

New York
County **Lawyers**
Association

NYC
Youth Law
Manual



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New York
County **Lawyers**
Association

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FOREWORD

Since its founding in 1908, the New York County Lawyers' Association (NYCLA) has served the public by sponsoring educational programs, providing *pro bono* legal advice and representation, and advocating for access to justice as well as reforms in the legal system. For more than three decades, our Law-Related Education (LRE) Committee, chaired since its inception until his death in 2019 by Hon. Richard Lee Price and now chaired by Marian Burnbaum, has translated NYCLA's mission into an expanding array of projects and resources for young people in New York City and the dedicated teachers of law-related education in our high schools.

The revised and expanded 2022 *New York City Youth Law Manual* is the fourth edition of the *Manual* and is the product of NYCLA's long-standing collaboration with the Justice Resource Center, whose Executive Director, Debra Lesser, is an expert on law-related education and serves as our partner in organizing professional development seminars for teachers and conferences for students in the public high schools. The *Manual* allows teachers and students to explore how the law affects the lives of young people and their families and to understand their rights and responsibilities. We hope the *Manual* piques the interest of every student who reads it and opens a door for those interested in the law as a career.

First and foremost, the Association acknowledges Justice Price's vision and dedication. Second, we would like to thank Marian Burnbaum for assuming the mantle of leadership of one of NYCLA's most important and hardest working committees. We are also very grateful for the teams of volunteers at Hughes Hubbard & Reed LLP, under the guidance of James B. Kobak Jr., a Past President of NYCLA, and at Norton Rose Fullbright US LLP under the guidance of Maureen Schad, who helped prepare the draft manuscript, and to the NYCLA committee and section chairs who reviewed chapters in their areas of expertise. Many thanks also go to the members of the LRE Committee, who not only volunteer countless hours visiting schools and running workshops at our student conferences, but also helped review chapters. Thanks are also in order to the educators who reviewed drafts of the manuscript including Arisha Athar of the Justice Resource Center and teachers at a number of City schools, particularly Carla Heckstall, Alexis Cicale, Alissa Amato and Jerry Megna. A number of New York City Department of Education law cluster and other students also reviewed drafts and made valuable comments as potential users of the Manual. Finally, Judge Robert Weisel, James Klaiber and Marcie Kobak volunteered their expertise to edit and comment on specific chapters.

At a time of civic and political turmoil when civics education is on the wane in our public schools, NYCLA is proud to publish *The New York City Youth Law Manual* and to contribute to the essential task of helping our young people become informed participants in the life of our city, state and country.

Vincent Chang

President
New York County Lawyers' Association

INTRODUCTION

The late Justice Richard Lee Price chaired the Law-Related Education (LRE) Committee at the New York County Lawyers' Association (NYCLA) for over 30 years. He was dedicated to educating young people about their rights and responsibilities. In 1996, 2007 and 2014, he spearheaded publication of the original *The New York City Youth Law Manual* and two subsequently updated and expanded versions, which were enthusiastically used by hundreds of teachers and thousands of students. In support of his vision, NYCLA and its Justice Center and LRE Committee are proud that we can provide an updated 2022 edition to new generations of eager students and their teachers.

Larry Carbone and Margo Hirsch, members of the LRE Committee, reviewed chapters in the *Manual*. I thank them and the chairs of other NYCLA committees and sections who reviewed chapters in their areas of expertise. I deeply appreciate the steadfast support of James B. Kobak Jr., NYCLA Past President, who has promoted the work of the LRE Committee for years through NYCLA's Justice Center and otherwise. A *pro bono* team at Hughes Hubbard & Reed LLP assembled by Jim and supervised by Meaghan Gragg and Erin Pamukcu along with a team lead by Maureen Schad at Norton Rose Fullbright US LLP produced the manuscript for this edition of the *Manual*.

NYCLA has generously provided the base for the LRE Committee's many projects in addition to the *Manual*—our annual public high school essay contest, Law Day Speakers Bureau, and high school student conference. Year after year, our LRE Committee members visit classrooms in public, private, and parochial schools to talk about the law and its role in our lives and serve as judges and mentors for student mock trial competitions. I applaud them and the many other NYCLA leaders and members for their sustained support of our efforts to ensure that young people learn about the law and our democratic system of government.

