

Table of Contents

CHAPTER 1. JURISDICTION AND REMOVAL

- § 1:1 Jurisdiction—In general
- § 1:2 —Courts
- § 1:3 Geographical jurisdiction of offenses—New York State
- § 1:4 —Counties
- § 1:5 Geographical jurisdiction of local criminal courts within a county—Filing of accusatory instruments
- § 1:6 Removal—In general
- § 1:7 —From one local criminal court to another
- § 1:8 —From a local criminal court to a superior court
- § 1:9 —From one superior court to another
- § 1:10 —To family court
- § 1:11 Practice summary

FORMS

- § 1:12 Form—Notice of motion to remove action to another local criminal court of the county
- § 1:13 —Affirmation in support of motion to remove action to another local criminal court of the county
- § 1:14 —Notice of motion by prosecutor in support of motion to adjourn proceedings in local criminal court on misdemeanor charge to present charge to a grand jury
- § 1:15 —Affirmation in support of prosecutor’s motion to adjourn proceedings on misdemeanor charge in local criminal court to present charge to a grand jury
- § 1:16 —Notice of motion by defendant to remove proceedings on misdemeanor charge to superior court
- § 1:17 —Affirmation in support of motion by defendant to remove proceedings on misdemeanor charge to superior court
- § 1:18 —Notice of motion in appellate division for change of venue
- § 1:19 —Affirmation in support of motion in the appellate division for change of venue

CHAPTER 2. DOUBLE JEOPARDY

- § 2:1 Introduction
- § 2:2 Attachment of jeopardy—In general
- § 2:3 Lack of jurisdiction and “procurement” exceptions to attachment of jeopardy
- § 2:4 Nullified proceedings—Mistrials, hung juries, vacated pleas, and appellate reversals

NEW YORK PRETRIAL CRIMINAL PROCEDURE

- § 2:5 “Same offense” constitutional and statutory double jeopardy
- § 2:6 “Same criminal transaction” statutory double jeopardy
- § 2:7 Mandatory joinder
- § 2:8 Collateral estoppel
- § 2:9 Enterprise corruption double jeopardy
- § 2:10 Miscellaneous issues—Multiple punishment, civil proceedings and juvenile proceedings
- § 2:11 Procedure for raising a double jeopardy claim
- § 2:12 Practice summary

FORMS

- § 2:13 Form—Notice of motion to dismiss accusatory instrument on ground that prosecution is barred by previous prosecution
- § 2:14 —Affirmation in support of motion to dismiss accusatory instrument on ground that prosecution is barred by previous prosecution
- § 2:15 —Petition in Article 78 proceeding to prohibit prosecution on ground that it is barred by previous prosecution

CHAPTER 3. PRELIMINARY PROCEEDINGS IN LOCAL CRIMINAL COURTS

- § 3:1 Introduction
- § 3:2 Local criminal court accusatory instruments—Types
- § 3:3 —Form and content
- § 3:4 —Supporting depositions
- § 3:5 —Supporting depositions filed in connection with simplified informations
- § 3:6 —Verification
- § 3:7 —Facial sufficiency
- § 3:8 —Severance, consolidation, amendment and bill of particulars
- § 3:9 —Superseding informations and prosecutor’s informations
- § 3:10 Means of compelling a defendant’s appearance for arraignment—In general
- § 3:11 Arrest warrant
- § 3:12 —Form and content
- § 3:13 —Additional procedural requirements
- § 3:14 —Execution
- § 3:15 —Post-arrest procedure
- § 3:16 Summons
- § 3:17 Warrantless arrests—In general
- § 3:18 —Authorization and execution
- § 3:19 —Post-arrest procedure
- § 3:20 Appearance ticket—In general

