

## INTRODUCTION

This supplement provides an introduction to the New York Penal Law which defines criminal conduct. This supplement is not intended as an extensive presentation of the statutes provided by the criminal law, but rather briefly describes the statutes, discussed in Professor Lippman's *Contemporary Criminal Law* textbook, as they apply to New York State. Case decisions made in New York courts have also been provided as illustrations for the statutes. The following discussion provides a brief background on the government of New York, the process by which a law is enacted, and the basic elements of an offense. Each discussion in the *Introduction* is intended to provide context for a better understanding of the readings in this supplement.

### THE PARTS OF NEW YORK GOVERNMENT

As with the federal system, there are three branches of government in New York. This supplement will concentrate on the judicial branch. The executive branch is headed by the governor and also comprises the comptroller and attorney general. The executive branch is tasked with enforcing the law. The legislative branch is responsible for making the law, including the Penal Law. This branch is bicameral. That is, the legislative branch (the Legislature) is composed of two bodies, or houses: the Senate and the Assembly, both of which are housed in Albany. One of the Legislature's most important functions is to propose laws that are within the limits of the federal constitution. These laws begin as bills that can be introduced in either house. The Legislature further acts as a check upon the executive authority of the governor as indicated by the Senate's power to confirm the governor's appointment of non-elected state officials and court judges after hearings concerning the candidate's qualifications.

The judicial branch is tasked with interpreting the law that the legislative branch introduces and the executive branch enacts. The judicial branch also determines the practical application and constitutionality of laws already in effect. The judicial branch covers the courts in New York State. The structure of the courts is divided into three main components: the appellate courts, the trial courts of superior jurisdiction, and the trial courts of lesser jurisdiction. The trial courts are those with original jurisdiction and are empowered to hear the initial case in most court proceedings. On the other hand, the appellate courts hear appeals from the decisions coming from the trial courts. The court structure will be discussed in greater detail in Chapter One.<sup>1</sup>

### THE PROCESS INVOLVED WHEN AN IDEA BECOMES A LAW

A discussion about the law in New York is enhanced by providing the process by which an idea becomes a law in New York. Briefly, an idea is presented to one of the houses by a senator, assemblyperson, citizen, state official, or organization. The idea is drafted as a bill by private attorneys or a legislative bill drafting commission in the Legislature. The bill is then introduced in the house where it originated, given a number, and sent to an appropriate house committee. The committee evaluates the bill and decides whether to send it to the floor for a vote. Once a bill is introduced by the committee, explanation, discussion, and/or debate may occur after which a vote is taken. If the majority approves, the bill is sent to the other house. If the other house approves the bill without amendment, the bill gets sent to the governor. However, if a bill is changed in the second house, the bill is sent to the original house for concurrence with the amendments.

While the legislature is in session, the governor has 10 days to sign or veto the bill passed by both houses. A signed bill will become law. A vetoed bill is returned to house that first passed it, along with a reason for the disapproval. A vetoed bill can still become law if two-thirds of the original house votes to override the veto. If the governor fails to sign or veto the bill within the 10 day period, the bill will become law automatically. When the legislature is not in session, the governor has 30 days to make a decision and failure to act has the same effect as a veto.<sup>2</sup>

The exception to the typical passage of a law occurred in 1965 when the New York Penal Law was substantially revised. In New York State, the Penal Law had not previously been revised for about 80 years and was considered outdated. In its revision, a commission was created in order to study, rewrite, and reorganize the old Penal Law. The commission ultimately presented a revised version of the Penal Law to the Legislature. In 1967, the revised Penal Law was effected.<sup>3</sup>

## THE ELEMENTS OF AN OFFENSE

As Professor Lippman describes in various chapters in his textbook, the elements of an offense that courts, including those in New York, must consider are:

- conduct—Behavior must have constituted an offense. This is the *actus reus* defined in Chapter Four. Conduct constituting an offense is criminal unless the conduct is justified, excused (as discussed in Chapters Eight and Nine respectively), or otherwise involuntary;
- intent—The offender’s state of mind must be considered. This is the *mens rea* defined in Chapter Five. The level of the state of mind of the actor helps to determine the level of responsibility the offender had when he committed the conduct under consideration. However, an actor whose state of mind is affected by influences such as intoxication, insanity, or extreme emotional disturbance, may not be able to form the intent required for criminal responsibility.
- circumstances—The specifics surrounding an offense, such as:
  - the nature of the offender (e.g., public servant, intoxicated person)
  - the nature of the victim (e.g., child)
  - the place of the conduct (e.g., in the home or outside)
  - the time of the conduct (e.g., in the day or middle of the night) are to be considered; and
- result—The level of harm caused must be determined.

It will help to keep these elements in mind when reading through the cases in this supplement.

## THE ORGANIZATION OF THIS SUPPLEMENT

The chapters in this supplement are designed to expand upon the concepts discussed in Professor Lippman’s textbook as they apply to New York State. The chapters in this supplement also generally follow the format of the textbook, although not every concept introduced in the textbook will be discussed in the supplement. The cases in this supplement will typically be briefly presented as examples to the concepts and statutes introduced. Landmark decisions and decisions that exemplify important legal concepts will be discussed in greater detail and will be entitled with capital letters. Some of the landmark decisions are *People v. Jovanovic* (in Chapter Eight), *People v. Marrero* (in Chapter Nine), *People v. Liberta* (in Chapter Ten). Landmark decisions are those that establish a precedent that substantially changes the interpretation of the

law. When deciding cases with similar issues or facts in subsequent case law, court decisions will adopt the principles resulting from a landmark case. Landmark and important cases will be summarized. Language incorporated directly from the text of the decision will be provided in quotes.

The cases provided in the supplement are mostly drawn from appellate decisions. Additionally, the chapters of this supplement will present the statutes related to the respective topic presented in the textbook's chapters. Finally, to the extent possible, context and history will be provided in order to give fuller explanation behind the reasons for the decisions of both the Legislature and courts. Each chapter will end with five multiple choice review questions.

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<sup>1</sup> New York State Senate. Branches of government in New York State. Retrieved August 26, 2006, from [http://www.senate.state.ny.us/sws/aboutsenate/branches\\_gov.html](http://www.senate.state.ny.us/sws/aboutsenate/branches_gov.html)

<sup>2</sup> New York State Senate. How a bill becomes a law in New York State. Retrieved August 26, 2006, from [http://www.senate.state.ny.us/sws/aboutsenate/how\\_idea\\_becomes\\_law.html](http://www.senate.state.ny.us/sws/aboutsenate/how_idea_becomes_law.html)

<sup>3</sup> Schwartz, H. (1968-1969). Introduction. *Buffalo Law Review*, 18, 211-212.