,
   c. Of a person not married to the offender,
   d. For the purpose of gratifying sexual desire,
   e. Of either party.

SEXUAL ABUSE IN THE THIRD DEGREE: This crime is a Class B misdemeanor. It is sexual contact with another person without the other person's consent. It requires only proof of sexual contact without consent (P.L. Sec. 130.55). No corroboration is required (P.L. Sec. 130.15).

It is an affirmative defense (i.e. one which the defendant must establish at trial by a preponderance of the evidence) to Sexual Abuse Third that:

1. The lack of consent was due solely to lack of capacity to consent by being under 17; and

2. The victim was over 14; and

3. The defendant was less than 5 years older than the victim (P.L. Sec. 130.55).

Officers will note that if the affirmative defense can be established, a youthful male engaged in a "necking" party or other sex play less than sexual intercourse with a girl over 14 and who is not 5 years or more older than the girl, is not guilty of this crime. A man 21 or more engaging in sexual intercourse with a girl less than 17 commits Rape Third (see Section 105, "Rape," this Manual).

SEXUAL ABUSE IN THE SECOND DEGREE: This crime is a Class A misdemeanor. It consists of sexual contact with a person who:

1. Is incapable of consent by some factor other than being less than 17; or

2. Is less than 14 (P.L. Sec. 130.60).

Sexual Abuse Second requires corroborating evidence (P.L. Sec. 130.15).

SEXUAL ABUSE IN THE FIRST DEGREE: This crime is a Class D felony. It consists of sexual contact with a person:

1. By forcible compulsion (see definition later under "Consent," this Manual section); or

2. When the person is incapable of consent because physically helpless (see definition later under "Consent"); or

3. When the other person is under 11 (P.L. Sec. 130.65).

Sexual Abuse First requires corroborating evidence (P.L. Sec. 130.15).

SEXUAL MISCONDUCT: A person is guilty of Sexual Misconduct when being a male, he engages in sexual intercourse with a female without her consent (P.L. Sec. 130.20, subd. 1). It is a Class A misdemeanor.

DEVIATE SEXUAL INTERCOURSE: Deviate sexual intercourse is an element of one kind of Sexual Misconduct, all sodomy, and the kind of Loitering set out in subdivision 3 of Section 240.35 Penal Law. These

sections are all set out in this section of the Manual under their specific titles.

Deviate sexual intercourse means sexual conduct between persons not married to each other consisting of (P.L. Sec. 130.00, subd. 2):

1. Contact between penis and anus (commonly termed "pederasty" if with a boy, and sodomy if with male or a female adult), or

2. Contact between mouth and penis (commonly termed "fellatio"), or

3. Contact between the mouth and the female vulva (commonly termed "cunnilingus").

From the above definition, it is evident that there can be, under the law, no such thing as deviate sexual intercourse between partners married to each other, nor any violation of the sodomy laws, which all require "deviate sexual intercourse." This is a change from the old Penal Law, which made no exception of a married couple engaging in acts of sodomy with each other.

SEXUAL MISCONDUCT (DEVIATE): A person is guilty of sexual misconduct when he engages in deviate sexual intercourse with another person without such person's consent (P.L. Sec. 130.20, subd. 2). This includes actual lack of consent or where lack of consent is conclusively presumed (see "Consent," pages 536, 537).

Corroboration is required (P.L. Sec. 130.15). It is a Class A misdemeanor (P.L. Sec. 130.20).

CONSENSUAL SODOMY: It is Consensual Sodomy to engage in deviate sexual intercourse with another (P.L. Sec. 130.38). Lack of consent is not a requirement of this violation (P.L. Sec. 130.05, subd. 1). It is a Class B misdemeanor.

No conviction may be had solely on the uncorroborated testimony of the alleged partner. Corroboration is required (P.L. Sec. 130.15).

LOITERING: A person is guilty of loitering when he loiters or remains in a public place for the purpose of engaging or soliciting another person to engage in deviate sexual intercourse or other sexual behavior of a deviate nature (P.L. Sec. 240.35, subd. 3). This offense is a violation.

SODOMY IN THE THIRD DEGREE: Sodomy Third is a Class E felony. It may be committed in either of two ways:

1. Engaging in deviate sexual intercourse with a person incapable of consent by reason of some factor other than being less than 17 (P.L. Sec. 130.40, subd. 1); or

2. A person 21 or older engaging in deviate sexual intercourse with a person less than 17 (P.L. Sec. 130.40, subd. 2).

Sodomy Third requires corroboration (P.L. Sec. 130.15).

SODOMY IN THE SECOND DEGREE: Sodomy Second is committed by any person age 18 or over who engages in deviate sexual intercourse with a person less than 14. It is a Class D felony (P.L. Sec. 130.45). It requires corroboration (P.L. Sec. 130.15).

SODOMY IN THE FIRST DEGREE: Sodomy First may be committed by engaging in deviate sexual intercourse with another under any of the following circumstances:

1. By forcible compulsion (see definition under "Consent" in this Manual section) (P.L. Sec. 130.50, subd. 1); or

2. When the other is incapable of consent because physically helpless (see definition under "Consent") (P.L. Sec. 130.50, subd. 2); or

3. When the other is less than 11 (P.L. Sec. 130.50, subd. 3). Sodomy First requires corroboration (P.L. Sec. 130.15). It is a Class B felony.

SEXUAL MISCONDUCT (ANIMAL, DEAD BODY): It is the crime of Sexual Misconduct to engage in sexual conduct with an animal or a dead human body (P.L. Sec. 130.20, subd. 3). Sexual Misconduct is a Class A misdemeanor.

1. Sexual conduct is not specifically defined in the Penal Law. Any conduct with an animal or dead human body providing sexual gratification to the defendant or the use of sex organs by the defendant would undoubtedly be a basis for a proper charge under this statute.

CONSENT: It is an element of every sex offense set out in this section of the Manual (except Consensual Sodomy) that the sexual act was committed without the consent of the victim (P.L. Sec. 130.05, subd. 1).

In addition to those cases where there is an actual lack of consent, lack of consent is conclusively presumed by law from any of the following:

1. Forcible Compulsion (P.L. Sec. 130.05, subd. 2(a).

a. Forcible compulsion means:

(1) Physical force that overcomes earnest resistance; or

(2) A threat (express or implied) that places a person in fear:

(i) Of immediate death; or

(ii) Of serious physical injury to himself or another; or

(iii) That he or another will immediately be kidnapped (P.L. Sec. 130.00, subd. 8).

2. Incapacity to consent (P.L. Sec. 130.05, subd. 2(b).

a. A person cannot consent who is:

(1) Under 17 (P.L. Sec. 130.05, subd. 3(a).

(2) Mentally defective (P.L. Sec. 130.05, subd. 3(b).

(i) Mentally defective means that a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct (P.L. Sec. 130.00, subd. 5).

(3) Mentally incapacitated (P.L. Sec. 130.05, subd. 3(c);

(i) Mentally incapacitated means that person is temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance which was administered to him *without his consent*, or owing to any other act committed upon him *without his consent* (P.L. Sec. 130.00, subd. 6).

(4) Physically Helpless (P.L. Sec. 130.05, subd. 3(d); (i) Physically helpless means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act (P.L. Sec. 130.00, subd. 7).

3. In Sexual Abuse cases only, any circumstances in which the victim does not expressly or impliedly acquiesce in the defendant's conduct (P.L. Sec. 130.05, subd. 2c).

a. Persons under 17 cannot consent or acquiesce at all, either expressly or impliedly.

b. To acquiesce means to accept passively, without actual assent or agreement.

(1) To expressly acquiesce may be taken to include situations where the victim acquiesces directly and distinctly by words or signs, such as

by saying "Yes," or "It's all right, go ahead," or by an act of disrobing after a request to engage in the sexual contact, etc.

(2) To impliedly acquiesce may be considered as involving situations where it is a fair inference that the victim accepted the sexual contact willingly, but gave no express signs of acceptance of the contact.

INTENT: The sex crimes in this section of the Manual are crimes of "mental culpability" and must be intentional (P.L. Sec. 15.15). There is no requirement that any specific kind of intent or purpose be established but only that the acts were intentionally done.

SEX OF OFFENDER AND VICTIM: Officers should note that there is no requirement that either offender or victim be of a particular sex. These sex crimes may thus be committed by males on males, males on females, females on females or females on males, where the facts of anatomy permit.

DEFENSES: In any case where the lack of consent is based solely on the victim's incapacity to consent because he was mentally defective or mentally incapacitated, or was physically helpless, it is an affirmative defense that the defendant at the time he engaged in the criminal conduct did not know of the facts or conditions responsible for the victim's incapacity to consent (P.L. Sec. 130.10).

1. An affirmative defense must be established by the defendant, at the trial, by a preponderance of the evidence (P.L. Sec. 25.00, subd. 2).

CORROBORATION: Corroboration means strengthening or adding weight or credibility by additional and confirming proof of facts or other evidence. Corroborating evidence is evidence supplementing evidence already available and tending to strengthen or conform it. It can be live testimony or physical evidence.

No corroboration is required in prosecutions for Sexual Abuse in the Third Degree.

In all other sex offenses in this section of the Manual, no conviction can be had (either for a completed crime or an attempt) solely on the uncorroborated testimony of the victim or partner (P.L. Sec. 130.15).

INVESTIGATIONS

When a complaint is received from a victim of a sex offense, a written statement should be taken where the victim is of sufficient age to give one. If the complaint is from an older relative or other responsible person, such person's knowledge of the event and source or sources of information should be determined by detailed interview and any information to which such person could testify should be set out in a signed statement.

Tact and good judgment must be used in questioning concerning sex offenses, especially in interviews of child victims.

The parents of child victims should always be notified at once of the receipt of the complaint, if they were not aware of it. However, the parents' presence at interviews of their children may seriously hinder obtaining accurate facts from such victims. Ordinarily child victims should not be interviewed in presence of parents, but the attendance of policewomen or qualified officials of the Child Welfare Bureau or the Society for Prevention of Cruelty to Children should be considered.

Officers should be certain that their interviews elicit and any signed statements contain sufficiently detailed facts to establish the specific crime

committed. Good interviewing techniques are required to overcome natural modesty, shame and inhibitions in relating facts about such sexual matters.

Proof of age is required in many cases and steps to obtain such proof should be taken immediately, in the early stages of the investigation.

Always require a medical examination of the victim in any instance where the type of crime indicates a purpose would be served in so doing, and to ensure that all pertinent facts are determined. The physician's examination may become testimonial evidence and he should be so informed, so that adequate medical facts may be preserved by the physician for trial use.

Photographs of victim's injuries should always be taken.

A person tolerates a deviate sex act on his or her person is termed a "pathic." Whether a complaint involves a willing pathic or an unwilling victim, it must be corroborated by other evidence to support a prosecution, except in case of Sexual Abuse Third, which requires no corroboration.

Officers should be certain, in interviewing complainants and victims, to elicit all information tending to identify possible witnesses to any of the circumstances surrounding the crime or the crime itself and to locate and interview such possible witnesses.

In addition, careful attention should be paid to locating possible physical evidence to corroborate the sexual acts and to identify the offender. This includes a search of the scene of the crime and careful consideration of the person and clothing of the victim. Usually, clothing should be considered for examination in the scientific laboratory, particularly for presence of seminal and other stains and for fibers or other foreign substances which could possibly be identified with the defendant's clothing or may otherwise be of value as evidence.

LOITERING AND PUBLIC LEWDNESS: Alertness for loitering violations and prompt arrests by patrols are of considerable value in reducing the incidence of more serious crimes. Officers should bear in mind loitering for the purpose of engaging or soliciting another to engage in deviate sexual intercourse or other sexual behavior of a deviate nature (P.L. Sec. 240.35, subd. 3).

Special attention should be paid to possible violations of loitering or remaining in or about school buidings or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or any other specific, legitimate reason for being there and not having written permission from the principal (P.L. Sec. 240.35, subd. 5).

Special attention should also be paid to public lewdness violations. It is public lewdness to, in a public place, intentionally expose the private or intimate parts of one's body in a lewd manner or commit any other lewd act (P.L. Sec. 245.00). This type of violator is always a prospect to commit more serious sex offenses involving others.

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115. STOLEN PROPERTY

Property is any money, personal property, real property, thing in action, evidence of debt or contract, or any article, substance or thing of value (P.L. Sec. 155.00, subd. 1). Property is stolen when a person, with intent to deprive another of it or to appropriate it to himself or to a third person, wrongfully takes, obtains or withholds the property from an owner thereof (P.L. Sec. 155.05, subd. 1).

CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE THIRD DEGREE: A person is guilty of Criminal Possession of Stolen Property Third when he:

1. Knowingly possesses,
2. Stolen property,
3. With intent to:
   a. Benefit himself, or
   b. Benefit a person other than an owner of the property, or
   c. Impede the recovery of the property by an owner of the property (P.L. Sec. 165.40).

Criminal Possession of Stolen Property Third is a Class A misdemeanor.

CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE: A person is guilty of Criminal Possession of Stolen Property Second when he:

1. Knowingly possesses,
2. Stolen property,
3. With intent to:
   a. Benefit himself, or
   b. Benefit a person other than an owner of the property, or
   c. Impede the recovery of the property by an owner of the property, and
4. The value of the property exceeds $250.00 (P.L. Sec. 165.45, subd. 1), or
5. He is a pawnbroker, or
6. He is in the business of:
   a. Buying,
   b. Selling, or
   c. Otherwise dealing in,
   d. Any property (P.L. Sec. 165.45, subd. 2).

Criminal Possession of Stolen Property Second is a Class E felony.

CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE: A person is guilty of Criminal Possession of Stolen Property First when he:

1. Knowingly possesses,
2. Stolen property,
3. With intent to:
   a. Benefit himself, or
   b. Benefit a person other than an owner of the property, or
   c. Impede the recovery of the property by an owner of the property, and
4. The value of the property exceeds $1,500 (P.L. Sec. 165.50).

Criminal Possession of Stolen Property First is a Class D felony.