TABLE OF CONTENTS

- § 3:21 —Pre-arraignment bail and post-issuance procedures
- § 3:22 —Marijuana violations
- § 3:23 Fingerprinting
- § 3:24 Arraignment on non-felony accusatory instrument
- § 3:25 Conversion or replacement of misdemeanor complaint to information
- § 3:26 Motion to dismiss—In general
- § 3:27 —Defective accusatory instrument
- § 3:28 —In furtherance of justice
- § 3:29 Adjournment in contemplation of dismissal
- § 3:30 Arraignment on felony complaints
- § 3:31 Return of felony complaint to local criminal court
- § 3:32 Reduction of felony charges
- § 3:33 The preliminary hearing
- § 3:34 Release of defendant in custody
- § 3:35 Termination of prosecution
- § 3:36 Practice summary

FORMS

- § 3:37 Form—Supporting deposition
- § 3:38 —Defendant’s request for supporting deposition
- § 3:39 —Supporting deposition for simplified information
- § 3:40 —Notice of motion to amend prosecutor’s information
- § 3:41 —Affirmation in support of motion to amend prosecutor’s information
- § 3:42 —Notice of motion to amend information
- § 3:43 —Affirmation in support of motion to amend information
- § 3:44 —Petition for writ of habeas corpus on behalf of person arrested without warrant who has not been produced for arraignment
- § 3:45 —Notice of motion to dismiss local criminal court accusatory instrument (or a count thereof)
- § 3:46 —Affirmation in support of motion to dismiss local criminal court accusatory instrument (or a count thereof)
- § 3:47 —Notice of motion to dismiss local criminal court accusatory instrument in furtherance of justice
- § 3:48 —Affirmation in support of motion to dismiss local criminal court accusatory instrument in furtherance of justice
- § 3:49 —Notice of motion to restore proceedings on local criminal court accusatory instrument that were adjourned in contemplation of dismissal
- § 3:50 —Affirmation in support of motion to restore proceedings on local criminal court accusatory instrument that were adjourned in contemplation of dismissal
- § 3:51 —Notice of motion for order releasing defendant from custody

- for failure to replace misdemeanor complaint with information
- § 3:52 —Affirmation in support of motion for order releasing defendant from custody for failure to replace misdemeanor complaint with information
- § 3:53 —Notice of motion for order releasing defendant from custody for lack of timely disposition of felony complaint
- § 3:54 —Affirmation in support of motion for order releasing defendant from custody for lack of timely disposition of felony complaint

CHAPTER 4. BAIL AND RECOGNIZANCE

- § 4:1 Introduction
- § 4:2 Definitions
- § 4:3 Acceptable varieties of bail
- § 4:4 Fixing of bail—In general
- § 4:5 Bail applications and general criteria
- § 4:6 Fixing of bail by local criminal courts
- § 4:7 Fixing of bail by superior courts
- § 4:8 “Stationhouse” pre-arraignment bail
- § 4:9 Bail after conviction and on appeal
- § 4:10 Bail and recognizance conditions and modification
- § 4:11 Examination of sufficiency of bail
- § 4:12 Forfeiture of bail and remission
- § 4:13 Procedure for challenges to excessive bail
- § 4:14 Practice summary

FORMS

- § 4:15 Form—Notice of application for recognizance or bail in superior court when action pending in local criminal court
- § 4:16 —Affirmation in support of application for recognizance or bail in superior court when action pending in local criminal court
- § 4:17 —Petition for writ of habeas corpus on ground that bail fixed by trial court is so excessive as to constitute an abuse of discretion
- § 4:18 —Notice of application for remission of forfeiture of bail
- § 4:19 —Affidavit in support of application for remission of forfeiture of bail

CHAPTER 5. GRAND JURY AND INDICTMENT

- § 5:1 Grand jury—In general
- § 5:2 —Formation and organization
- § 5:3 —Secrecy and attendance