Marian Burnbaum

Chair, Law-Related Education Committee
New York County Lawyers' Association

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CHAPTER 1

THE UNITED STATES SYSTEM OF GOVERNMENT

Q. What system of government does the United States have?

- A. The United States is a representative democracy, meaning that citizens elect a small number of people, called representatives, to serve their interests and make decisions on their behalf. It is not, however, a pure democracy but rather a republican democracy in which state governments that ceded (or gave up) some of their original authority to a central government (the U.S. or federal government) at the time the Constitution was adopted more than two hundred years ago. Nevertheless, states continue to play a role. Thus, voters in each state choose two Senators from that state and one or more Representatives to the House of Representatives from the districts or parts of the state where they live as determined by a state's proportion or percentage of the total population of the United States as determined by the census.

The population is counted every ten years by the United States Census Bureau as required by the U. S. Constitution. District lines or borders for purposes of voting are drawn by state legislatures and are sometimes challenged if the district lines seem to favor one political party over another. In addition, district lines may be challenged if the result is discrimination against one group by intentionally weakening the group's voting power. Even Presidential votes are apportioned among the states according to population and not on a strict majority of all votes cast by all voters in the United States. This chapter discusses first the United States or federal government and then briefly the role of the state governments.

Q. How was this system of government created in the United States?

- A. This system of government was created by the U.S. Constitution. (See Chapter 2 On Sources of Law.) The Constitution defines the scope of power granted to the federal government by the states and the people. The federal government must act within those powers.

Q. What is the structure of this system of government?

- A. The United States government consists of three parts, or branches: Executive, Legislative, and Judicial. The States have their own constituencies which generally follow this structure.

Q. What are the duties of the Executive branch?

- A. The power to carry out and enforce the laws established by Congress is vested in (given to) the President. This is referred as executive power. The principal responsibility of the President is to "take care that the laws be faithfully executed." The Constitution does not generally prescribe exactly how the President must execute the laws or require the

President to enforce the law personally; rather, officers and agencies subordinate to and appointed by the President perform such duties.

Q. What are the duties of the Legislative branch of the federal government?

A. The Legislative branch, also called Congress, is made up of two bodies: the House of Representatives and the Senate. The Legislative branch has the sole power to legislate, or make laws, for the United States. Each state, no matter how large or small its population, has two Senators. The Representatives in the House of Representatives are apportioned among the states according to the population as determined every ten years by the census. Some states like Alaska or Vermont have one representative, while states with large populations like New York, California, or Texas have many representatives.

Q. What are the duties of the Judicial branch of the federal government?

A. The Judicial branch has the power to decide cases and controversies. This power is vested in the Supreme Court and in lower courts established by Congress. While both the President and the members of Congress are elected by the people to act as their representatives for limited terms, federal judges are appointed by the President with the consent of the Senate without term limits (also known as lifetime appointments).

Q. How is power split among the three branches of the federal government?

A. Power is divided among the branches by the “separation of powers” model.

Q. What is “separation of powers”?

A. “Separation of powers” is a term used for a model of government where power is separated into three branches to prevent any one branch from exercising power in the field of responsibility of another branch. Each branch provides “checks and balances” for the other two branches.

Q. What does “checks and balances” mean?

A. “Checks and balances” refers to the ability of each branch of government to limit the power of the other branches, to maintain a balanced amount of power among all three. “Checks” are the actions each branch can take to review and sometimes alter the decisions of the other branches. One branch may “check” the action of another to prevent any one branch from becoming too powerful.

Q. What are some of the ways in which the Executive branch exerts checks on the other two branches of government in the federal government?

A. The Executive branch checks the Legislative branch by using veto power. This means the President can refuse to sign a bill passed by Congress, and the bill will not become law unless two-thirds of the members of each house of Congress vote to override the President’s veto. The Executive branch checks the Judicial branch by appointing judges and deciding which federal enforcement actions or criminal cases to prosecute. The

President may also pardon criminals that the judiciary has found guilty of crimes. The Executive branch may also limit legislative power to some extent through the manner in which the President or presidential appointees chooses to enforce the laws Congress has written.

Q. What are some of the ways in which the Legislative branch exerts checks on the Executive branch in the federal government?

A. The Legislative branch has the ability, if enough members of Congress agree, to exercise a number of checks on the Executive branch. While the President appoints ambassadors and federal judges, and enters into treaties, the Senate must approve these actions. Congress also has the ability to override (or cancel) presidential vetoes of legislation that it has passed if two thirds of the members of Congress vote to do so. Congress may also control the Executive branch through the funds that it appropriates (gives to the Executive in its budget). Congress may also remove a President from office for conduct constituting high crimes and misdemeanors through impeachment proceedings.