INTENT PRESUMED: A person who knowingly possesses stolen property is presumed to possess it with intent to benefit himself or a person other than an owner or to impede its recovery by an owner (P.L. Sec. 165.55, subd. 1).

KNOWINGLY: A person possesses "knowingly" when he knows (1) that he possesses the property and (2) that the property is stolen (P.L. Sec. 15.05, subd. 2).

A pawnbroker, or any person in the business of buying, selling, or otherwise dealing in property, who possesses stolen property is presumed to know that the property was stolen, if:

1. He obtained it without having ascertained,
2. By reasonable inquiry,
3. That the person from whom he obtained it had a legal right to possess it (P.L. Sec. 165.55, subd. 2).

WHAT IS NOT A DEFENSE: In any prosecution for criminal possession of stolen property it is no defense that:

1. The person who stole the property has not been:
   a. Convicted, or
   b. Apprehended, or
   c. Identified (P.L. Sec. 165.60, subd. 1); or
2. The defendant stole or participated in the stealing of the property.
   a. A person may not, however, be convicted of both Larceny of Property and Criminal Possession of Stolen Property with respect to the same property (P.L. Sec. 165.60, subd. 2);
3. The larceny of the property did not occur in New York (P.L. Sec. 165.60, subd. 3).

TESTIMONY OF ACCOMPLICE: A person charged with Criminal Possession of Stolen Property who participated in the larceny of the property may not be convicted of Criminal Possession solely upon the testimony of an accomplice in the larceny unless the accomplice is corroborated by such other evidence as tends to connect the defendant with the commission of the crime (P.L. Sec. 165.65, subd. 1; CCP Sec. 399).

In any other case, a person charged with Criminal Possession of Stolen Property may be convicted solely upon the testimony of one from whom he obtained it or one to whom he disposed of it (P.L. Sec. 165.65, subd. 2).

POLICE HANDLING OF STOLEN PROPERTY: When property alleged to have been stolen or embezzled comes into the custody of an officer, he must hold it subject to the order of the magistrate before whom the information is laid or who examines the charge against the defendant (CCP Sec. 685, 686).

On satisfactory proof of ownership, the magistrate may order the property delivered to the owner unless its temporary retention is deemed necessary in furtherance of justice. The owner must pay the reasonable and necessary expenses incurred in preserving the property, as certified by the magistrate. On the basis of such an order from the magistrate the owner is entitled to demand and receive the property (CCP Sec. 686).

The same rules applies to stolen or embezzled property seized under a search warrant.

If property seized under a search warrant is either property the possession of which is unlawful, property used or possessed with intent to be used as the means of committing a crime or offense or concealed to prevent a crime or offense from being discovered, or property constituting evidence of a crime or tending to show that a particular person committed a crime, the magistrate, judge or justice to whom delivered under the warrant must retain it in his possession or direct that it be held in the custody of the officer or agency or department that executed the warrant, subject to the order of the court which will try the case (CCP Sec. 804).

If property embezzled or stolen is not claimed by the owner before the end of six months from the conviction of a person for stealing or embezzling it, the officer having it in his custody must, on payment of the necessary expense incurred in its preservation, deliver it to the County

Superintendent of the Poor (in New York City to the Commissioners of Charities and Corrections), to be applied for the benefit of the poor of the county or New York City as the case may be (CCP Sec. 689).

Any peace officer has power to seize any motor vehicle or motorcycle when there is good reason to believe that it has been stolen. In every case of seizure the officer making the seizure is required to forthwith proceed to the most accessible magistrate or judge, who is required to examine the facts and direct either that the motor vehicle or motorcycle be released or that it be retained to await the action of the Commissioner of Motor Vehicles for the purpose of restoring it to its rightful owner, or for sale if the ownership is not determined (V & T Law, Sec. 424, subd. 3).

In instances where an officer recovers a stolen vehicle he must apply to a magistrate for an order returning the vehicle to the owner and fixing the amount of expenses to be paid for preserving it, prior to returning the car to the owner. In addition, a signed receipt should be obtained from the owner, including an adequate description of the vehicle.

It is most convenient if police utilize a printed form incorporating an order for delivery of stolen property and a receipt, the former to be executed by the magistrate and the latter by the owner at time of delivery of the property.

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116. SUBPOENAS

A subpoena is the process by which the attendance of a witness before a court or magistrate is required (CCP Sec. 607).

Subpoenas may be issued, in a criminal matter, by any magistrate before whom an information is laid. He may issue subpoenas for any witness within the state, either on behalf of the people or on behalf of the defendant (CCP Sec. 608).

The District Attorney may issue subpoenas for witnesses before the Grand Jury (CCP Sec. 609), or for the people in any prosecution by indictment (CCP Sec. 610).

The attorney for the defendant in a criminal case may also issue subpoenas and subpoenas duces tecum, for a witness within the state (CCP Sec. 610-b) or a defendant may obtain blank subpoenas free of charge, under the seal of the court, from the court clerk (CCP Sec. 611).

FORM AND KINDS OF SUBPOENA: The form of a subpoena in a criminal action is prescribed by Section 612, Code of Criminal Procedure. A subpoena merely requiring a person to attend to give testimony is often called a subpoena ad testificandum—this is the ordinary witness subpoena. Subpoenas may also be issued requiring the witness to bring with him chattels, books, papers or documents (CCP Sec. 613). Such a subpoena is called a subpoena duces tecum. A subpoena ad testificandum is made a subpoena duces tecum merely by the issuing officer adding "And you are required to bring with you the following:" and describing intelligibly the things to be brought (CCP Sec. 613).

FEES: Witnesses for the people in a court of record are required to be paid $2 fee for each day's attendance and 8¢ per mile travel expense, going and returning. No mileage is payable for travel wholly within a city (CCP Sec. 616; CPLR Sec. 8001). Defense witnesses are not required to be paid unless so ordered by the court (CCP Sec. 617). The same fees as for prosecution witnesses are required to be paid any witnesses in civil cases (CPLR Sec. 8001).

SUBPOENAS DUCES TECUM BY DEFENSE: A subpoena duces tecum when issued for the defense to police or public officers for records

of police or public departments must be issued by a justice of the supreme court in the district in which the thing to be produced is located or by the judge of the trial court. Unless the court orders otherwise, a motion for issue must be made on at least one day's notice. The District Attorney should be promptly informed and his advice sought when such a subpoena is received by an officer or department. A certified photostatic copy may always be produced in place of the original unless otherwise ordered by the court (CCP Sec. 610-b; CPLR Sec. 2307).

SERVICE OF SUBPOENAS: A peace officer must serve (in his own county, town, city or village) any subpoena in a criminal case delivered to him for service, either for the people or for the defendant and must make a written return of service, without delay, stating the time and place of service.

A subpoena in a criminal case can be served by anyone (CCP Sec. 614).

Where a witness in a criminal case is out of the county, the District Attorney may send the subpoena to the sheriff of the county where the witness resides and the sheriff must serve it without delay and make his return to the District Attorney (CCP Sec. 615-a).

Where the witness is out of the county and the subpoena is issued by any person or court other than a court of record or a judge of such court, or a District Attorney or a county clerk, the subpoena must be endorsed with an order for the attendance of the witness by the county judge of the county where returnable, or a justice of the supreme court or a court of record. If not endorsed, the out-of-county witness is not required to respond (CCP Sec. 618).

The Uniform Justice Court Act, effective September 1, 1967, requires that all procedures of Courts of Special Sessions shall conform to the Code of Criminal Procedure (UJCA Sec. 2006). This includes subpoenas.

WITNESSES OUT OF STATE: By agreement with the states bordering New York and a major part of the other states, witnesses in other states who are required in a criminal prosecution may be required to attend in New York, pursuant to the provisions of Section 618-a of the Code of Criminal Procedure.

SERVING SUBPOENAS: A subpoena is served by delivering it to the person subpoenaed personally, or by showing it and delivering a copy (CCP Sec. 615). There is a duty on the part of every person within the state to submit to the service of process (Gumperz vs. Hofmann, 245 App. Div. 622, aff'd. 271 NY 544). Deception by the process server to obtain access to the person to be served will not invalidate the process. Where the person to be subpoenaed refuses to accept a subpoena it is sufficient to inform him of the subpoena and to leave the subpoena or a copy (Schenkman vs. Schenkman, 206 Misc. 660, affirmed 284 App. Div. 1068; Chernick vs. Rodriguez, 2 Misc. 2d. 891).

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117. SUICIDE

Suicide is the intentional taking of one's own life. Suicide is a grave public wrong, but the law does not make it a crime because of the impossibility of reaching the successful perpetrator (old P.L. Secs. 2300, 2301).

MURDER OR MANSLAUGHTER (SUCCESSFUL SUICIDE): A person is guilty of murder when, with intent to cause the death of another person, he causes the death of such person. It is an affirmative defense to murder that the defendant, without the use of duress or deception,

caused or aided another to commit suicide. It is thus murder to cause or aid another to commit suicide by the use of duress or deception (P.L. Sec. 125.25, subd. 1-b).

Murder is a Class A felony.

A person is guilty of Manslaughter in the Second Degree when he intentionally causes or aids another to commit suicide (P.L. Sec. 125.15, subd. 3). This is a Class C felony.

PROMOTING A SUICIDE ATTEMPT (UNSUCCESSFUL SUICIDE): A person is guilty of Promoting a Suicide Attempt when he intentionally causes or aids another person to attempt suicide (P.L. Sec. 120.30).

Promoting a Suicide Attempt is a Class E felony.

PROMOTING A SUICIDE ATTEMPT; WHEN PUNISHABLE AS ATTEMPT TO COMMIT MURDER: A person who engages in conduct constituting both the offense of promoting a suicide attempt and the offense of attempt to commit murder may not be convicted of attempt to commit murder unless he causes or aids the suicide attempt by the use of duress or deception (P.L. Sec. 120.35).

SUICIDE NOTES: Under the old Penal Law (Section 553, subd. 5), it was a misdemeanor for any officer or any other (without a coroner's finding that it was necessary) person to publish any letter, telegram, private paper or portion thereof found on or among the effects of anyone who had committed suicide (or who had been dangerously wounded, died suddenly or was found dead). This section was not included in all its terms in the new Penal Law.

The current law makes it the crime of Tampering with Private Communications (a Class B misdemeanor) for any person to:

1. Open or read a sealed letter or other sealed private communication, knowing that he does not have the consent of the sender or receiver (P.L. Sec. 250.25, subd. 1).

2. Divulge, without the consent of the sender or receiver, the contents of a sealed letter or other sealed private communication, in whole or in part, or a resume of any part of it, knowing that it had been opened or read without the consent of the sender or receiver (P.L. Sec. 250.25).

It is therefore still a misdemeanor for an officer to disclose a sealed suicide note without the consent of an attempted suicide or of the proper receiver of the note.

INVESTIGATIONS

Every apparent suicide should be handled as a homicide until proof has established that it is in fact a suicide and not a homicide. Relatives or friends of an actual suicide may alter or attempt to alter facts and/or evidence to give a suicide death the appearance of a homicide, or accident, or natural death, either to avoid disgrace or because of loss of insurance benefits in event of death by suicide rather than from another cause.

The instructions applicable to homicide investigations (see Section 73, "Homicide," this Manual) apply equally to investigations of apparent suicide.

It is important that sufficient photographs be taken of the body before anything is disturbed, to show the condition of the body and the position of any weapons or devices which may be connected with the death.

Suicide notes are of importance. A thorough search should always be made to locate them. If found, known specimens of the decedent's handwriting should be obtained, for comparison with the note in the Scientific Laboratory.

In deaths by slashing wrist or throat, "hesitation wounds" may frequently be found on a suicide's body. These are superficial cuts made when the victim commenced to slash the vein or artery and then hesitated. The suicide may inflict a number of such wounds before executing the fatal stroke.

In carbon monoxide poisoning cases, appropriate blood samples should be obtained for submission to the scientific laboratory for determination whether the victim was alive before being exposed to the fumes.

If the death was apparently by drowning, blood samples should be obtained from the right and left chambers of the heart, in separate containers properly marked, together with a separate sample of the water in which drowning allegedly occurred. These samples may be examined in a scientific laboratory and determination made whether death was in fact due to drowning.

ATTEMPTS: Officers investigating attempted suicides should bear in mind that persons who attempt suicide are likely to be mentally unstable or ill. Proper medical attention should be promptly secured.

THREATENED SUICIDE: Officers may receive notice of a threatened suicide from the potential suicide or from a witness. In either case, immediate response to the scene may save a life.

When the potential suicide himself, calls, he should be kept in conversation and his location, name, address and telephone number should be obtained. If location cannot be obtained, a separate telephone should be used to have the telephone company trace the call, while the caller is kept in conversation on the line, if at all possible. If the number from which the call was made is obtained and the caller hangs up, the number should be called right back and efforts made to delay the potential suicide's plans. A person who calls and threatens suicide is probably subconsciously making a final appeal for help, and may often be dissuaded through persuasion.

At the scene of a threatened suicide, the officer should engage the potential suicide in conversation, trying to ascertain his problem and appealing to his emotions. Members of his family should be located and promptly brought to the scene to talk to the subject. His clergyman or a clergyman of his faith should be brought to speak to him.

It is often necessary to establish police lines to keep spectators away from danger. If the subject is threatening to jump from a height, consideration should be given to fire department assistance and nets.

If there is danger of a fall in approaching subject, officers should make use of safety lines.

If the threatened suicide is thwarted, the subject should be brought to the attention of the local health authority for mental examination procedures.

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118. THEFT OF SERVICES

Theft of Services is a crime new to the Penal Law.

Some offenses which are now "Theft of Services" under the new law were previously contained in the old Penal Law in individual sections, such as Frauds Relating to Hotel, Inn, Boarding-house, Rooming-house and Lodging-house Keepers (old P.L. Sec. 925), Riding on Railway Cars, etc., (old P.L. Sec. 1990), Entry and Exiting from Subway and Elevated Railway Stations, Riding on Omnibuses and Trolley Coaches (old P.L. Sec. 1990-b), Obtaining Telephone Service Fraudulently (old P.L. Sec. 967). Obtaining Property or the Use of Property by Fraudulently Operating a Slot-machine, Coin-box Telephone or Other Coin Receptacle (old P.L.