TABLE OF CONTENTS

| | |
|--------|---|
| § 5:4 | —Legal advisors |
| § 5:5 | —Legal instructions |
| § 5:6 | —Applicability of rules of evidence |
| § 5:7 | —Exculpatory evidence |
| § 5:8 | —Appearance of witnesses |
| § 5:9 | Compelled testimony |
| § 5:10 | Waiver of indictment and superior court informations |
| § 5:11 | Indictment—In general |
| § 5:12 | —Form and content |
| § 5:13 | —Purpose |
| § 5:14 | —Adequate notice |
| § 5:15 | —Date of offense |
| § 5:16 | —Jurisdictional defects |
| § 5:17 | —Duplicitous counts |
| § 5:18 | —Curing defects |
| § 5:19 | —Bill of particulars |
| § 5:20 | —Lesser offenses prosecuted by indictment |
| § 5:21 | —Joinder of offenses |
| § 5:22 | —Joinder of defendants |
| § 5:23 | —Securing defendant’s appearance |
| § 5:24 | —Arraignment |
| § 5:25 | —Motion to dismiss—In general |
| § 5:26 | — —Procedure |
| § 5:27 | —Motion to dismiss or reduce indictment—Grounds |
| § 5:28 | —Disposition following dismissal |
| § 5:29 | —Disposition following order reducing count |
| § 5:30 | Practice summary—Grand jury |
| § 5:31 | —Waiver of indictment |
| § 5:32 | —Indictment |
| § 5:33 | Form—Notice of motion in superior court to release defendant due to failure of timely grand jury action |
| § 5:34 | —Affirmation in support of motion in superior court to release defendant due to failure of timely grand jury action |
| § 5:35 | —Notice of motion to dismiss indictment because defendant not afforded opportunity to testify before grand jury |
| § 5:36 | —Affirmation in support of motion to dismiss indictment because defendant not afforded opportunity to testify before grand jury |
| § 5:37 | —Notice of motion for severance of counts |
| § 5:38 | —Affirmation in support of motion for severance of counts |
| § 5:39 | —Notice of motion to consolidate indictments against the same defendant |
| § 5:40 | —Affirmation in support of motion to consolidate indictments against the same defendant |

NEW YORK PRETRIAL CRIMINAL PROCEDURE

- § 5:41 —Notice of motion for severance of trials of jointly indicted defendants
- § 5:42 —Affirmation in support of motion for severance of trials of jointly indicted defendants
- § 5:43 —Notice of motion to consolidate indictments against different defendants
- § 5:44 —Affirmation in support of motion consolidating indictments against different defendants
- § 5:45 —Notice of motion to amend indictment
- § 5:46 —Affirmation in support of motion to amend indictment
- § 5:47 —Notice of motion to amend bill of particulars
- § 5:48 —Affirmation in support of motion to amend bill of particulars
- § 5:49 —Notice of motion to dismiss indictment (or count(s) of indictment) as defective
- § 5:50 —Affirmation in support of motion to dismiss indictment (or count(s) of indictment) as defective
- § 5:51 —Notice of motion to dismiss indictment (grand jury immunity)
- § 5:52 —Affirmation in support of motion to dismiss indictment (grand jury immunity)
- § 5:53 —Notice of motion to dismiss indictment in furtherance of justice
- § 5:54 —Affirmation in support of motion to dismiss indictment in furtherance of justice
- § 5:55 —Notice of motion by prosecutor to submit charge(s) to a new grand jury
- § 5:56 —Affirmation in support of prosecutor's motion to submit charge(s) to a new grand jury

CHAPTER 6. COMPETENCY PROCEEDINGS

- § 6:1 In general
- § 6:2 Order of examination
- § 6:3 Effect on case of order of examination
- § 6:4 Initial examination—By whom conducted
- § 6:5 —How and when conducted
- § 6:6 Post-examination procedure in superior court
- § 6:7 Post-Examination procedure in local criminal court
- § 6:8 The 1980 amendments
- § 6:9 Hearing procedure
- § 6:10 Additional considerations
- § 6:11 Practice summary