Q. How does the Legislative branch exert checks on the Judicial branch in the federal government?

A. The Senate must approve federal judges appointed by the President. Congress also exerts a check on the power of the judiciary through its regulation of the federal courts. Congress has the power to determine the jurisdiction of the federal courts and to establish courts lower than the Supreme Court. And, in extreme cases, Congress has the power to remove federal judges for bad behavior through impeachment.

Q. What are some of the ways in which the Judicial branch exerts checks on the other two branches of government in the federal government?

A. The Judicial branch holds the power of “judicial review,” or the authority to interpret and even declare acts of Congress and the President unconstitutional. Judicial review is designed to allow the judiciary to check abuses by both the Executive and Legislative branches. The power of judicial review is not set forth explicitly in the Constitution, but was developed by the Supreme Court in a series of cases dating back to the late 1700s. The Supreme Court is now considered to be the chief interpreter of the Constitution on most matters.

Q. How do the three branches of the federal government maintain their independence?

A. The election of the President and members of Congress by citizens helps to maintain their independence. Since they are elected by the population for fixed terms, both are accountable to the public. They also are prohibited from interfering in each other’s affairs in certain ways. For example, under the “non-delegation doctrine,” Congress may not delegate (give authorization to use) its lawmaking responsibilities to any other agency. In addition, judges are appointed for life and can be removed by the Legislature only in limited circumstances constituting bad behavior, which helps maintain the independence of the Judicial branch.

Q. Do the three branches of the federal government possess all political power in the United States?

A. No. The federal government shares power with the states in a system called “federalism.”

Q. What is federalism?

A. Federalism is a form of government in which a number of self-governing regions are united by a central government. This is called a federation. In a federation, the powers of the self-governing regions are set forth in the constitution of the central government, and their self-governing status cannot be altered or abolished by the central government. The United States has a system of government that separates the power of government between the federal government and various state and local governments. Each state has its own constitution. However, because of the Supremacy Clause (Article 6, Clause 2), the federal Constitution controls in the event of a conflict with a state constitution.

Q. How do state governments function alongside the federal government?

A. The federal government has certain powers set forth in the Constitution, called “enumerated powers,” including the right to collect taxes, declare war and regulate interstate and foreign commerce. In addition, based on the Constitution, the federal government has implied powers to pass any law “necessary and proper” for the execution of its enumerated powers. For instance, through the Commerce Clause, the federal government has the right to regulate areas of the law that affect interstate commerce, as well as interstate commerce itself. The Constitution provides that all powers not specifically granted to the federal government are retained by the states. Thus, state governments are empowered to take responsibility for actions of the government that the federal government does not control.

Q. How are state governments organized?

A. States have their own constitutions, chief executives (governors), legislatures and court systems. Some state constitutions are actually older than the federal constitution. The state constitutions and forms of government are generally similar to the model of the federal government, but there can be some differences. For example, most states, like New York, have two branches of their legislature (the state senate and assembly in New York), but a few states have only one branch of a legislature, rather than two. Another example in New York, as in many other states, many judges are elected to office for specified terms rather than, like federal judges, appointed for life. Some state constitutions also cover many detailed matters not found in the federal constitution such as the “forever wild” provision added as a constitutional amendment to the New York constitution to protect vast areas of land from development and the allocation of power between the state and local bodies such as towns and cities.

Useful Websites

Federal Judiciary

<http://www.uscourts.gov/>

Guide to the U.S. Government, Grades 9-12

<http://bensguide.gpo.gov/9-12/index.html>

International Examples of Separation of Powers

http://www.usconstitution.net/consttop_sepp.html

National Constitution Center

<http://constitutioncenter.org/constitution>

Supreme Court

<https://www.supremecourt.gov/>

The Presidency

<http://www.whitehouse.gov/>

U.S. House of Representatives

<http://www.house.gov/>

U.S. Senate

<http://www.senate.gov/>

Wikipedia—Separation of Powers

http://en.wikipedia.org/wiki/Separation_of_powers

CHAPTER 2

SOURCES OF LAW

Q. What are the main sources of law in the United States?

A. On the federal and state levels, the main sources of law in the United States are: (1) constitutions, (2) statutes, (3) court opinions, (4) administrative rules and regulations, (5) treaties and (6) executive orders.

Q. What is a constitution?

A. A constitution is a document that creates the framework for a system of government.

Q. Does the United States have a constitution?

A. Yes. The U.S. Constitution (“the Constitution”) was created in 1787 and became effective in 1788 after it was ratified (formally agreed to) by nine of the 13 original states.