Sec. 1293-c), Interference with Gas or Electric Meters or Steam Valves (old P.L. Sec. 1431), and Unlawful Interference with Water Meters, Water Service Pipes and Their Connections (old P.L. Sec. 1432).

SERVICES DEFINED: A service includes (but is not limited to) labor, professional services, transportation service, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use and the supplying of commodities of a public utility nature such as gas, electricity, steam and water (P.L. Sec. 165.10, subd. 1).

1. Commodities of a public utility nature such as gas, electricity, steam and water constitute property (and may be the subject of Larceny). The supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits or other equipment is a rendition of a service and not a sale or delivery of property (P.L. Sec. 155.00, subd. 1).

THEFT OF SERVICES GENERALLY: Section 165.15 of the Penal Law specifies seven different kinds of Theft of Services, as set out in the following sections. All are Class A misdemeanors.

THEFT OF SERVICES AND LARCENY DISTINGUISHED: Theft of Services is distinguished from Larceny by the fact that Larceny involves stealing property. Services are not "property" as property is defined in the law (see Section 82, "Larceny," this Manual) and so "stealing" services cannot be a Larceny but must be the crime of Theft of Services.

Larceny involves stealing tangible things. The use of a hotel bed, a ride on a bus, a telephone call, and so on, are not tangible things which can be stolen as can a piece of pipe, a bag of pennies or an automobile. Thus, if something tangible which has an independent existence of its own as a physical object is stolen, it is a Larceny. If it is an intangible, like a nights' sleep in a hotel, a telephone call, someone's labor, the use of equipment, and so on, it is Theft of Services.

Of course, some services do include tangibles, such as the steak and coffee served in the restaurant, the soap and tissue furnished a hotel guest, or the hair tonic with a haircut. In such cases, where the tangibles are a part of the services usually rendered to a customer the case should ordinarily be a crime of Theft of Services. If the offender steals more than the usual service (i.e. the hotel guest also steals blankets or the restaurant guest silverware) the case would involve both Theft of Services and Larceny.

The fact that a credit card is used does not determine by itself that the case is one of Theft of Services. It depends on what is stolen. If the offender gets ten gallons of gasoline (a tangible thing) he has committed Larceny. If he gets an adjustment of his carburetor or a tire repair, he has committed Theft of Services.

Where both services and property of substantial value are obtained (e.g., a wedding dinner for 300 people) and the property obtained would be over $250 (e.g., filet mignon for 300), the advice of the District Attorney should be sought as to whether a felony Larceny should be charged rather than the misdemeanor of Theft of Services. Where the property is valued at $250 or less the Larceny can be only Petit Larceny, so that it is of little concern to the officer whether the crime is charged as Petit Larceny or as Theft of Services in such cases, since both are Class A misdemeanors.

Where an automobile is rented from a drive-it-yourself type of agency, with a forged or otherwise invalid credit card, the kind of offense will be determined by the intent of the offender. If he intends to take and keep, sell or otherwise dispose of the car, it is a Larceny. If he intends merely to use it briefly and return it or leave it where the owner can readily

find it, merely intending to steal its use for a brief time, it would be a Theft of Services.

Proof of intent will usually depend upon the factual situation, since intent to keep or return will be demonstrated to a large degree by what the offender actually does with the car. In cases of doubt, the District Attorney's advice should be sought.

CREDIT CARD VIOLATIONS: A person is guilty of Theft of Services who:

1. With intent to defraud:
   a. Obtains (or attempts to obtain) a service, or
   b. Induces (or attempts to induce) the supplier of a rendered service to agree to payment therefor on a credit basis,
2. By the use of a credit card,
3. Which he knows to be:
   a. Stolen, or
   b. Forged, or
   c. Revoked, or
   d. Cancelled, or
   e. Unauthorized, or
   f. In any way invalid for the purpose (P.L. Sec. 165.15, subd. 1).

A rendered service may be taken to be a service which has been obtained and enjoyed by the offender, as opposed to a service merely requested or sought to be obtained. If a person offers a known forged credit card at a hotel desk on checking in and is told the hotel will not accept credit cards, it is an attempt to obtain. If he offers the same card after spending the night, he is endeavoring to induce the supplier of a rendered service to agree to payment on a credit basis. Either situation involves a violation of Penal Law Section 165.15.

OTHER CREDIT CARD LAWS: Officers are referred to the section on "Larceny" in this Manual, under the sub-heading "Credit Cards," for related state and Federal violations in respect to credit cards.

CREDIT CARD DEFINED: A credit card is any instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer. It may be known as a credit card, credit plate, charge plate, or by any other name (P.L. Sec. 165.10, subd. 2).

RESTAURANTS, HOTELS, MOTELS, ETC.: A person is guilty of Theft of Services who:

1. With intent to avoid payment,
2. For:
   a. Restaurant services rendered, or
   b. Any services rendered to him as a transient guest at a:
      (1) Hotel, or
      (2) Motel, or
      (3) Inn, or
      (4) Tourist cabin, or
      (5) Rooming house, or
      (6) Any comparable establishment,
3. Avoids (or attempts to avoid) payment by:
   a. Unjustified failure or refusal to pay, or
   b. By stealth, or
   c. By any misrepresentation of fact which he knows to be false.

4. A person who fails or refuses to pay for such services is presumed to have intended to avoid payment therefor (P.L. Sec. 165.15, subd. 2).

PUBLIC TRANSPORTATION SERVICES: A person is guilty of Theft of Services who:

1. With intent to obtain:
   a. Railroad, or
   b. Subway, or
   c. Bus, or
   d. Air, or
   e. Taxi, or
   f. Any other public transportation service,
2. Without payment of the lawful charge therefor,
3. Obtains (or attempts to obtain) such service,
4. By:
   a. Force, or
   b. Intimidation, or
   c. Stealth, or
   d. Deception, or
   e. Mechanical tampering, or
   f. Unjustifiable failure or refusal to pay.

A person is also guilty of Theft of Services who:

1. With intent to avoid payment of the lawful charge for transportation service by:
   a. Railroad, or
   b. Subway, or
   c. Bus, or
   d. Air, or
   e. Taxi, or
   f. Any other public transportation service,
2. Which has been rendered to him,
3. Avoids (or attempts to avoid) payment therefor
4. By:
   a. Force, or
   b. Intimidation, or
   c. Stealth, or
   d. Deception, or
   e. Mechanical tampering, or
   f. Unjustifiable failure or refusal to pay (P.L. Sec. 165.15, subd. 3).

TELECOMMUNICATIONS SERVICE: Telecommunciation means communication at a distance, such as by telephone, telegraph, cable or radio. A person is guilty of Theft of Services who:

1. With intent to avoid payment,
2. By himself or another person,
3. Of the lawful charge for any telecommunication service,
4. Obtains (or attempts to obtain) such service, or
5. Attempts to avoid payment by himself or another for such services,
6. By means of:
   a. Tampering or making connection with the equipment of the supplier by:
      (1) Mechanical means, or
      (2) Electrical means, or

(3) Acoustical means, or
(4) Any other means, or

b. Any misrepresentation of fact which he knows to be false, or

c. Any other:
(1) Artifice, or
(2) Trick, or
(3) Deception, or
(4) Code, or
(5) Device (P.L. Sec. 165.15, subd. 4).

See also sub-heading in this section "By-passing Meter and Other Tampering," in regard to telephone service.

METER TAMPERING: A person is guilty of Theft of Services who:

1. With intent to avoid payment by himself or another,
2. For a service (whether prospective or rendered),
3. Which is measured by a meter or other mechanical device,
4. Tampers:
   a. With such meter or device, or
   b. With any other equipment related thereto, or
5. In any manner attempts to prevent the meter or device from performing its measuring function,
6. Without the consent of the supplier of the service (P.L. Sec. 165.15, subd. 5).

Any person who tampers with a meter or mechanical measuring device or any other equipment related thereto, without the consent of the supplier of the service, is presumed to do so with intent to avoid (or to enable another to avoid) payment for the service involved (P.L. Sec. 165.15, subd. 5).

BY-PASSING METER OR OTHER TAMPERING: A person is guilty of Theft of Services who:

1. With intent to obtain,
2. Without the consent of the supplier,
3. Any:
   a. Gas service, or
   b. Electricity service, or
   c. Water service, or
   d. Steam service, or
   e. Telephone service.
4. Tampers with,
5. Any equipment which is designed to:
   a. Supply the service (either to the community in general or to particular premises), or
   b. Prevent the supply of the service (either to the community in general or to particular premises) (P.L. Sec. 165.15, subd. 6).

See also sub-heading in this section "Telecommunications Service."

LABOR, EQUIPMENT AND FACILITIES: A person is guilty of Theft of Services who:

1. Obtaining or having control over:
   a. Labor in the employ of another, or
   b. Business equipment or facilities of another, or
   c. Commercial equipment or facilities of another, or
   d. Industrial equipment or facilities of another,
2. Knowing that he is not entitled to the use thereof, and

3. With intent to derive (for himself or a third person):
   a. A commercial benefit, or
   b. Any other substantial benefit,
4. Uses or diverts to the use of himself or a third person,
5. Any such labor, equipment or facilities (P.L. Sec. 165.15, subd. 7).

INVESTIGATIONS

In all Theft of Services cases it is important to pin down the precise facts of the theft, with details as to exact service, labor, equipment or facility obtained. Where any records are available, such as a bill "paid" with a credit card, they should be promptly obtained or copied. They should be regarded as evidence in all instances and handled accordingly, if taken by the officer. If not taken, the holder should be appropriately instructed as to their preservation. All records pertaining to the incident, in addition to the primary bill or other specific evidence of the theft, should also be located.

In hotel services thefts, for example, it is of importance to determine all telephone call records, meals checks and other notations, papers, etc. on services or charges, for identification of personnel in contact with the thief, so that they may be interviewed for his description and information of value in identifying or locating him. Such things also may furnish good leads, such as telephone numbers of personal business acquaintances, shops or businesses dealt with, and other possible sources of information leading to the identification and location of the offender.

In cases involving theft of telephone services, officers should establish contact with telephone company personnel assigned responsibility for attempting to determine to whom calls should properly be billed. These persons are frequently able to make associations of persons and numbers which could not be made by anyone not constantly working with such things. They may thus provide the officer with valuable leads. Such contact may be established either directly or through the telephone company security man or investigator who may be assigned to the case. Ordinarily such cases originate with the telephone company, but may of course grow out of various kinds of criminal investigations, such as gambling cases involving bookmaking.

In all cases involving meter tampering or by-passing, it is well to make several clear photographs of the installation or tampering found. The photographs should be considered and handled as evidence. They will accurately preserve the evidence of the tampering or connection as a supplement to oral testimony.

In meter tampering cases the presumption that the tampering was with intent to avoid payment for the service should be borne in mind. Under the old Penal Law (Section 1431-a) the presumption was different — it was that the beneficiary of the service was presumed to have created the illicit condition. This is no longer true and the only presumption now is that the tampering was with intent to avoid payment for the service. There is thus no longer a definite presumption of the identity of the one who tampered.

Officers investigating meter or connection with service cases must keep in mind the need to prove the offender's identity and the value of fingerprint evidence. The officer should always ensure that in addition to photographing the installation, connection, by-pass, etc., a complete examination for fingerprints is made. It is important that there be no preliminary touching or handling of the condition by the investigating officers or company agents, to avoid spoiling latent prints of the culprit.

Of course, in many instances, the meter or installation will be on the premises of an individual. Even in such cases fingerprint evidence will be of value in connection with the tampering, since even though the individual premises owner is the only one whose fingerprints could likely be on the meter, etc., there is no usual reason, other than tampering, to find his fingerprints there at all. As in many other cases, the finding of a premises owner's fingerprints on the installation or at a scene may not of itself be sufficient to establish guilt and may have to be supported by proof of additional circumstances.

In handling credit card cases it should be borne in mind that such violations frequently involve persons who travel rapidly over large areas, stealing thousands of dollars worth of services and property, through use of the cards.

Cards are probably most usually ones stolen or invalidated, although cases of entire forgery of such cards will be encountered. In all such cases the officer must take care to make detailed inquiry not only at the local establishment which was bilked but at the headquarters of the agency to which the service or property was to be billed, as shown by the illicit credit card. This company will be able to advise (taking into account billing delays) of the offender's past and future whereabouts, by means of the false charges which have or will be sent to them.

In any case of extensive illicit credit card use, where bills must be sent to an agency out of New York, the FBI should be consulted, in view of the apparent Federal violation. (Interstate Transportation of Stolen Property Laws covering interstate movement of forged securities, Title 18, U.S. Code Sec. 2314 — see Section 82, "Larceny," this Manual).

In any instance where the case appears to be one involving a multiple offender, likely travelling from place to place, the value of an alarm and inquiry on the Police Teletype System should be considered. In any such case, it is well to promptly obtain a warrant of arrest and to include warrant data in pertinent messages.

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119. TRAFFIC

Traffic is perhaps the biggest single problem of law enforcement. Intelligent and efficient regulation and control of motor vehicle traffic is one of the major responsibilities of today's officer.

The Department of Motor Vehicles publishes annually, as soon as possible after the Legislature adjourns, the complete text of the Vehicle and Traffic Law, and a driver's manual. These publications may be obtained from any office of that department. Every officer should have copies of them for careful study and ready reference.

Officers should also obtain from the Department of Motor Vehicles its "Motor Vehicle Handbook for Patrolmen" and its "Police Accident Report Manual."

In addition, all officers should familiarize themselves with the basic definitions in Article 1 of the Vehicle and Traffic Law.

CHARACTER OF VIOLATIONS: Any violation of the Vehicle and Traffic Law not specifically designated in that law or another law as a felony or a misdemeanor is a traffic infraction and not a crime (V & T Sec. 155). Most violations of the Vehicle and Traffic Law are traffic infractions. For court and arrest purposes, traffic infractions are handled like misdemeanors, except that there can be no jury trial for a traffic infraction and a violator may waive court appearance and ask for disposal of the case by mail in traffic infraction cases (see "Waiver" later in this section of the Manual) (V & T Sec. 155; CCP Sec. 335, subd. 2).