FORMS

- § 6:12 Form—Notice of motion for order of examination

TABLE OF CONTENTS

§ 6:13 —Affirmation in support of motion for order of examination

CHAPTER 7. DISCOVERY

- § 7:1 Introduction
- § 7:2 Criminal discovery in New York
- § 7:3 Demand disclosure—In general
- § 7:4 —By defendant
- § 7:5 —By prosecution
- § 7:6 —Refusal of demand
- § 7:7 Defense motion for discovery—Statutory basis
- § 7:8 —Subpoenas
- § 7:9 —Identity of prosecution witnesses
- § 7:10 —Identity of informant
- § 7:11 Prosecution motion for discovery
- § 7:12 *Brady*—In general
- § 7:13 —Materiality
- § 7:14 —Other issues
- § 7:15 Disclosure of uncharged prior bad acts
- § 7:16 *Rosario*—In general
- § 7:17 —Specific issues
- § 7:18 Witness criminal history information
- § 7:19 Protective orders
- § 7:20 Sanctions—In general
- § 7:21 —Belated disclosure
- § 7:22 —Complete failure to disclose
- § 7:23 —Loss or destruction of discoverable material
- § 7:24 —Against the defense
- § 7:25 Pretrial notice of defenses—In general
- § 7:26 —Psychiatric evidence
- § 7:27 —Alibi
- § 7:28 —Computer-Related offenses
- § 7:29 Prosecution’s notice of intent to seek death penalty
- § 7:30 Discovery of privileged and confidential material
- § 7:31 The work product exemption
- § 7:32 Defendant’s right to test of physical evidence
- § 7:33 Miscellaneous issues
- § 7:34 Practice summary—Defense
- § 7:35 —Prosecution
- § 7:36 —Court

FORMS

- § 7:37 Form—Demand to produce (made by defendant)
- § 7:38 —Demand to produce (made by prosecutor)
- § 7:39 —Refusal of demand to produce (either party)

NEW YORK PRETRIAL CRIMINAL PROCEDURE

- § 7:40 —Notice of motion by defendant for disclosure in response to refusal of prosecution to comply with demand to produce
- § 7:41 —Affirmation in support of defendant’s motion for disclosure after refusal of prosecutor to comply with demand to produce
- § 7:42 —Notice of motion by defendant for discovery beyond that required under demand to produce
- § 7:43 —Affirmation in support of defendant’s motion for discovery beyond that required under demand to produce
- § 7:44 —Notice of motion by prosecutor for discovery of non-testimonial evidence
- § 7:45 —Affirmation of prosecutor in support of motion for discovery of non-testimonial evidence
- § 7:46 —Notice of motion for protective order
- § 7:47 —Affirmation in support of motion for protective order
- § 7:48 —Demand for notice of alibi
- § 7:49 —Notice of alibi

CHAPTER 8. THE OMNIBUS MOTION

- § 8:1 The omnibus motion

FORMS

- § 8:2 Form—Notice of omnibus motion in felony case
- § 8:3 —Affirmation in support of omnibus motion in felony case

CHAPTER 9. TIMELINESS OF PROSECUTION AND SPEEDY TRIAL

- § 9:1 CPL Article 30—Introduction
- § 9:2 Statute of limitations—Introduction
- § 9:3 —Relevant time periods
- § 9:4 —Extensions
- § 9:5 —Tolling
- § 9:6 —How and when to raise; burden of proof
- § 9:7 —Waiver of defense by guilty plea
- § 9:8 Federal constitutional speedy trial
- § 9:9 State speedy trial and due process guarantees—In general
- § 9:10 —*Taranovich* factors
- § 9:11 Preference of criminal over civil cases
- § 9:12 Constitutional speedy trial/due process claims—Procedural requirements
- § 9:13 Prosecutorial readiness rule—In general
- § 9:14 Nonapplicability to some criminal actions
- § 9:15 “Commencement” of the criminal action starts the clock ticking
- § 9:16 Special recommencement rule—Plea withdrawal, mistrial, or order for new trial