Q. What are the main elements of the Constitution?

A. The Constitution created our system of government and established a system of checks and balances for the three branches of the federal government: Executive, Legislative and Judicial. (See Chapter 1, The United States System of Government.) It also established the rights of the people (the “Bill of Rights”), which cannot be taken away by the government.

Q. Do states have constitutions?

A. Yes. Each state has its own constitution that establishes Executive, Legislative and Judicial branches on the state level. A state’s constitution may provide greater rights than those provided by the federal government and may differ in some ways from the federal Constitution (*see* Chapter 1). However, because a state constitution is subordinate to the federal Constitution, it cannot provide fewer rights than the federal Constitution does. All of a state’s statutes and regulations must be consistent with both the state and federal constitutions.

Q. What is a statute?

A. A statute is a written rule or law that must be obeyed. Federal statutes are passed by Congress and approved (signed) by the President. Some examples of federal statutes are the Occupational Safety and Health Act of 1970 (OSHA), the Clean Water Act, and the Voting Rights Act of 1965. Congress created these and many other federal statutes under the powers granted to it by the Constitution. State statutes are passed by state legislatures and approved by governors.

Q. What is an agency?

A. An agency is a department of the government created by the legislature that usually operates in the Executive branch and reports to the President, governor or local elected official. Some examples of federal agencies are the Internal Revenue Service (IRS), Federal Bureau of Investigation (FBI) and the Transportation Security Administration (TSA). The Department of Motor Vehicles and the Department of Education are state agencies of New York.

Q. What are agency rules and regulations?

A. Agency rules, like statutes, are rules that must be obeyed by citizens, legal entities and the agencies themselves. The primary differences between statutes and rules are that agency rules tend to be much more detailed than statutes and may be changed or eliminated by federal or state statutes. They are created by agencies rather than by the legislature, but they must be consistent with the legislation that created the agency as well as with the federal and state constitutions.

Q. If federal law conflicts with state law, which law prevails?

A. The Supremacy Clause of the Constitution (Article 7, Section 2) states that federal law prevails over state law.

Q. Where does Congress get the power to pass laws?

A. Article I of the Constitution grants legislative powers to Congress, including, the power to tax, borrow money, regulate commerce, coin money and establish post offices. This list of powers is referred to as the “enumerated powers.” However, the Constitution does not specify what Congress can and cannot do to exercise these enumerated powers. As a result, the Supreme Court found that Congress also has “implied powers,” meaning that Congress must have the power to do what is necessary and proper to exercise its enumerated powers.

Q. Where do the state and local governments get their power to pass laws?

A. The Tenth Amendment to the Constitution states that the “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” This Amendment means that the states retain the power that the Constitution does not grant to the federal government. State constitutions or statutes may grant some of their retained powers to local governments such as cities or counties.

Useful Websites:

(See Useful Websites in Chapter 1, The United States System of Government)

New York State Assembly
<http://assembly.state.ny.us>

New York State Senate
<https://www.nysenate.gov/>

Wikipedia—United States Constitution
http://en.wikipedia.org/wiki/United_States_Constitution

United States House of Representatives, Educational Links
<http://www.house.gov/content/educate>

United States Senate
<http://www.senate.gov>

CHAPTER 3

OVERVIEW OF THE JUDICIAL SYSTEM

Q. What are courts and what is their role in society?

A. Courts are the judicial branch of government operated by judges who write opinions that either interpret statutes or regulations or decide whether statutes or regulations meets constitutional requirements or who impanel juries to either resolve disputes or determine if someone is guilty of a crime. There are both federal courts and state courts.

Q. What authority do courts have and where does it come from?

A. Federal and state constitutions grant courts the authority to interpret and apply the law. New York State courts get their authority from the New York State Constitution and statutes passed by the New York State Legislature. Federal courts get their authority from the U. S. Constitution and statutes passed by Congress.

Q. What are court opinions?

A. Court opinions are written decisions that explain rulings made in cases brought before the courts. Some opinions state whether a statute or an agency rule meets constitutional requirements; others interpret a statute or agency rule; still others may decide disputes between parties. Court opinions become precedents for future cases.

Q. What are precedents?

A. “Precedent” in law refers to prior court opinions that judges refer to when hearing new cases. Judges use prior opinions to guide their decisions to ensure that cases are decided as consistently as possible.