STOLEN AND UNCLAIMED MOTOR VEHICLES AND MOTORCYCLES:

1. Any policeman, state trooper, or other peace officer has power to seize any motor vehicle or motorcycle in the state when there is good reason to believe that it is stolen. In every case of seizure, the officer making the seizure must go before the most accessible magistrate or judge for a direction either that the motor vehicle or motorcycle be forthwith released or that it be retained to await the action of the Commissioner of Motor Vehicles. The magistrate or judge must forthwith notify the Commissioner in writing. (V & T Sec. 424, subd. 3) (see also Section 82, "Larceny," this Manual).

ARRESTS: For purposes of arrest without warrant, a traffic infraction may be handled the same as a misdemeanor. Any officer may, without a warrant, arrest and take into custody a driver who has committed a traffic infraction in his presence (V & T Sec. 155; CCP Sec. 177).

An officer may issue a traffic summons in any case of a Vehicle and Traffic Law violation. In addition, the usual laws of arrest apply to the misdemeanor and felony violations of the Vehicle and Traffic Law. Merely issuing a summons for driving while intoxicated or felony violations is not recommended and is rarely done. The dangers in merely issuing a traffic summons and not making a physical arrest in driving while intoxicated cases are obvious.

It is advisable, for statistical and record purposes, to issue traffic summonses in all Vehicle and Traffic violation cases, even though a physical arrest is actually made and the defendant is immediately arraigned. This will assist in proper record keeping in connection with violations of individual operators and chauffeurs.

The Vehicle and Traffic Law gives peace officers additional arrest authority, in that they may, without a warrant, arrest a motor vehicle or motorcycle operator who left the scene of any accident without stopping and giving his name, street address and license number and exhibiting his license to the injured party, or a police officer, or to the nearest police station or judicial officer, where the operator knew that damage was caused to the real or personal property (except animals) of another, or that personal injury was caused to anyone, or where the vehicle struck and injured any horse, dog or animal classified as cattle (V & T Sec. 600, 601, 602). In order to make such arrest legal, the violation must have in fact been committed and the officer must have reasonable cause to believe that the violation was committed by the person arrested (V & T Sec. 602).

Police officers may, without a warrant, arrest a person for operating a motor vehicle or motorcycle while in an intoxicated condition or while ability to operate is impaired by alcohol, even if the violation was not in their presence. The violation must in fact have been committed and must involve an accident or collision and the officer must have reasonable cause to believe that the violation was committed by the person arrested (V & T Sec. 1193).

TRAFFIC SUMMONS (UNIFORM TRAFFIC TICKET): Officers issuing a summons instead of making a physical arrest for a traffic violation (except parking violations) must use a Uniform Traffic Ticket conforming to Regulations of the Commissioner of Motor Vehicles (V & T Sec. 207, subd. 1; Regulations of the Commissioner, Sec. 94.2). New York City is excepted from this requirement and officers there may use summonses conforming to local ordinance (V & T Sec. 207, subd. 4).

Disposing of a Uniform Traffic Ticket in any manner other than prescribed by law is a misdemeanor (V & T Sec. 207, subd. 5).

The chief executive officer of each law enforcement agency is required by law to provide all records and reports on Uniform Traffic Tickets required by the Commissioner of Motor Vehicles (V & T Sec. 207, subd. 2).

Tickets must be in the form prescribed by the Commissioner and must have serial numbers of not over six digits (Regulations of the Commissioner, Sec. 91.5, 91.6). The tickets must be in at least five parts, with interleaved carbons (Regulations of the Commissioner, Sec. 91.5).

Law enforcement agencies must procure tickets at their own expense (Regulations of the Commissioner, Sec. 91.9).

At the expiration of one month from the end of each calendar quarter of the year, every law enforcement agency must report to the Commissioner on all Uniform Traffic Tickets issued by its officers, showing:

1. Packets of tickets assigned;
2. Tickets issued by officers;
3. Tickets disposed of and disposition;
4. Tickets still pending;
5. Voided, mutilated or destroyed tickets or packets.

The report must be submitted within 45 days of the end of the quarter (Regulations of the Commissioner, Sec. 91.10).

Any officer losing a ticket or packet of tickets must prepare an official report for his law enforcement agency.

Law enforcement agencies must retain a duplicate copy of their quarterly reports and must retain for at least 2 years the enforcement agency's copy of every Uniform Traffic Ticket issued (Regulations of the Commissioner, Sec. 91.10, subd. d, e, f).

ISSUE OF TICKET BY OFFICER: A ball-point pen is best for writing tickets, in view of the multiple copies to be made with carbons. When an officer issues a ticket he should take care to fill in every appropriate space and must sign the top copy (Part 1) and give it to the violator. The next copy (Part 2) is the complaint or information and the officer must sign and swear to it before the magistrate or any chief, deputy chief, captain, lieutenant or acting lieutenant or sergeant or acting sergeant of a police department, or any sheriff, undersheriff, chief deputy, deputy sergeant or deputy in charge of any road patrol maintained by any sheriff in the county to whom the officer reports service of the ticket (Regulations of the Commissioner, Sec. 91.11; V & T Sec. 208). The officer must deliver to the court Parts 2, 3 and 4 of the Uniform Traffic Ticket and must keep Part 5 (Regulations of the Commissioner, Sec. 91.11).

In filling out a ticket, it is only necessary to show the name of the violation and the section of law violated. For uniformity, officers should use the abridged names of violations in PART IV, "Motor Vehicle Handbook for Patrolmen," published by the Department of Motor Vehicles.

Officers should take care to enter the name of the magistrate rather than "Magistrate Presiding" or some similar phrase. The name and location of the court should be included.

Sections 147-a through 147-e of the Code of Criminal Procedure provide for the use of the short, simplified information (complaint) as printed on Part 2 of the ticket for Vehicle and Traffic Law and local traffic ordinance violations only. In such informations it is only necessary to show the name of the violation and the section of law instead of a full set of facts describing the violation, as in a regular long form information. Such informations cannot be used for violations of any laws or ordinances except the Vehicle and Traffic Law and traffic ordinances.

In view of the brevity of such traffic informations, the law permits violators to ask for a bill of particulars at their arraignment or thereafter

and if the magistrate so directs, the officer who issued the ticket must provide a bill of particulars. This is a document showing the name of the court and of the parties and containing a statement in ordinary language setting out sufficient (not necessarily all) elements of the violation to give the defendant and the court reasonable information as to the nature and the character of the violation charged. It is not necessary to state items of evidence in such a bill. It need not be sworn to (CCP Sec. 147-f, 147-g).

The need for giving a bill of particulars requires that each time an officer issues a ticket he must make and retain pertinent notes concerning the violation, for later use. The notes may be made on the back of Part 5 of the ticket, which has appropriately marked spaces in which to do so.

The court is required, after disposing of the violator, to fill out Parts 3 and 4 of the ticket, and must forward Part 3 to the Department of Motor Vehicles and Part 4 to the law enforcement agency whose officer issued it (Regulations of the Commissioner, Sec. 91.12).

WAIVERS: Any violator issued a traffic summons for a traffic infraction may waive appearance in court and make an application by mail to the court to dispose of the matter without necessity of appearance, except for a second or subsequent speeding violation within 18 months or a second or subsequent charge of failure to stop for school bus. This waiver provision is not applicable in New York City and it cannot be used in cases of misdemeanor or felony traffic violations.

The application must be in the form of an affidavit and must be accompanied by the "record of convictions" stub of the violator's license. The form of affidavit must be exactly as prescribed by the Commissioner of Motor Vehicles and every officer issuing a ticket to a violator must hand the violator a copy of the form to use if he chooses (CCP Sec. 335, subd. 2).

The form prescribed is set out in Regulations of the Commissioner, Section 92.2. It may be printed on the back of Part 1 of the Uniform Traffic Ticket (Regulations of the Commissioner, Sec. 91.7, subd. a-3). This is the most convenient way to furnish the form and ensures that the officer will not omit the statutory duty to furnish it when he issues a ticket.

NOT GUILTY PLEA BY MAIL: In addition to appearing personally to enter a plea of not guilty to a traffic infraction (Vehicle and Traffic law or any local law, ordinance, order, rule or regulation relating to the operation of motor vehicle or motorcycles,) a defendant (on or after 10/1/67) may enter a plea of not guilty by mailing to the court the ticket making the charge and a signed statement indicating such plea. The plea must be sent by registered or certified mail, return receipt requested within forty-eight hours after receiving the ticket. Upon receipt of the ticket and statement the court must advise the violator (by registered or certified mail) of a trial date, not less than seven days after the notice of trial is mailed (CCP Sec. 335-b; V & T Sec. 1800, subd. e).

PENAL LAW: Vehicle violations of concern to all officers are found not only in the Vehicle and Traffic Law but also in the Penal Law:

1. **CRIMINALLY NEGLIGENT HOMICIDE** — a person commits Criminally Negligent Homicide when with criminal negligence, he causes the death of another (P.L. Sec. 125.10; see Section 73, "Homicide," this Manual).

2. **MANSLAUGHTER** — a person commits Manslaughter Second when he recklessly causes the death of another person (P.L. Sec. 125.15; see "Homicide").

3. **MENACING** — a person commits Menacing when, by physical menace, he intentionally places or attempts to place another person in fear of imminent serious physical injury (e.g. teenagers playing

"chicken" with cars). (P.L. Sec. 120.15; see Section 27, "Assault, Menacing, Reckless Endangerment," this Manual).

4. **RECKLESS ENDANGERMENT** — a person is guilty of Reckless Endangerment Second who recklessly engages in conduct which creates a substantial risk of serious physical injury to another (P.L. Sec. 120.20; see Section 27, this Manual).

5. **ASSAULT** — a person commits Assault Third when he recklessly causes physical injury to another (P.L. Sec. 120.00; see Section 27, this Manual).

VEHICLE AND TRAFFIC LAW: For the exact wording of any Vehicle and Traffic law, officers should refer to the law itself, either in the Department of Motor Vehicle's "Vehicle and Traffic Law," published annually, or in a standard law text.

BICYCLES: Sections 1230 through 1236 of the Vehicle and Traffic Law cover the use of bicycles on the highway. Section 1231 makes the traffic rights and duties applicable to drivers of vehicles also applicable to riders of bicycles, subject to the special regulations in Sections 1230 and 1232-1236.

LOCAL ORDINANCES: Articles 38, 39 and 40 of the Vehicle and Traffic Law permit additional regulation of traffic by public authorities and commissions, by cities and villages and by the County Superintendent of Roads in counties. Officers must familiarize themselves with their pertinent local ordinances and rules and regulations of authorities and commissions on highways within the officer's jurisdiction.

NON-RESIDENT DRIVERS: No person under age 18 may operate a motor vehicle or motorcycle in New York on an out-of-state license.

Persons 18 and over who are non-residents and from a place whose laws do not require a license to operate may operate without a license in New York (except as a chauffeur) for up to 60 days a year, when driving their own or a family motor vehicle or motorcycle if the car or cycle is properly registered in their place of residence (V & T Sec. 250, subd. 2). They may not drive New York-registered vehicles.

Persons 18 and over who are non-residents and from a state, territory, federal district or foreign country whose laws do require licensing to operate a motor vehicle or motorcycle, may drive in New York on the out-of-state license. They may drive their own, their families' or any other vehicle. This driving privilege is reciprocal—it operates only to the extent that the other jurisdiction grants driving privileges to New York drivers (V & T Sec. 250, subd. 2). If the non-resident becomes a New York resident he can drive on his out-of-state license for 60 days pending obtaining a New York license (V & T Sec. 250, subd. 2).

VEHICLES OF NON-RESIDENTS: Motor vehicles, motorcycles and trailers owned by non-residents of the state may be operated in New York if they are duly registered and equipped and display registration numbers as required by the laws of the owner's place of residence. This privilege, like the licensing privilege, is reciprocal and operates only to the extent that the owner's place of residence gives operating privileges to New York-owned vehicles (V & T Sec. 250, subd. 1).

VEHICLES OPERATED FOR HIRE OR PROFIT: Out-of-state registered vehicles engaged in transporting persons or property for hire or profit from point-to-point within New York have no privilege at all and may not lawfully operate in New York, except the following:

1. An out-of-state registered semi-trailer drawn by a tractor registered in New York.

2. An out-of-state registered trailer drawn by a motor vehicle registered and owned in New York, provided no property is both placed upon and unloaded from the trailer within New York.

3. An out-of-state registered vehicle cannot be used on any work under contract for a public improvement for the state, a municipality, a school district or a commission appointed by law, except that it may transport machinery, tools or plant equipment to perform the contract (V & T Sec. 250, subd. 3).

RECIPROCITY LAWS OF OTHER PLACES: Officers should obtain from the Department of Motor Vehicles a copy of its publication "State of New York Motor Vehicle Reciprocity Summary" in order to be informed of the specific privileges of non-resident drivers from the different states in the United States and from other countries.

SEASONAL FARM LABORERS: Between April 1 and November 30 annually, non-resident seasonal farm laborers are permitted to drive on license and registration of their own place of residence, but must file proof with the Commissioner of Motor Vehicles that they are insured and receive from the Commissioner a certificate (for the vehicle) which must be affixed to a prominent place in the interior of the vehicle and/or a personal driving permit (V & T Sec. 250, subd. 4-a, 5-a). Such laborers have 30 days from the date of entry into New York to procure the certificate and/or permit (V & T Sec. 250, subd. 4-d, 5-c). The fee for certificate or permit is $2.00.

MILITARY PERSONNEL: Motor vehicles or motorcycles having registrations and displaying plates issued by the armed forces of the United States for vehicles owned by military personnel are exempt from New York registration for a period of 45 days after the owner enters New York to either travel to his residence or a point of military duty (V & T Sec. 251).