TABLE OF CONTENTS

| | |
|--------|--|
| § 9:17 | Desk appearance tickets |
| § 9:18 | Reduction of original charges—Reduction of felony complaint |
| § 9:19 | —Inspection and reduction of indicted felony |
| § 9:20 | —Other reductions |
| § 9:21 | Prosecutor’s “readiness” stops the clock—“readiness” defined |
| § 9:22 | —genuine “readiness” defined |
| § 9:23 | —valid communication of “present” readiness defined |
| § 9:24 | Time within which prosecution must be ready to avoid dismissal |
| § 9:25 | Time within which prosecution must be ready to avoid release of jailed defendant on bail or recognizance |
| § 9:26 | Excludable periods—In general |
| § 9:27 | —Other proceedings concerning the defendant |
| § 9:28 | — —Competency |
| § 9:29 | — —Discovery |
| § 9:30 | — —Pretrial motions |
| § 9:31 | — —Appeals |
| § 9:32 | — —Trial of other charges |
| § 9:33 | — —The period during which such matters are under consideration by the court |
| § 9:34 | —Continuances |
| § 9:35 | Excludable periods under (4)(c)—Absent, unavailable, or bench-warranted defendant |
| § 9:36 | Excludable periods under (4)(c)(i)—Absence or unavailability of the defendant—Absent |
| § 9:37 | — —Unavailable |
| § 9:38 | — —Cause of prosecution’s unreadiness |
| § 9:39 | Excludable periods under (4)(c)(ii)—Bench warrants |
| § 9:40 | Excludable periods—Co-defendant joinder |
| § 9:41 | —Incarcerated defendants |
| § 9:42 | —Defendant without counsel |
| § 9:43 | —Exceptional circumstances |
| § 9:44 | —Adjournments in contemplation of dismissal |
| § 9:45 | —Prosecutor’s direction to appear at arraignment |
| § 9:46 | —Family offenses |
| § 9:47 | Post-readiness delay |
| § 9:48 | Procedural considerations—Calculating time |
| § 9:49 | —Motion practice requirements |
| § 9:50 | —Sufficiency of motion papers and burden of proof |
| § 9:51 | —Sufficiency of motion papers |
| § 9:52 | —Burden of proof |
| § 9:53 | Interstate agreement on detainers (CPL § 580.20) |
| § 9:54 | Interstate agreement on detainers—The prisoner’s request (Article III) |
| § 9:55 | —The receiving state’s request (Article IV) |

NEW YORK PRETRIAL CRIMINAL PROCEDURE

- § 9:56 Practice summary—Defense
- § 9:57 —Prosecution

FORMS

- § 9:58 Form—Notice of motion to dismiss for statute of limitations violation
- § 9:59 —Affirmation in support of motion to dismiss for statute of limitations violation
- § 9:60 —Notice of motion to dismiss indictment for violation of right to speedy trial (constitutional/CPL § 30.20)
- § 9:61 —Affirmation in support of motion to dismiss indictment for violation of right to speedy trial (constitutional/CPL § 30.20)
- § 9:62 —Notice of motion to dismiss indictment for failure of the prosecution to timely announce readiness for trial (CPL § 30.30(1) only)
- § 9:63 —Affirmation in support of motion to dismiss indictment for failure of the prosecution to timely announce readiness for trial (CPL § 30.30(1) only)
- § 9:64 —Notice of motion for bail/recognizance for failure of the prosecution to timely announce readiness for trial (CPL § 30.30(2) only)
- § 9:65 —Affirmation in support of motion for bail/recognizance for failure of the prosecution to timely announce readiness for trial (CPL § 30.30(2) only)