Q. What types of courts are there?

A. There are federal courts throughout the United States and each state has its own state courts. Some courts decide only civil or criminal matters, some decide both. Civil matters are those involving money, property, family or other issues not involving a crime. Criminal matters are cases where an individual is accused of a crime and is brought to court to determine whether he or she is guilty.

There are also specialized courts that handle a particular type of dispute like bankruptcy or family court and courts where judges hear matters that arise from government agency decisions.

Q. What types of federal courts are there?

A. There are ninety-four (94) district courts throughout the United States that hear cases that involve violations of federal laws or disputes between people from different states, as well as criminal cases involving charges of violations of federal law. Appeals from the district

courts go to eleven regional Courts of Appeals which hear most appeals from the states in their region. For example, the United States Court of Appeals for the Second Circuit hears cases decided by the six federal district courts in New York, Connecticut and Vermont. The Court of Appeals for the Federal Circuit (in Washington, DC) has jurisdiction over a number of specific subject areas, including international trade, government contracts, patents, trademarks and certain monetary claims against the federal government, among others. The highest federal court is the Supreme Court of the United States which hears only a small percentage of cases appealed to it. Those are cases deemed of exceptional importance or which may help to resolve important questions of law on which the lower federal courts have rendered inconsistent results. There are also special courts such as Bankruptcy Courts and Immigration Courts.

Q. What state courts exist in New York?

A. In New York City, there are five main state courts: (1) The Supreme Court, (2) The Family Court, (3) The Surrogate's Court, (4) The Civil Court of the City of New York, and (5) The Criminal Court of the City of New York. The type of cases each court handles is described below:

1. **The New York Supreme Court:** The state Supreme Court is a trial court that has the ability to hear any type of case, including civil cases and criminal cases. However, the Supreme Court usually only hears cases that cannot be heard by one of the other four specialized trial courts. On the criminal side, this includes cases involving felonies—crimes punishable by more than one year in prison. Despite its name, the New York Supreme Court is not the highest court in the state, and its decisions may be appealed, first to one of four intermediate courts of appeal called Appellate Divisions, some if not all cases may be appealed to the Court of Appeals, the highest court in the state.
2. **The Family Court:** The Family Court handles cases that involve children and families. These cases may include custody and visitation, support, domestic violence, persons in need of supervision, delinquency, child abuse and neglect, foster care approval and review, termination of parental rights, adoption and guardianship.
3. **The Surrogate's Court:** The Surrogate's Court handles cases involving the matters for people who have died with or without wills, including estate administration, adoptions and trusts
4. **The Civil Court of the City of New York:** This court hears civil cases where the amount of money in dispute is \$25,000 or less. Within the Civil Court of the City of New York, there is a Small Claims Court and a Housing Court. The Small Claims Court hears cases for claims of \$10,000 or less brought by individuals (not corporations or other entities). (Claim amounts are lower outside New York City.) The Housing Court handles disputes between landlords and tenants and claims of Housing Code violations.

- 5. The Criminal Court of the City of New York:** This court hears criminal cases involving misdemeanors (crimes punishable by a fine or up to one year in prison) and lesser offenses. This court also handles arraignments and preliminary hearings for felonies (crimes punishable by more than one year in prison).

Q. What levels of courts are there?

- A. In general, courts are either trial courts or appellate courts. The trial courts typically hear evidence while appellate courts primarily hear appeals on questions of law decided by trial or other courts.

Q. What is a trial court?

- A. A trial court is a court where evidence is presented to a judge or jury. The judge or jury makes a decision, either resolving a dispute or determining if someone is guilty of a crime. Each of the five specialized courts described above is a trial court.

Q. What is an appellate court?

- A. An appellate court is a higher-level court made up only of judges (no juries) who review decisions of trial courts to determine if there was a mistake in the decision relating to the relevant facts or law. A person who believes that a lower-level court made a mistaken decision can appeal the case to an appellate court for review. In New York State, there are two levels of appeal. First, is the New York Supreme Court Appellate Division. The New York Supreme Court Appellate Division is divided into four departments (First, Second, Third and Fourth) based on the geographic area each department covers. These courts are located in Manhattan, Brooklyn, Albany and Rochester.

The Appellate Division hears cases that are appealed from any of the five trial courts listed above. Second, there is the New York Court of Appeals. Someone who believes that the Appellate Division made a mistaken decision, may seek to appeal the case to the New York State Court of Appeals, but not all cases are accepted for appeal. This is the highest court in New York State and sits in Albany, the state capitol.