A New York operator's license of a person entering the armed forces expires on the 30th of September following either the expiration date of the Defense Emergency Act (7/1/68) or 60 days after a person is separated from the service, whichever is first (Unconsolidated Laws, Sec. 9196, subd. 3).

A New York chauffeur's license of a person entering the armed forces expires on the 31st of May following either the expiration of the Defense Emergency Act (7/1/68) or 60 days after the person is separated from the service, whichever is first (Unconsolidated Laws, Sec. 9196, subd. 3).

If the person entered the armed forces on or after 7/1/63, the advantages in the previous two paragraphs may be secured only if the person notified the Commissioner of Motor Vehicles of his entry into service, as required by Section 501, subdivision 1, paragraph g of the Vehicle and Traffic Law (Unconsolidated Law, Sec. 9196, subd. 3).

Any member of the armed forces who has been issued a motor vehicle or motorcycle operator's license by the armed forces can operate a motor vehicle or motorcycle on New York highways only for a period of 60 days after entering New York (V & T Sec. 251).

TRAFFIC DIRECTION AND ENFORCEMENT

The purpose of traffic direction is to give the users of streets and highways the greatest freedom of movement consistent with safety and the rights of others.

The traffic officer's contact with the public is much more frequent than that of any other officer. For many people, their only contact with police agencies or law enforcement officers is with traffic officers. The public may thus judge a department solely on the appearance and ability of its traffic officers. The traffic officer is frequently subjected to tests of self-

control. In spite of this, he must maintain an agreeable attitude and control his temper. Performance of his duty in a firm but courteous manner will create confidence in his ability and in his department.

DIRECTING TRAFFIC: Successful traffic direction depends upon continued analysis by the officer of the changing needs of his post and upon giving correct instructions to drivers and pedestrians. When directing traffic, the officer must be certain that:

1. The instruction is necessary.
2. The instruction can be executed.
3. The instruction is clear and can be easily understood.
4. The instruction can be and is promptly withdrawn when it has served its purpose.

The traffic officer's instructions are ordinarily given by hand-and-arm and whistle signals. The purpose of the signals is to let drivers and pedestrians know what the officer wants them to do. The traffic officer's ability is measured by the response of drivers and pedestrians to his instructions and by the prompt and safe movement of traffic.

SIGNALS: Hand and arm signals should be given at or above shoulder height, for best visibility. A whistle should not be used as a means of giving signals but merely as an auxiliary to the hand-and-arm signals. It should be blown as a warning or preparatory command, the actual direction being given by the hand-and-arm signal. Good, usable signals are:

1. To stop vehicle approaching from the right, turn head to right, raise right arm to shoulder height with the index finger pointed toward the vehicle. Look directly at the driver and try to get his attention.

2. To start vehicles on the right, turn head to right, raise right arm to shoulder height with the index finger pointed toward the driver. Hold arm rigid from shoulder to elbow, bend the arm at the elbow and bring the hand down in a circular movement in front of the face.

3. Traffic on the left of the officer should be handled as in 1 and 2, using the left arm and hand in place of right.

4. In handling left turns, direct the turning car so that it is close to the officer, in the center of the highway. It is then in a position to complete the turn at the first opportunity. Traffic officers should encourage a short left turn in front of the officer. This permits two vehicles to be moved at the same time without intereference with each other. It is preferable to a long turn around the officer, from a standpoint of both time and safety.

In changing direction of traffic flow do not wait for stragglers. To do so results in loss of time. Move accumulated vehicles which are at a standstill and waiting. When stragglers are reached, change the direction of traffic flow. In the interval, stragglers will accumulate and be ready for the next change. The officer should regulate the time of changing traffic so as to safely move the greatest number of vehicles and still keep none waiting for unreasonable lengths of time. Never give a signal to start or stop without looking in all directions affected to make sure that compliance with the signal will not result in an accident.

PEDESTRIANS: When directing pedestrian traffic an officer may signal "stop" by raising both arms to a position horizontal with the shoulders, palms facing the pedestrians and release the pedestrians by swinging the arms in a circular movement across the chest.

HAZARD TO OFFICER: The position of an officer directing traffic at a busy intersection is one of great personal danger. This hazard is some-

what reduced by making an effort to educate the motoring public never to pass a traffic officer when he is facing them or has his back toward them, but to wait until they may pass in a line parallel with his chest or back, at which time he is in a position to observe moving traffic approaching from his right and left.

TIE-UPS: In the event of a traffic tie-up, the situation is like an arch held in place by a keystone. Find the keystone (a car stalled, mechanical trouble, accident, attempt to turn against traffic), and remove it. In the event of congestion, arrange to divert traffic through parallel streets, making sure that traffic is diverted into streets having outlets and not into dead ends.

CAPACITY TRAFFIC: Every street and highway has a maximum capacity or saturation point. When this point is reached, traffic becomes an engineering problem. The officer can improve the situation only by remaining calm, even in the face of irritating remarks, blowing horns, etc. He must attempt to keep as many vehicles moving as possible. In handling traffic congestion the officer must remember not to become excited. When emotion of any kind takes over, a person loses his ability to think clearly or reason logically. The officer's job is to remove excitement, not to add to it.

OTHER CONSIDERATIONS: If it is necessary for an officer to talk with a driver or to issue a summons, he must avoid blocking traffic. The driver must be directed to drive to the side of the road before stopping. When giving a summons all unnecessary talk must be avoided. The officer should be brief and businesslike.

In addition to handling traffic the traffic officer is in a position to make important arrests. Alarms shoud be studied carefully. The automobile is used by most criminals. While on traffic post the officer has an excellent opportunity to observe people who are wanted.

QUESTIONS FROM THE PUBLIC: Many people regularly ask traffic officers questions regarding routes, points of interest, etc. Furnishing information of this kind is recognized as an important police service. Officers should familiarize themselves with such information to quickly and intelligently answer inquiries. Proper handling of on-the-street inquiries is a major factor in good public relations.

PATROLS

See section on "Observation and Patrol," in this Manual.

ALCOHOL

Officers should review the sections of this Manual covering "Intoxication" and "Laboratory Examinations" for information pertaining to driving while intoxicated or driving while ability impaired cases.

ACCIDENTS AND PREVENTION

POLICE REPORTS: Whenever an accident involving personal injury is reported to an officer he must immediately investigate the facts or cause them to be investigated and report the results to the Commissioner of Motor Vehicles forthwith (V & T Sec. 603).

PREVENTION: There are three principal methods of preventing traffic accidents: Engineering, Education, and Enforcement.

Enforcement is the direct responsibility of the law enforcement officer. It is a quick and direct means of obtaining results when intelligently applied in sufficient quantity.

When traffic enforcement is adequate, accidents caused by law violations are reduced and motorists learn respect for the law. A strong deterrent results from efficient and constant patrolling and strict enforcement.

In order to be most effective enforcement activities must be carefully planned and selective—they must be directed to the area where they can accomplish the most in preventing accidents rather than be applied without plan, or haphazardly.

To do this requires planning based on adequate statistics concerning accidents and accident locations.

Ineffective traffic law enforcement permits the accident rate to remain static or increase. The public attitude toward the police and traffic laws will be undesirable in such circumstances.

The police administrator can determine, from study of accident statistics, when and where to assign traffic patrols, what violations are contributing to accidents and which should be given major enforcement attention. This is "Selective Enforcement."

Most accidents are caused by traffic violations. In order for the police to determine which violations are contributing to accidents in any one municipality or area, it is necessary to study accident records and reports for that particular location. Before accident records can be relied upon to produce accurate, useable data, an investigation must be made of each accident. Officers must be trained to investigate accidents and to prepare reports containing such descriptions of accidents that those who read and analyze the reports can construct each accident, prepare a collision diagram and tally the violation or violations which contributed to the accident, by type, time and location.

An accident spot-map will show at a glance on which highway or streets and in which areas accidents most frequently occur. A review of the accident records for that highway, street, or area will show the time the accidents are occurring, and which violations are contributing factors. This will permit directing special attention to high-accident locations, with patrols at specific times alert for the accident-producing violations. A comparison should be made of the times of day traffic arrests are being made on high-accident highways and the times of day accidents are occuring there. If there is a significant discrepancy in times, adjustments must be made so that times of enforcement activities and accident experience will closely coincide. A comparison should also be made between the accident-producing causes and arrests, and if there is a significant difference between the two, adjustments in enforcement activity must be made.

ENFORCEMENT INDEX: The Enforcement Index of any area is the ratio of the number of fatal and personal injury accidents in the area to the number of convictions with penalty for Hazardous Moving Violations in the area (speeding, reckless driving, failing to keep right, changing lanes unsafely, passing a red light or stop sign, and most other traffic violations committed while the vehicle is moving). Only penalties such as fines or jail sentences are counted. Arrests resulting in suspended judgment or sentence or in dismissal are not considered when computing the index.

The Enforcement Index is a useful method of measuring the effect of enforcement activities on the accident rate in an area, municipality or on a specific highway. The index also measures the quantity and quality of traffic arrests. Police administrators can determine from it whether officers should make more arrests per accident, whether more men are needed in an area, or whether arrests are or are not being made for accident-producing violations.

There is a wide range in enforcement indices in various areas. Some jurisdictions with a low traffic accident rate have found an enforcement index

of 5 produced good results. Others have found it necessary to go as high as 15 or 20.

A usual procedure is to increase the amount of enforcement until a further increase fails to produce a corresponding drop in accidents. This is assumed to be the point of diminishing returns beyond which additional enforcement becomes an inefficient method of accident prevention.

A low index points up a necessity for more convictions with penalty for moving hazardous violations. This can be accomplished by placing more patrols in the area or by instructing officers in the area to increase the quality and quantity of their enforcement activities. It may also indicate that too many arrests are being closed by the courts without a penalty.

When only a limited number of officers are available to patrol a high-accident location, or when the work-time of such officers is divided between traffic and general police duties, and a low enforcement index results, it is clearly evident that additional officers are required in order to produce a reduction in violations and accidents.

If a high enforcement index is obtained in an area without a significant reduction in accidents, it is evident that the point of diminishing return has been reached. Enforcement efforts should not be reduced. Such a situation indicates that accidents are being caused by factors other than violations, such as highway grades, alignment, inadequate traffic control devices or drivers skidding, falling asleep or being inattentive, etc., and steps other than on-the-road enforcement are required.

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121. UNAUTHORIZED USE OF A VEHICLE

Under Section 1293-a of the old Penal Law, unauthorized use of a vehicle was a larceny. Under the new law unauthorized use is not a larceny, and is the crime of "Unauthorized Use of a Vehicle."

VEHICLE DEFINED: A vehicle is any motor vehicle as defined in the Vehicle and Traffic Law, or any aircraft or any vessel equipped for propulsion by mechanical means or sail (i.e. a row-boat or canoe without an outboard motor or sail is not a vehicle, most other boats are) (P.L. Sec. 10.00 subd. 14).

The Vehicle and Traffic Law defines a motor vehicle as any vehicle (except electrically-driven invalid chairs being operated or driven by an invalid) operated or driven upon a public highway by any power other than muscular power, including power obtained from overhead trolley wires, except vehicles which run only upon rails or tracks (Vehicle & Traffic Sec. 125).

UNAUTHORIZED USE DISTINGUISHED FROM LARCENY: In order to commit a Larceny it is necessary that the offender intend either to deprive the owner or to appropriate the property permanently or for so long a period that the major portion of the property's economic benefit is lost to the owner. A person who takes a vehicle to use for a day, a week, even a couple of weeks, does not intend to deprive the owner either permanently or for so long a period that a major part of the vehicle's major economic value or benefit is lost. This is the basic difference in the two crimes. Where intent to permanently take the vehicle can be made out, the crime should be considered and handled as a Larceny by Embezzlement, False Pretenses or False Promise, as best suited to the circumstances of taking.

UNAUTHORIZED USE OF A VEHICLE DEFINED: The crime of Unauthorized Use of a Vehicle may be committed under any of three sets of circumstances, as follows:

1. A person, knowing he does not have consent of the owner,
   a. Takes, operates, exercises control over, rides in or otherwise uses
   b. A vehicle (P.L. Sec. 165.05, subd. 1)
   c. Presumption: a person who engages in any such conduct without the consent of the owner is presumed to know that he does not have such consent (P.L. Sec. 165.05, subd. 1).

2. A person having custody of a vehicle,
   a. Pursuant to an agreement between himself or another, and the vehicle owner,
   b. Whereby he or another is to perform:
      (1) For compensation,
      (2) A specific service for the owner,
      (3) Involving the maintenance, repair or use of the vehicle
   c. Intentionally uses or operates the vehicle,
      (1) Without the consent of the owner,
      (2) For the offender's own purposes,
      (3) In a manner constituting a gross deviation from the agreed purpose (P.L. Sec. 165.05, subd. 2)

3. A person having custody of a vehicle,
   a. Pursuant to an agreement with the vehicle owner,
   b. Whereby the vehicle is to be returned to the owner at a specified time,
   c. Intentionally retains or withholds possession of the vehicle,
   d. Without the consent of the owner,
   e. For so lengthy a period beyond the specified time as to render the retention or possession a gross deviation from the agreement (P.L. Sec. 165.05, subd. 3).

A gross deviation should be taken to be a deviation which is very substantial.

Unauthorized Use of a Vehicle is a Class A misdemeanor.

INVESTIGATIONS

The types of crimes included in the three sets of circumstances of Unauthorized Use of A Vehicle are typified by cases such as the usual juvenile taking for "joyriding," a garage receiving a car for repair and a mechanic taking it for a personal trip over a weekend, or an alleged used or new car "buyer" taking a car for a "test drive" and failing to return.

It should be borne in mind of course, that the crime applies equally to motor vehicles, outboard motorboats, airplanes, balloons, sailboats, etc.

Education of businessmen and the public will do much to reduce the occurrence of these crimes. National statistics show that about 42% of all cars stolen had the keys in the ignition or the ignition was not locked. Enforcement of Section 1210 of the Vehicle and Traffic Law, which makes it a traffic infraction for any person driving or in charge of a motor vehicle to permit it to stand unattended without first stopping the engine, locking the ignition and removing the key, will do much to reduce thefts.