CHAPTER 10. SEARCH WARRANTS AND SUPPRESSION PROCEEDINGS

- § 10:1 Suppression proceedings—Introduction
- § 10:2 Suppressible evidence—In general
- § 10:3 —Indirect fruits
- § 10:4 —Attenuation
- § 10:5 Standing
- § 10:6 Motion to suppress—Court
- § 10:7 —Time of motion
- § 10:8 —Time of decision
- § 10:9 —Renewal
- § 10:10 The defendant's motion papers—In general
- § 10:11 —Factual allegations
- § 10:12 The prosecution's motion papers
- § 10:13 Suppression hearings—In general
- § 10:14 —Burden of proof
- § 10:15 —Decision
- § 10:16 Implications for subsequent proceedings
- § 10:17 Notice—In general

TABLE OF CONTENTS

- § 10:18 —Timing and content of notice
- § 10:19 —Statements within and without the rule
- § 10:20 —Identifications within and without the rule
- § 10:21 —Good cause for lateness
- § 10:22 —Scope of preclusion
- § 10:23 —Waiver and appeal
- § 10:24 Search warrants—In general
- § 10:25 —Application for and issuance of search warrant
- § 10:26 —Facial sufficiency of warrant and warrant application
- § 10:27 —Controverting the warrant
- § 10:28 —Execution of warrant
- § 10:29 —Extent of search allowed under proper warrant
- § 10:30 Practice summary

FORMS

- § 10:31 Form—Notice of motion to suppress statements
- § 10:32 —Affirmation in support of motion to suppress statements
- § 10:33 —Notice of motion to suppress identification evidence
- § 10:34 —Affirmation in support of motion to suppress identification
- § 10:35 —Notice of motion to suppress physical evidence
- § 10:36 —Affirmation in support of motion to suppress physical evidence

CHAPTER 11. PLEAS

- § 11:1 Introduction
- § 11:2 Pleading guilty as of right
- § 11:3 Guilty pleas by permission of the court and the consent of the prosecutor
- § 11:4 Pleas of not responsible by reason of mental disease or defect
- § 11:5 Statutory plea bargaining restrictions
- § 11:6 Withdrawal of not guilty plea by the defendant
- § 11:7 Entry of the guilty plea—Knowing and voluntary waiver of rights
- § 11:8 —Competency of defendant
- § 11:9 —Defendant's understanding of direct and collateral consequences of the plea
- § 11:10 —Factual basis for the plea
- § 11:11 Sentence promises—In general
- § 11:12 —Conditional nature of promise
- § 11:13 —Special conditions for defendants at liberty between plea and sentence
- § 11:14 —Specific performance
- § 11:15 Rights automatically relinquished by a defendant upon pleading guilty

NEW YORK PRETRIAL CRIMINAL PROCEDURE

- § 11:16 Claims that ordinarily survive a guilty plea
- § 11:17 Bargained-for waivers of the right to appeal
- § 11:18 Withdrawal of guilty plea—Defendant
- § 11:19 —Court or prosecutor
- § 11:20 Practice summary—Defense
- § 11:21 —Prosecution
- § 11:22 —Court

FORMS

- § 11:23 Form—Notice of motion to withdraw guilty plea
- § 11:24 —Affirmation of attorney upon motion to withdraw guilty plea
- § 11:25 —Affidavit of defendant upon motion to withdraw guilty plea

Table of Laws and Rules

Table of Cases

Index

Table of New and Retitled Sections

CHAPTER 1. JURISDICTION AND REMOVAL

§ 1:10.50 Removal—To family court—Juvenile and adolescent offenders; raising the age of criminal responsibility in New York
[New]

CHAPTER 4. BAIL AND RECOGNIZANCE

§ 4:20 Form—New York City Criminal Court—Secured bail bond justifying affidavit and undertaking to answer *[New]*

§ 4:21 Form—New York City Criminal Court—Unsecured bail bond justifying affidavit and undertaking to answer *[New]*

§ 4:22 Form—New York City Criminal Court—Partially secured bail bond justifying affidavit and undertaking to answer *[New]*

CHAPTER 7. DISCOVERY

§ 7:50 Form—Model order to counsel in criminal cases *[New]*