Q. How do courts help achieve a more democratic form of government?

- A. Courts (the judicial branch of government) were created not only to fulfill the need to resolve disputes and try criminals but also to “check” the other branches of government. Generally, if the Legislative branch enacts a law that violates a state constitution or the U.S. Constitution, or if the Executive branch (President, Governor or Mayor) oversteps his or her authority, the courts may strike down the law or official’s action.

Q. What do judges do?

- A. In some cases judges decide the dispute or determine if a person is guilty of a crime. The final results of court cases are judgments. In criminal cases, a judgment is called a sentence if a defendant is found guilty. In many civil cases, judgments are money awards to the

winning party. In all cases, judges interpret the law, manage the courtroom and, in jury cases, explain the law to the jury to assure that the trial is fair.

Q. Who is on a judge's staff?

A. A judge's staff consists of a secretary, law clerk and one or more legal interns. Law clerks (as they are called in federal courts) or court attorneys (as they are called in New York State courts) are responsible for preparing the judge for proceedings, interacting with parties to a case, doing legal research and often preparing drafts of opinions. Legal interns are generally supervised by the law clerk and do legal research and drafting of opinions. Legal interns are law school, college or even high school students engaged in either an internship or school clinic program. There are also additional personnel assigned to the courtroom to assist the judge, such as court clerks (called deputies in the federal court), who handle much of the paperwork, and court officers or other security personnel to support safety and good order. Courts also have court reporters who make a record of what everyone in court says and, if necessary, courts also have translators.

Q. How do you become a judge?

A. In New York State, you must be an attorney and have practiced for ten years. You must then, depending on the court, be either elected or appointed by the Governor for state courts or by the Mayor or County Executive for local courts. Federal judges are appointed by the President, approved by the Senate and have lifetime appointments (assuming good behavior).

Q. What is a jury?

A. A jury is a group of citizens who are called to serve in a courtroom to decide a dispute. A jury is used so that parties to a civil dispute or criminal defendants are judged impartially by a group of their peers. The availability of jury trials is a key component in administering justice within our democratic form of government, and serving on a jury is an important responsibility and a way to assure that our laws are applied fairly.

Q. Who is eligible for jury duty in New York State?

A. Anyone who is registered to vote, has a New York State ID, has filed a New York State tax return or has received unemployment insurance or family assistance is eligible for state jury duty. It is also possible to volunteer.

Federal jurors are selected from lists of registered voters or combined lists of voters and people with driver's licenses in the judicial district. Potential jurors must fill out a questionnaire to determine if they are qualified to sit on a jury. Jurors are then randomly selected from those who are deemed qualified.

Q. What qualifications must jurors possess?

A. State jurors must be United States citizens over 18 years old, resident in the county in which they are called, able to communicate in English, and have not been convicted of a felony.

Federal jurors must meet all of the qualifications above but must also have resided in the judicial district for one year, have no disqualifying mental or physical condition and not currently be subject to felony charges punishable by one year of imprisonment or more.

Q. What should I do if I receive a summons for jury duty?

A. If you receive a summons in the mail, follow the directions and report to the court at the appointed time.

Q. What should I do if I cannot serve at the required time?

A. If you are called to New York State jury duty, you may postpone your service by calling 1-800- 449-2819 one week before your date of service. Jury duty can be postponed up to 6 months from the date on the summons.

If you are called to federal jury duty, use the return envelope to mail the summons and a brief note indicating when you would like to serve within the next 6 months.

Q. How long will I have to serve for?

A. Typically, most people summoned for jury duty are either not needed or not chosen to serve on a jury hearing a case; they generally serve only 1-2 days and are then released. However, if selected to serve on a jury, jurors serve until the trial is completed. This may last from two weeks to a month or more. The judge will inform jurors how long the trial is expected to last.

Q. Will I be paid for jury duty?

A. State and federal jurors are paid \$40 per day. If asked to serve on a lengthy trial, the court may increase the amount jurors receive up to \$50 per day. Federal jurors also receive travel expenses, reimbursement of parking fees and a subsistence allowance if required to stay overnight.

Q. What if I do not want to serve?

A. Jury duty is an important civic responsibility that is essential to a democratic government. Many civil rights battles were fought to assure that all citizens could serve (including minorities, women and unpopular groups) in order to assure that trials are fair and unbiased. Jury duty, like paying taxes, is mandatory. Everyone who is eligible must serve. Jurors may be excused due to financial or medical hardship, but must provide documentation when requesting an excuse for these reasons.