Proper supervision by owners and managers of garages, boat-yards, small airports and similar establishments will be of assistance in cutting down on unauthorized use cases involving vehicles brought in for changes, adjustment or repair.

Stressing to motor car dealers the inadvisability of solo test drives by "customers" will save them loss and cut down on Unauthorized Use crimes.

In all cases, the exact circumstances under which the offender obtained the vehicle should be pin-pointed, together with all details of and docu-

ments relating to the initial transaction between the owner and any one who initially received the car from the owner.

All officers should bear in mind, in reporting or preparing teletypes, alarms, etc., that a car involved in an unauthorized use is not a stolen car nor is the offender guilty of stealing. The car is merely one subject to Unauthorized Use and the offender is an unauthorized user. Unauthorized Use is a misdemeanor. All Larceny (except Petit Larceny) is a felony.

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122. UNLAWFUL IMPRISONMENT

UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE: A person is guilty of Unlawful Imprisonment Second when he restrains another person (P.L. Sec. 135.05).

1. "Restrain" means to restrict a person's movements:
   a. Intentionally and Unlawfully,
   b. Without consent,
   c. And with knowledge that the restriction is unlawful,
   d. In such manner as to interfere substantially with his liberty by:
      (1) Moving him from one place to another, or
      (2) Confining him either in the place where the restriction commences or in a place to which he has been moved.
   e. A person is moved or confined "without consent" when the moving or confining is accomplished by:
      (1) Physical force, or
      (2) Intimidation, or
      (3) Deception, or
      (4) Any means whatever, including acquiescence of the victim, if the victim is:
         (i) A child less than 16, or
         (ii) An incompetent person, and
         (iii) The parent, guardian or other person or institution having lawful control or custody of the victim has not acquiesced in the movement or confinement (P.L. Sec. 135.00, subd. 1).

Unlawful Imprisonment Second is a Class A misdemeanor.

UNLAWFUL IMPRISONMENT IN THE FIRST DEGREE: If the restraint is under circumstances which expose the one restrained to a risk of serious physical injury, the offense is Unlawful Imprisonment First, a Class E felony (P.L. Sec. 135.10).

UNLAWFUL IMPRISONMENT BY OFFICER: Unlawful Imprisonment can be committed by anyone. Officers should note that even when a person's movements are restrained intentionally and unlawfully and without his consent, the restriction must be committed with knowledge that it is unlawful. Thus, when an officer makes an arrest or stops a person and the officer has reason to believe he is acting lawfully, one of the elements of Unlawful Imprisonment is lacking, even if what the officer did later turns out to have been unlawful or contrary to the law.

DEFENSE BY RELATIVE: A relative is a parent, ancestor, brother, sister, uncle or aunt. In any prosecution for Unlawful Imprisonment, it is an affirmative defense (i.e. one the defendant must establish at trial by preponderance of evidence) that:

1. The person restrained was a child under 16, and
2. The defendant was a relative of the child, and

3. The defendant's sole purpose was to assume control of the child (P.L. Sec. 135.15).

INVESTIGATIONS

The factual situations which would give rise to a criminal charge of Unlawful Imprisonment or a civil cause of action for False Imprisonment are similar, with the exception that the criminal charge requires that the restraint of the victim be "with knowledge that the restriction is unlawful" while the civil tort requires only that the restraint be legally unjustifiable. The civil wrong, in other words, could be committed even where an officer acts in good faith, such as when by mistake he arrests the wrong person (Gill vs. Montgomery Ward & Co., 284 AD 36, McLaughlin vs. N.Y. Edison Co., 292 NY 202). Criminal Unlawful Imprisonment cannot be committed in good faith; there must be knowledge that the restriction is unlawful, by the terms of the criminal statute.

Any person may commit the crime of Unlawful Imprisonment and it should not be supposed that the law is aimed only at public servants.

In taking a complaint of Unlawful Imprisonment, it should be determined in the initial interview precisely what act or acts are relied upon to establish the necessary interference with the alleged victim's liberty. The specific means which it is claimed were used to accomplish the necessary moving or confining which constitute the interference with liberty must also be ascertained. Exact details should also be pin-pointed which would indicate the offender's intent and his knowledge of the unlawful nature of his conduct, in conformance with the requirements of the criminal statute.

In the usual case it will be found desirable to require complainants to furnish signed statements, specifying these facts.

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123. UNLAWFUL DISCLOSURE

UNLAWFUL GRAND JURY DISCLOSURE: A person is guilty of Unlawful Grand Jury Disclosure who:

1. Being:
   a. A grand juror, or
   b. A public prosecutor, or
   c. A grand jury stenographer, or
   d. A grand jury interpreter, or
   e. A peace officer guarding a witness in a grand jury proceeding, or
   f. A clerk, attendant, or warden having official duties in or about a grand jury room or proceeding, or
   g. Any other public servant having official duties in or about a grand jury room or proceeding,
2. Intentionally discloses,
3. To another:
   a. The nature of any grand jury testimony, or
   b. The substance of any grand jury testimony, or
   c. Any decision, result or other matter attending a grand jury hearing which is required by law to be kept secret,
4. Except in the proper discharge of his official duties, or
5. Except upon written order of the court (P.L. Sec. 215.70).

Unlawful Grand Jury Disclosure is a Class B misdemeanor.

UNLAWFUL DISCLOSURE OF AN INDICTMENT: A person is guilty of Unlawful Disclosure of an Indictment who:

1. Being a public servant,
2. Intentionally discloses (except in the proper discharge of his official duties),
3. The fact that an indictment has been:
   a. Found, or
   b. Filed,
4. Before the accused person is in custody (P.L. Sec. 215.75).

Unlawful Disclosure of an Indictment is a Class B misdemeanor.

INVESTIGATIONS

A key element of proof in these cases will be proof of intent. Ordinarily such proof will be derived from the circumstances of the case, rather than direct admissions.

Upon receipt of a complaint of violations under this section the officer should clearly ascertain from the complainant and any other logical sources what was allegedly disclosed. The actual testimony, decision, result, finding of indictment, etc., should then be promptly checked. The circumstances surrounding the testimony, decision, etc., including persons involved, time, place, means of access, means of communication, and similar facts should also be checked. Analysis of this information and the alleged facts in the complaint is required and will give practical direction to further investigation.

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124. USURY

RATE OF INTEREST; CIVIL USURY:

1. The rate of interest upon the loan or forbearance of any
   a. Money, or
   b. Goods, or
   c. Things in action
2. Except as otherwise provided by law,
3. Shall be six dollars
   a. Upon one hundred dollars,
   b. For one year (Genl. Oblig. L. Sec. 5-501).

Pawnbrokers (Genl. Bus. L. Sec. 46) may charge up to 3% per month (see Section 94, "Pawnbrokers," this Manual).

LENDERS: Persons or firms engaging in the business of lending money or credit in the amount of $800 or less must be licensed (by the Superintendent of Banks) and cannot charge more than 2½ per cent per month interest, based on the unpaid principal (Banking Law, Secs. 340, 352).

Non-licensed lenders cannot enforce a greater rate on loans of $800 or less (Banking Law, Sec. 357).

TAKING SECURITY UPON CERTAIN PROPERTY FOR USURIOUS LOANS:

1. It is a Class A misdemeanor for a person to take security upon any:
   a. Household furniture,
   b. Sewing machines,
   c. Plate or silverware in actual use,
   d. Tools or implements of trade,
   e. Wearing apparel, or
   f. Jewelry,

2. For a loan or forbearance of money, or

3. For the use or sale of his personal credit,

4. Conditioned upon the payment of a greater rate than six per-centum per annum,

5. Or as security for such loan, use or sale of personal credit:

a. To make a pretended purchase of such property from any person upon the like condition, and

b. Permit the pledgor to retain possession of the property (Genl. Oblig. L. Sec. 5-524).

CRIMINAL USURY: A person is guilty of Criminal Usury when:

1. Not being authorized or permitted by law to do so,

2. He knowingly charges, takes or receives,

3. Any money or other property as interest,

4. On the loan or forbearance of any money or other property,

5. At a rate exceeding 25 per centum per annum, or the equivalent rate for a longer or shorter period (P.L. Sec. 190.40).

Criminal Usury is a Class E felony.

POSSESSION OF USURIOUS LOAN RECORDS: A person is guilty of possession of Usurious Loan Records when, with knowledge of the contents thereof, he possesses any writing, paper, instrument or article used to record criminally usurious transactions prohibited by Section 190.40 of the Penal Law (P.L. Sec. 190.45).

Possession of Usurious Loan Records is a Class A misdemeanor.

CIVIL LAW; CREDIT: The General Obligations Law and Banking Law sections limiting the amount of interest which lenders can charge do not create crimes. They are merely civil laws which regulate what rate of interest is enforceable by law, in the absence of some special law, like the one covering pawnbrokers. The Penal Law creates the crimes of Criminal Usury and Possession of Usurious Loan Records. The General Obligations Law creates the additional crime of Taking Security Upon Certain Property for Usurious Loans.

The prohibitions against usury under the General Obligations Law and the Banking law are not applicable to the sale of property on credit (Congress Financial Corp. vs. Patti, et al., 26 App. Div. 2d 924, Jackson vs. Westchester Auto Credit Corp., 293 NY 840).

INVESTIGATIONS

When a complaint of Criminal Usury is received, the officer must obtain specific details as to the identification of the usurer and the victim, and the specific amounts loaned, specific amounts paid and the frequency and manner of payment. Determine whether all payments were cash. The frequent police problem in usury is the "loan shark" hoodlum.

In planning investigation consider that Possession of Usurious Loan Records is a crime, and that in all possible instances, the additional crime of possession should be proved and charged.

Where loan shark activity is reported, a prime consideration must be development of new and utilization of existing confidential informant coverage. Include victims as new informant prospects for purposes of the specific case.

Most cases will depend upon development of victims' willingness to testify. Approaches to victims who have not previously complained should

ordinarily be deferred until other investigation, including surveillances as required, has developed the identity of the loan sharks, their modus operandi and their current customers, insofar as it is practical to do so.

125. TAX LAWS

INTRODUCTION: This section of the Manual deals with two tax laws with which the local officer may have need of familiarity, one as a matter closely akin to Vehicle and Traffic Law enforcement and the other as a major loss of revenue to the State because of smuggling. The former is the Highway Use Tax, often referred to as the "Truck Mileage Tax." The other is the Cigarette Tax.

HIGHWAY USE PERMITS: Every carrier must apply to the State Tax Commission for a permit for each "motor vehicle" operated or to be operated by him on the public highways in the State of New York (Tax L. Sec. 502, subd. 1-a).

1. Carrier: means any person having the lawful use or control or the right to the use or control of any motor vehicle.

2. Motor vehicle (under this law) means any automobile, truck, tractor or other self-propelled device having:

a. A gross weight, alone or in combination with any other motor vehicle in excess of 18,000 pounds, or

b. Any trailer, semi-trailer, dolly or other device drawn thereby and having a gross weight alone or in combination with any other motor vehicle in excess of 18,000 pounds, or

c. Any motor truck having an unloaded weight in excess of 8,000 pounds, or

d. Any tractor having an unloaded weight in excess of 4,000 pounds (Tax L. Sec. 501, subd. 2, 5).

PERMIT REQUIREMENTS: A permit is required for each of the vehicles described in the definition of a motor vehicle. Since a tractor and a trailer are each motor vehicles, a separate permit is required for every tractor and every trailer with a maximum gross weight in excess of 18,000 pounds (Tax L. Sec. 502).

EXEMPTIONS AND EXCLUSIONS: The following vehicles when used for the purposes for which they were designed are exempt from the Highway Use Tax Law:

1. A vehicle operating on fixed rails or tracks.
2. An omnibus.
3. A road roller.
4. A tractor-crane, truck crane.
5. A power shovel, a road building machine.
6. A snow plow, a road sweeper, a sand spreader.
7. A well driller.
8. Motor vehicles operated by the United States, New York State, or other states, or any county, city, town or municipality in New York State or other states, except when operated by a private person under a lease or contract. However, if a motor vehicle is operated by one of the foregoing agencies, it is exempt from the statute even if owned by a private person.
9. Motor vehicles transporting mail.

10. A motor vehicle owned and operated by a farmer, provided it is used exclusively by him to transport:

a. his own agricultural commodities;

b. products which were grown or raised on his land;

c. supplies and equipment to his own farm or orchard for consumption and use thereon;

d. farm products from a farm contiguous to his own (Tax L. Secs. 501, subd. 2, 5; 504, subd. 1, 2, 3).

MOVING VANS: Also exempt from the Highway Use Tax law are any vehicular units used exclusively in the transportation of household goods (as defined by the Public Service Commission of New York or by the Interstate Commerce Commission) by a carrier under authority of the Public Service Commission of New York or of the Interstate Commerce Commission (Tax L. Sec. 504, subd. 5).

SPECIAL EXEMPTION: A "motor vehicle" is exempt from the Highway Use Tax permit if it has a maximum gross weight of 18,000 pounds or less, unless the carrier elects the "unloaded weight method" of computing the Highway Use Tax (Tax L. Sec. 504, subd. 4). If this election is made, a permit must then be obtained for every tractor with unloaded weight over 4,000 pounds and every truck with unloaded weight over 8,000 pounds (20 NYCRR 471.6).

APPLYING FOR AND AFFIXING PERMITS: Permits cost $5. All applications should be made to the State Tax Commission on the approved "TMT" form.

1. If an emergency requires the immediate use of a motor vehicle in this state and it does not have a permit or if a vehicle enters the state for the first time, an emergency permit may be obtained for the motor vehicle by sending a telegram money order for $5 for each motor vehicle, to the Department of Taxation and Finance, Truck Mileage Tax Section, Building 9, State Campus 12226, Albany. If the permits are for a tractor and trailer, a fee of five dollars for each such vehicle must be submitted. The telegram must contain the following information:

a. Name and address of person to whom reply telegram is to be sent.

b. Name and address of applicant,

c. Serial or motor number of motor vehicle,

d. Make and year of motor vehicle,

e. Unloaded weight and maximum gross weight of trucks and trailers.