Q. What happens if I do not show up for jury duty?

A. Skipping jury duty can result in civil or criminal penalties. In addition, anyone who skips jury duty will be assigned a new date for future jury service. As noted above, serving on a jury is an important civic responsibility that is essential to a democratic government and should not be avoided simply because it seems inconvenient.

Q. What is arbitration and is it the same as going to court?

A. Arbitration is a method of resolving disputes in which a person other than a judge is chosen by the parties to hear the parties' evidence and legal arguments and resolve a dispute.

Q. When and why is arbitration used?

A. Arbitration is often required by contract. It may be chosen as an alternative to going to court because it is usually less formal and more flexible than a court proceeding, is conducted in private and can allow the parties to choose an arbitrator very experienced in the types of issues and facts at issue in a particular dispute. It is often required in form consumer and on-line contracts where it is criticized as being somewhat one-sided and depriving consumers of protections and safeguards such as the right to jury trial or to sue for punitive damages. Courts may also suggest that a case be arbitrated by an arbitrator from a panel or list selected by the court so that it may be decided more quickly than the court's schedule and docket of other cases would allow.

Q. What is mediation and is it the same as arbitration or going to court?

A. Mediation is a procedure in which a neutral party is used by the parties to help them try to resolve a dispute without a trial or arbitration. Unlike a neutral arbitrator or judge, a mediator does not make a decision but tries to help the parties understand the strengths and weaknesses of their arguments and alternatives to the positions they are taking. Parties may choose to mediate a dispute either before or after court proceedings have begun. Courts may also suggest or require the parties to mediate their dispute, usually before a mediator selected from a panel of experienced, court-appointed mediators. The mediation is confidential.

Useful Websites:

Association of the Bar of the City of New York—How to Become a Judge
http://www.nycbar.org/pdf/report/become_a_judge.pdf

New York State Unified Court System
<http://www.courts.state.ny.us/courts/structure.shtml>

Supreme Court of the United States
<http://www.Supremecourt.gov>

Court of Appeals for the Second Circuit
<http://www.ca2.uscourts.gov>

United States District Court Southern District of New York
<http://www.nysd.uscourts.gov>

United States District Court Eastern District of New York
<http://www.nyed.uscourts.gov>

For jury service in state courts, handbooks and videos are available at www.nyjuror.gov information can also be obtained by calling 1-800-NYJUROR (1-800-659-8767)

For jury service in the federal courts in New York City information and handbooks are available at <http://www.nysd.uscourts.gov/jurors> for the Bronx, Manhattan and Westchester and at <http://www.nyed.uscourts.gov/jurors> for the federal courts in Brooklyn, Queens, Staten Island and Long Island).

CHAPTER 4

THE ATTORNEY-CLIENT RELATIONSHIP

Q. What do attorneys do?

A. Attorneys are involved in almost all areas of modern life. One important role of attorneys is to provide legal advice to help clients resolve legal problems. This can take many forms, from giving information and advice to clients, to drafting legal documents to advocating for their clients in courtrooms and other settings.

Q. When should I consult an attorney?

A. You should consult an attorney when you have a legal question or dispute, or if you are questioned by law enforcement officials or other government representatives.

Q. What are the responsibilities of an attorney?

A. Examples of an attorney's responsibilities include representing the client's interest with commitment and dedication, using legal and ethical means necessary to pursue those interests, and providing candid advice so that the client can make decisions based on accurate legal information. The lawyer has a duty to keep information about the client and discussions with the client confidential unless the client wants it disclosed. The lawyer is also an officer of the court, must follow its rules, and cannot lie to the court or others.

Q. What are the responsibilities of a client?

A. A client is responsible for deciding the objectives of the case and has most of the decision-making authority. In terms of strategy, such as whether to settle, the client is the ultimate decision maker. In New York, an attorney is supposed to give a client a statement of the client's rights and responsibilities, and in most matters an engagement letter to help clarify the scope of the relationship.

Q. If I tell my attorney something, is there a risk that he or she will tell law enforcement officials or my adversary?

A. Attorneys usually are prohibited from revealing any information you provide to them concerning your legal issues. As a general rule, if anyone questions your attorney about your situation, the attorney should refuse to answer without your permission. In litigation, if you or the attorney is asked about these discussions, the attorney-client privilege protects the information from being disclosed with certain exception explained below.