Twenty-four hours service will be provided. Replies will be sent collect. The reply telegram is an emergency permit and is valid for twenty days from its date. It must be carried in the vehicle (20 NYCRR 473.2).

When a permit is granted, a plate, tag or sticker is issued. The plate must be firmly and conspicuously fixed on the motor vehicle as closely as practicable to the license plate, kept visible and legible at all times (rear of vehicles, except tractors, when must be in front) (Tax L. Sec. 502, subd. 1-a).

TAX: The Highway Use Tax Law requires carriers to make monthly tax returns based on truck mileage, as set out in several provisions of the tax law. Law enforcement officers generally have no direct enforcement duties as to the tax, or its collection, except to ensure that vehicles coming under the law have valid and current permits.

CHECKING PERMITS: Permits may be checked against the records of the Truck Mileage Tax Section of the Department of Taxation and Finance by telephoning (at Albany) GL 7-3652 (days) or GL 7-3657 (nights) and furnishing name and address of carrier, and (if different from carrier) name and address of registered owner, together with the "TMT", plate number of the motor vehicle, if it has one displayed Tax L. Sec. 502).

SPECIAL PERMIT AND PLATE: In place of the highway use permit and plate and the emergency permit, carriers who are engaged in the business of transporting motor vehicles by saddle or full mount mechanism or a combination of both, may apply to the Miscellaneous Tax Bureau for a special permit. All of the provisions of the Tax Law relating to the regular plate, tag, sticker or permit will apply also to those issued in the special permit category. Persons who employ this mode of transportation must possess either a regular permit, an emergency telegram permit or a special permit. Special plates and permits are to be used only by the carrier to whom issued and are transferable among his vehicles furnishing motive power in the transportation of another vehicle or vehicles under saddle or full mount mechanism, or a combination of both. They may not be used by any other carrier or entity (Tax L. Sec. 502, subd. 1-b).

OFFENSES UNDER HIGHWAY USE LAW: It is a Violation, punishable by fine of not less than $100 nor over $250 (first offense) or fine not less than $250 nor over $500, or imprisonment up to 10 days (second offense) to do any of the following:

1. Use or cause or permit to be used, any public highway in this state, for the operation of a motor vehicle subject to the Highway Use Tax Law, without first obtaining a permit and tag, plate or sticker (Tax L. Sec. 512, subd. 1-a).

2. Carry or cause or permit to be carried upon any such motor vehicle a permit, tag, plate or sticker which has been suspended or revoked or which was issued for another motor vehicle (Tax L. Sec. 512, subd. 1-a).

   a. Operation without a permit, or tag, place or sticker is presumptive evidence that they have not been obtained for the vehicle (Tax L. Sec. 512, subd. 1-a).

3. Operate or cause or permit to be operated, on any public highway any motor vehicle subject to the Highway Use Tax Law with an actual gross or unloaded weight in excess of that set out in its permit (Tax L. Sec. 512, subd. 1-a).

4. Section 512 of the Tax Law sets out other offenses of less direct concern to the law enforcement officer.

JURISDICTION: Courts of Special Sessions outside New York City and the City Magistrates' Courts in New York City have exclusive jurisdiction of offenses under the Highway Use Tax Law (Tax L. Sec. 512, subd. 1-g).

CIGARETTE TAX LAW DEFINITIONS:

1. Cigarette — any roll for smoking made wholly or in part of tobacco or of any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

2. Person — includes an individual, copartnership, society, association, corporation, joint stock company, and any combination of individuals and also an executor, administrator, receiver, trustee or other fiduciary.

3. Sale — means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor.

4. Retail sale or sale at retail — means a sale to a consumer or to any person for any purpose other than resale.

5. Dealer — any wholesale dealer and retail dealer as hereinafter defined.

6. Wholesale dealer — any person who sells cigarettes to retail dealers or other persons for purposes of resale only, and any person who owns, operates or maintains one or more cigarette vending machines in, at or upon premises owned or occupied by any other person.

7. Retail dealer — any person other than a wholesale dealer engaged in selling cigarettes.

8. Package — the individual package, box or other container in or from which retail sales of cigarettes are normally made or intended to be made.

9. Agent — any person authorized by the Tax Commission to purchase and affix adhesive or meter stamps on packages of cigarettes under this article (Tax L. Sec. 470).

CIGARETTE TAXES IMPOSED: There is imposed a tax on all cigarettes possessed in the State by any person for sale on and after April 1, 1965 (except cigarettes on which the State is without power to impose tax or sold to the United States or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating pursuant to regulations). The tax is at the rate of four and one-half cents for each ten cigarettes or fraction thereof and is intended to be imposed upon only one sale of the same package of cigarettes. All cigarettes within the State are subject to tax until the contrary is established, and the burden of proof that any cigarettes are not taxable is on the person in possession (Tax L. Sec. 471).

There is also a tax on all cigarettes used in the State by any person on and after April 1, 1965, except that no such tax shall be imposed:

1. If the taxes provided in Sections 471 and 471-a of the Tax Law are paid, or

2. On the use of cigarettes which are exempt from the taxes imposed by said sections, or

3. On the use of four hundred or less cigarettes, brought into the State on, or in the possession of, any person.

Such tax on cigarettes is at the rate of five cents for each ten cigarettes or fraction thereof. Within twenty-four hours after liability for the tax accrues, each such person must file with the Tax Commission a return in such form as it may prescribe together with a remittance of the tax shown to be due thereon. For purposes of the Cigarette Tax Law the word "use" means the exercise of any right or power actual or constructive and shall include but is not limited to the receipt, storage or any keeping or retention for any length of time, but shall not include possession for sale. One-tenth of all revenues received under this section with respect to the use of cigarettes is paid into the war bonus and mental health bonds accounts specified in Sec. 471-a of the Tax Law (Tax L. Sec. 471-b).

RECORDS TO BE KEPT; EXAMINATION: Every person who shall possess or transport unstamped cigarettes upon the public highways, roads or streets of the state, shall be required to have in his actual possession invoices or delivery tickets for such cigarettes. Such invoices or delivery tickets shall show the name and address of the consignor or seller, the name and address of the consignee or purchaser, the quantity and brands of the cigarettes transported, and the name and address of the person who

has or shall assume the payment of the tax. The absence of such invoices or delivery tickets shall be prima facie evidence that such person is a dealer in cigarettes in this State and subject to the provisions of Art. 20 of the Tax Law (Tax L. Sec. 474).

PENALTIES: Any person other than an agent, who possesses or transports for the purpose of sale any unstamped or unlawfully stamped packages of cigarettes subject to the tax imposed by Sec. 471 of the Tax Law, or who sells or offers for sale unstamped or unlawfully stamped packages of cigarettes in violation of the provisions of Article 20 of the Tax Law, or who wilfully attempts in any manner to evade or defeat the taxes imposed by Article 20 of the Tax Law, or the payment thereof, shall be guilty of a misdemeanor and upon conviction thereof, for a first offense, shall be sentenced to pay a fine of not more than one thousand dollars, or to be imprisoned for not more than one year, or both, in the discretion of the court; and for a second or subsequent offense, shall be sentenced to pay a fine of not less than two hundred fifty dollars nor more than twenty-five hundred dollars, and to be imprisoned for a definite period which shall be not less than six months and not more than one year. The possession or transportation within this State by any person other than an agent at any one time of five thousand or more cigarettes in unstamped or unlawfully stamped packages shall be presumptive evidence that such cigarettes are possessed or transported for the purpose of sale and are subject to the tax imposed by Sec. 471 of the Tax Law. The possession within this State of more than four hundred cigarettes in unstamped or unlawfully stamped packages by any person other than an agent at any one time shall be presumptive evidence that such cigarettes are subject to tax as provided by Art. 20 of the Tax Law (Tax L. Sec. 481, subd. 2).

Nothing in this subdivision shall apply to common or contract carriers or warehousemen while engaged in lawfully transporting or storing unstamped packages of cigarettes as merchandise, nor to any employee of such carrier or warehouseman acting within the scope of his employment, nor to public officers or employees in the performance of their official duties requiring possession or control of unstamped or unlawfully stamped packages of cigarettes, nor to temporary incidental possession by employees or agents of persons lawfully entitled to possession, nor to persons whose possession is for the purpose of aiding police officers in performing their duties (Tax L. Sec. 481, subd. 2).

Any person who falsely or fraudulently makes, forges, alters or counterfeits any stamp prescribed by the Tax Commission under the provisions of Art. 20 of the Tax Law, or causes or procures to be falsely or fraudulently made, forged, altered or counterfeited any such stamp, or knowingly and wilfully utters, purchases, passes or tenders as true any such false, forged, altered, or counterfeited stamp, or knowingly and wilfully possesses any cigarettes in packages bearing any such false, forged, altered or counterfeited stamps, and any person who knowingly and wilfully makes, causes to be made, purchases or receives any device for forging or counterfeiting any stamp prescribed by the Tax Commission under the provisions of Art. 20 of the Tax Law, or who knowingly and wilfully possesses any such device, shall be guilty of a felony and upon conviction thereof shall be sentenced to suffer imprisonment for a term of not more than five years. For the purposes of this section, the words "stamp prescribed by the Tax Commission" shall include a stamp, impression or imprint made by a metering machine, the design of which has been approved by such commission (Tax L. Sec. 481, subd. 4).

126. WANTED PERSONS

This section deals solely with the techniques of locating wanted persons. For law relating to arrests, extradition and Federal assistance in locating out-of-state persons wanted in felony cases, refer to the section "Arrests and Bail" in this Manual.

Where investigation is required outside his own jurisdiction the officer, if Department rules permit, may conduct it himself, providing time and distance permit. If not, he may request the local law enforcement agency exercising jurisdiction at the place to do so. Requests may be by telephone, teletype or by letter. If time permits, letters are preferable, since they permit furnishing more background and detail, and may include photographs.

When any information is available indicating that a wanted person is armed, or otherwise dangerous, or has suicidal tendencies, such information should be furnished to all officers or law enforcement agencies who may conduct any investigation in the matter and should be included in any broadcast, whether radio or teletype, and in any circular.

NATURE OF INVESTIGATION: A stereotyped or unvarying procedure in wanted persons cases is undesirable and is not very effective. Successful handling requires continual analysis of the wanted person and of the investigation as it develops, as well as the exercise of considerable imagination. If the wanted person is not apprehended almost immediately, "follow through" is of prime importance—the case should continue under active investigation with active supervision.

INITIAL STEPS: The first steps in any wanted person case are obtaining adequate personal description and full details on any motor vehicle in possession of the subject and sending a general alarm teletype on the New York State Police Teletype System.

All officers must bear in mind that the law requires that when any officer receives a complaint of a felony and the violator is not apprehended within five hours after receipt of the complaint, a teletype containing information of the felony must be dispatched over the New York State Police Teletype System. Agencies without teletype equipment must transmit the information to the nearest or most convenient teletypewriter point, for dispatch over the system (Exec. L. Sec. 221).

STOPS: The Bureau of Identification, NYSIIS, at Albany, and the FBI Identification Division, Washington, D.C., will place stops in their fingerprint files, on request, as explained in this Manual in the section "Fingerprints and Identification." A request for stops should be sent early in the investigation. The general alarm teletype will result in indexing of the wanted person in Special Files of the New York State Police Teletype System, Albany, providing a "stop" on the subject in respect to any teletype message from other agencies. When the subject has been located, all three of the mentioned agencies should be immediately informed so that the stops may be removed.

BACKGROUND AND DESCRIPTION: A complete physical description, photographs of the subject and complete background should be obtained as soon as possible.

Physical descriptions should include information as to illnesses or infirmities which might require medical treatment, prescriptions, etc. Handwriting specimens should be obtained. Background should include names and addresses of all family members (including close relatives as well as parents, brothers, sisters, spouses and children) and any useful information concerning each of them. It must include business and personal associates, known hangouts, occupation or trade and past employers, hobbies

or sports interests, and anything peculiar or unusual about the subject or his interests or past activities, including taste in clothes, liquor, tobacco and amusements.

A complete arrest record should be obtained from police agencies known to have arrested the subject and from the Bureau of Identification in Albany and the FBI Identification Division, Washington. Inquiry should be promptly made of all departments and agencies which arrested the subject for information of value in determining his current whereabouts. Such information would include the identity of relatives, divorced wives, earlier confederates, employers, etc., who may be interviewed for current information or leads.

OCCUPATION: The subject's employment history should be obtained as soon as possible. His last employer, supervisors and fellow employees should be interviewed. If salary was paid by check, review of last checks may (through the endorsements) determine where cashed, and provide currently useful leads. Interviews should also be conducted at places of previous employment.

Contacts should be established with trade union personnel, including officials, in the subject's trade. Interviews should be conducted with pertinent individuals who knew the subject through the union and arrangements made to be informed of any dues or insurance premium payments to the subject's account.

ORGANIZATIONS: Background checks should include a determination of all fraternal, sports or other organizations with which subject was connected. Appropriate personnel should be interviewed. Where dues or insurance premiums are involved arrangements should be made to be informed of payments so that the source can be determined.

INSURANCE: Inquiries should be made (family, employer, local agencies, Department of Motor Vehicles re car insurance, etc.) to identify insurance policies of the subject and to be informed of any recent or future premium payments and the source.

NAME CHECKS: In addition to the mentioned checks with the Bureau of Identification NYSIIS, and the FBI and other law enforcement agencies, name checks should be made through telephone company records, city directories and utility company records to determine for investigation any listing of subject's name on a current or recent basis. These checks should be made periodically in the place of last residence and at any place investigation determines to be a possible residence of subject. It should be borne in mind that subjects frequently use not only their own true names but names of relatives, such as mother's or wife's maiden name or names of prominent persons in the community. Any aliases known should always be checked as some subjects will persist in the use of a limited number of aliases.

PECULIARITIES: Background investigation should develop all distinctive tastes and habits of the subject. If he drinks a special whiskey, bartenders can be alerted to report a person of subject's description ordering such whiskey, as an example, and may be furnished a photograph of subject if available. The fact that the subject is fond of bowling, or likes to go to the harness races or the flat tracks, or any other similar fact offers a number of leads. At race tracks, for instance, the track policing agency may be requested to be on the alert for the subject and to include him in bulletins or wanted notices. Bowling alley managers can be furnished photographs and description of subject and so on. The useful leads to be developed from the subject's known peculiarities are limited only by the ingenuity of the officer handling the investigation.

It is almost routine in wanted person cases to make regular checks and leave description and photograph of subject at establishments of types he may be expected to frequent on the basis of his known habits and amusements. Successful use of this technique depends upon successfully "selling" the personnel at such places on the desirability of informing the law enforcement agency if the subject appears.

GIRL FRIENDS: At an early stage of the investigation the subject's current and recent girl friends should be identified and consideration should be given to interviews with them and, in more important cases, continued coverage of their activity, including the use of neighborhood sources and eavesdropping. In the usual case, little is lost by interviewing girl friends, since police interest in the subject will not be secret.

BONDSMEN: If subject has ever been released on bail or otherwise, based on security from professional bondsmen, such persons should be interviewed for useful leads, particularly in those instances where subject may have skipped his bail.

MOTOR VEHICLE DATA: Prompt inquiry should be made under subject's true name and the aliases he is known to have used to determine all chauffeur's and/or operator's licenses and registrations listed to the subject and appropriate inquiry should be made concerning all residences and employments shown on such records. If no photograph is available, one may be found on chauffeur's licenses.

BANKS: Contact should be established with any banks or financial institutions where subject maintains an account in order to be promptly informed of withdrawals or deposits and the whereabouts of the drawer or depositor.

CREDIT AGENCIES: The records of local credit agencies should be checked to determine all information on file, including banks, stores and firms with which the subject traded. Interviews should be conducted at such firms to determine all facts of pertinence known to their sales personnel and credit offices and appropriate investigation should be conducted as to the persons and addresses, etc., developed by such inquiry. A stop should be placed with the credit agencies, to be informed of any later inquiries concerning the subject.

TELEPHONE COMPANY: Where subject is known to have had a telephone, an analysis should be made at the telephone company of all available toll or charge tickets and appropriate investigation conducted as to the telephone numbers called or from which calls were received in the recent past.

It should be determined whether or not the subject had a telephone credit card and if so, appropriate records checks should be made through the telephone company as to current or recent usage of such charge card.

CREDIT CARD FIRMS: If subject is known or believed to have had credit cards (gasoline, diners, express, etc.) inquiries should be directed to the accounting offices of such firms to be informed of current or recent charges. Inquiries should be directed to determining whether subject used such cards in local establishments and the local credit bureau should be checked for the same purpose.

SCHOOLS: If the subject has children in school, either his own, his wife's, his mistress's, etc., appropriate liaison should be established with local school authorities to be immediately informed of any inquiry or transfer data concerning the children, if they have been removed from the local school. The children themselves may also be useful sources of

information, but care must be taken not to embarrass innocent children or antagonize school authorities in connection with interviews of the children.

If any information developed points to a logical place where subject might be found, inquiry should be made of schools in that place to determine if his children or children connected with him have registered in the local schools there.

HOTELS AND MOTELS: Subjects not known to reside in the community at a fixed address should be checked, by name and aliases, against the records of logical hotels, motels, flop-houses, etc., in the area. All pertinent information in the records should be obtained and desk clerks, managers, bellboys, etc., interviewed as to the subject's activities, habits, etc. Specific inquiry should always be made as to checks cashed, credit extended or references or business contacts mentioned. Telephone numbers called, if recorded by the hotel, etc., should be identified and persons connected with such phones should be interviewed.

OTHER LOGICAL BUSINESS SOURCES: The information developed concerning the subject by previously mentioned investigation may indicate the advisability of checking with drayage or storage firms, taxicab companies and other firms which maintain records of customers or calls, to determine activities, contacts or property possessed by the subject.

Employers may be checked on a logical basis—automobile transfer firms, truckers, large scale contractors and other employers may be requested to check their files on recent employees under subject's name and known aliases.

PRISON RECORDS: Whenever the subject is known to have been in a jail, penitentiary or prison, checks should be made with such institution to be informed of any background data, inmate friends and visitors, for investigation and/or interview.

PAROLE AND PROBATION AUTHORITIES: If subject is believed to have been on parole or probation at any time, contact should be made with the local parole or probation officer for information and leads.

ALIENS: If the subject is an alien, checks should be made with the nearest U. S. Immigration and Naturalization Service Office. Checks may also be made with the Alien Registration Division, Immigration and Naturalization Service, Washington, D. C., which keeps records on a national scale concerning registration of resident aliens. Checks should be made not only under subject's true name but also his known aliases.

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127. DESCRIPTIONS — PERSONS OR PROPERTY

Accurate and sufficiently detail descriptions of persons or property are essential to good police work. The following check lists will be found of value in preparing descriptions, whether from interviews of witnesses or owners, or from a subject in custody.

DESCRIPTION OF PERSONS: For an adequate description, consider and enter pertinent information on each of the following points. Each point is important to a good, useful description.

1. Name (include full name with middle name or initials and all aliases or nicknames)
2. Sex
3. Race (White, Negro, American Indian, Japanese, Chinese, etc.)

4. **Age** (include full date and place of birth)

5. **Citizenship** (if naturalized, list how and date and place of naturalization)

6. **Height** (feet and inches)

7. **Weight** (pounds)

8. **Build** (heavy, stout, very stout, medium, thin, very thin, gaunt)

9. **Complexion** (pale, fair, reddish, yellowish, light brown, etc., also specify if pimpled, pockmarked, blemished or scarred on face.)

10. **Hair** (state color, thin or thick, bald or balding, hair curly, kinky, wavy, how worn, hair styling if woman, whether dyed, etc.)

11. **Eyes** (color, size, peculiarities like bulging, crosseyed, glass eye, obvious cataract, etc.)

12. **Nose** (size, shape, thin or thick, broken, bulbous, broken blood vessels, etc.)

13. **Beard** (heavy or light, color, whether wears full beard, Van Dyke, sideburns and chin whiskers, etc., or if always clean shaven, etc.)

14. **Moustache** (shape, color, how worn and trimmed)

15. **Chin** (describe: small, large, receding, sharp, prominent, dimpled, double, etc.)

16. **Face** (describe shape and if pertinent well-known public, sports or entertainment personality who is a "look-alike")

17. **Neck** (Long, short, thick, thin, stringy, muscular, etc.)

18. **Mouth** (size as small or large, shape of lips, how held, drooping, corners up, etc.)

19. **Ears** (size, shape of lobes, close set, sticking out, cauliflowered, etc.)

20. **Forehead** (shape, high, low, sloping, bulging, wide, narrow, etc.)

21. **Distinctive Marks** (moles, missing fingers, missing teeth, gold teeth, tatoos)

22. **Scars** (whether readily visible or under clothing, state location, size, shape, color, source)

23. **Peculiarities** (immediately observable things not general to everyone—i.e., wears horn-rimmed glasses, carries cane, stutters, has deep voice or feminine voice (if man), walks fast, limps on left foot, is left handed, etc.)

24. **Clothes** (cover hat, ties, suit, overcoat, shoes, shirts, dresses, etc., state size, style, maker, color. State whether carelessly or neatly dressed, whether usually wears dark, light or other distinctive coloration, whether usually wears sweaters, sports coats, business suits, etc.)

25. **Jewelry** (type liked by subject, where and how worn)

26. **Teeth** (describe general appearance. Determine dentist; dental chart may be of value at some later date.)

27. **Fingerprints** (take three sets whenever permitted by law)

28. **Photographs** (If not available for photographing, logical sources of pictures are family, relatives, and friends. Also license applications, such as chauffeurs, peddlers, gun permits. If club member, group pictures of club outings, clambakes, etc., may be found to show subject. School photographs, newspaper morgues and files of other police agencies are also logical sources.)

29. **Handwriting** (major offenders and specialists such as check passers should be required to furnish handwriting specimens and

specimens may also be obtained from employers, schools, applications, personal correspondence—be sure to fully identify each for possible future use as evidence)

30. **Habits** (heavy or light smoker, pipes, cigars, cigarettes, favorite brands, favorite liquor, favorite cocktail or drink, plays pool frequently, follows a sports team, stops at hotel rather than roadside motel, winters in Florida, etc.)

31. **Hangouts** (where he may be found—girl friend's house, bowling alley, tavern, club headquarters, etc., including homes of relatives and friends he habituates)

32. **Clubs, lodges, fraternities** (does he wear any emblem, or usually frequents a club, or attend meetings, visit brother clubs when traveling, like YMCA, Elks, Masons, etc.)

33. **Associates** (Persons who would be most likely to know of subject's movements and whereabouts in the future, including girl friends or boy friends, favorite relatives, friends, business associates)

34. **Residences** (always include last known address)

35. **Occupation** (jobs held in recent past, work skills or jobs can do, union membership including identity of locals in which holds cards, employers and addresses, always including last known employer)

36. **Transportation** (automobiles, cycles, etc., owned or in possession, with full description including license plate numbers and other visible numbers, such as aircraft identification number, name of credit firm financing vehicle)

37. **Relatives** (name, relationship, residence and business addresses of close relatives or relatives to whom subject is attached)

38. **Bank Accounts** (names and locations of banks, types of accounts; include credit unions, savings and loans, etc.)

DESCRIPTIONS OF PROPERTY

1. **Watches:** wrist or pocket watch, maker's name, description of case and movement and number on each, lady's or gentleman's, design of engraving, initials, monograms, number of jewels, inscriptions, size, value

2. **Rings:** kind of metal, lady's or gentleman's style, setting, kind, size and number of stones, maker's name, initials or other marks, value

3. **Chains:** kind of metal, length and weight, kind of link, style of chain, pendants or charms attached, maker's name, initials or other marks, value

4. **Earrings or studs:** kind of metal, style, screw, coil or drop, kind, size and number of stones, value

5. **Miscellaneous jewelry:** name of article, kind of metal, or other material, kind, size and number of stones, design, initials, inscriptions or monograms, maker's name, value, and jeweler's scratch marks, if known

6. **Table silverware:** name of article, solid silver or plated, heavy or light weight, design (most manufacturers have their own trade name for certain patterns or designs), initials, inscription or monogram, value

7. **Miscellaneous gold and silver articles:** name of article, kind of material, plated or solid metal, maker's name, design, number of pieces if a set, initials, inscriptions or monograms, plain, chased, etched or engraved, open or solid pattern, value

8. **Bric-a-brac or antiques:** name of article, material, design, size, shape, carved, engraved, enamelled or inlaid, age, period, value

9. **Pocketbooks, handbags, suitcases, etc.:** name of article, material, style, size, color, shape, maker's name, initials or other marks, damages or repairs, labels affixed, value

10. **Clothing:** name of article, material, style, size, color, shape, maker's name, labels, initials or other marks, value

11. **Furs:** name of article, kind of fur, size, color, labels, value

12. **Animals:** sex, kind, size, color, distinctive color or other marks, breed, collar, license or tag

13. **Vehicles:** type; body style; color; name and year of manufacture; registration plate number; identification, motor or serial number; accessories or other equipment; description of numbers, markings or lettering indicating ownership or lessee; any damage; occupants and/or contents; tire tread design

14. **Bicycles:** make, color, number, tire size, serial number, kind of brake, saddle, accessories attached

15. **Typewriters:** make, model, color, type size, serial number

16. **In general, always consider:**
   a. Where was property purchased?
   b. Would the seller have a record of any numbers or private inventory marks?
   c. Any names stamped on inside of lining or backs of skins in coats?
   d. Any catalogue illustrations, brochures or photos available?
   e. Any repairs made may produce a record such as jeweler's repair marks or new parts installed?
   f. If article was ever pawned are there any pawnbroker's identification marks?

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128. RELIGIOUS SERVICES-DISRUPTING OR DISTURBING

AGGRAVATED DISORDERLY CONDUCT: A person is guilty of the crime of Aggravated Disorderly Conduct who:

1. Makes unreasonable,
   a. Noise, or
   b. Disturbance,

2. While:
   a. At a lawfully assembled religious service, or
   b. Within 100 feet of a lawfully assembled religious service,

3. With intent to cause:
   a. Annoyance, or
   b. Alarm, or

4. Recklessly creating a risk of annoyance or alarm (P.L. Sec. 240.21).

Aggravated Disorderly Conduct is a Class A misdemeanor.

INVESTIGATIONS

Arrests for Aggravated Disorderly Conduct will be found to frequently involve offenders who are not "at" the religious service involved, as worshippers or participants, but who were within 100 feet of it, as "outsiders" bent on interference of some kind.

In all such instances of persons not "at" the service, officers must have proof of the actual distance and that it was less than 100 feet. An officers estimate could be sufficient proof. But better proof may be readily obtained by pacing off the distance (the officer's length of pace must be known and measured) or by carefully noting the exact spot where the offense occurred and thereafter taking an exact measurement by rule or tape. The measurement from the place where the offender acted should be to the actual person of the nearest member of the congregation, at an outdoor religious service, and to the nearest part of the church or hall, if indoors.

Proof of intent to annoy, or alarm, or recklessly creating a risk of annoying or alarming, will ordinarily be found in the circumstances of the occurrence. Proof may often be determined from admissions of the subject made while actually engaged in the actions leading to his or her arrest.

In all cases the officer must pause and consider (and if necessary take active steps to determine) whether in fact the religious service is lawfully assembled, with particular reference to whether it is lawfully in the place where held, and whether the religious activities violate any law.

The law does not define what is unreasonable noise or disturbance. Since the crime requires a specific intent, (or recklessness) unintended noise or disturbance (such as from vehicles, ball players, transporters, excavators, etc.) would ordinarily not come within the statute, in the absence of aggravating circumstances. Where a specific intent or reckless disregard can be made out, officers may take "unreasonable" noise or disturbance to mean noise or disturbance of a degree sufficient to possibly alarm or annoy several persons assembled at the religious service who are nearest the source of the noise or disturbance.

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