Q. What is the attorney-client privilege?

A. The attorney-client privilege is a legal principle that provides that certain communications between an attorney and his or her client are "privileged"—that is, the attorney is not allowed to reveal to others certain information provided by the client without the client's permission, and the courts will prevent that information from being disclosed. Work that

an attorney does to investigate, research and prepare your matter may also be protected by something called the work product doctrine, although this protection is less absolute than the attorney-client privilege that covers confidential communications between you and your attorney.

Q. Are there exceptions to the attorney-client privilege?

A. Yes. If a client commits perjury (lies) on the witness stand, the attorney, as an officer of the court, is required to cure (correct) the lie, which may include the revealing of the information to the court or others. In certain other situations, an attorney may (but is not required to) reveal a client's privileged or confidential information. If a client consents to the disclosure, the attorney may reveal information. Additionally, the attorney may reveal the client's intention to commit a crime if the lawyer is unable to persuade the client not to commit the crime. There are also other limited exceptions to the attorney-client privilege, such as when certain disputes arise between the lawyer and client or if someone's life or health is in danger. Finally, and most importantly, the privilege may be lost or "waived" if the information is shared voluntarily with others, even accidentally.

Q. What is the purpose of the attorney-client privilege?

A. The attorney-client privilege allows a client to speak freely with an attorney without fear that the attorney will share secret or harmful information with others. This helps to ensure the attorney will have all relevant facts in order to present the client with a full assessment of the situation. With a clearer picture of his or her rights and options, a client can assess the likelihood of success or failure, and decide whether to resolve a matter out of court or go to trial or, in the case of a criminal matter, consider a plea bargain or other resolution.

Q. What information is privileged, and when can the privilege be lost?

A. For information to be considered privileged, it must be a communication with an attorney, the client must intend it to remain confidential and it must be communicated for the purpose of obtaining legal advice. The privilege can be lost if the client discloses or talks about what was said, written or emailed to the attorney, with third parties, even close friends, co-workers, or family members.

Q. What does it mean to waive the attorney-client privilege?

A. Communications between you and your attorney must remain confidential to be confidential. As noted above, speaking about what was said or answering questions about discussions with your attorney may be a waiver of the privilege, meaning that once you have disclosed information about what was said the courts will no longer allow you or your attorney to keep it confidential.

Q. When does the attorney-client privilege become effective?

A. The attorney-client privilege applies to an attorney's current clients, former clients and prospective clients. A prospective client is an individual who communicates with an attorney while in the process of deciding whether to hire that attorney.

Q. If someone other than the client pays for the attorney, does the attorney-client privilege still apply?

A. Yes. The attorney has a duty of loyalty and confidentiality to the client. An attorney may not reveal privileged information to anyone, even the person paying for the attorney's services. For example, if a person's rich uncle were paying the legal bill and demanded information about the case from the attorney, the attorney would have to refuse unless the client specifically authorized disclosure to the uncle. The same is true when an employer or an insurance company may be paying for the attorney.

Useful Websites:

New York State Bar Association Resources on Professional Standards

<https://nysba.org/attorney-resources/professional-standards/>

New York State Unified Court System-Client/Attorney Relationship Rules

<http://www.nycourts.gov/attorneys/clientattorneyrel.shtml>

Example Statement of Client's Rights:

https://nysba.org/app/uploads/2020/01/StatementClientsRights_22NYCRR1210_1.pdf

What to Expect of a Lawyer

<https://www.nolo.com/legal-encyclopedia/expectations-for-lawyer-attorney-29876.html>

Hiring a lawyer - FTC Consumer Information

<https://consumer.ftc.gov/articles/hiring-lawyer>

New York County Lawyers Association, Task Force Report on Professionalism, (January 2010)

https://www.nycla.org/siteFiles/Publications/Publications1321_0.pdf

CHAPTER 5

COMPUTERS AND SOCIAL MEDIA

Online Security

Q. What is malware?

A. Malware is short for “malicious software.” It includes viruses and spyware that get installed on your computer, phone or mobile device without your consent. These programs can cause your device to crash and can be used to monitor and control your online activity. Criminals use malware to steal personal information, send spam and commit fraud.

Q. How does malware get onto a computer?

A. Malware usually gets installed when a person clicks on a link on a website or opens an attachment to an email. Without the person knowing it, the click may cause the malware to automatically download and/or install on that person’s computer.

Q. Is there any way to avoid malware?

A. To reduce your risk of downloading unwanted malware and spyware:

- **Install anti-virus and anti-spyware software on your computer.** You also need to keep this software updated. An easy way to do that is to set your security software, internet browser and operating system (like Windows or Mac OS) to update automatically.
- **Be careful with links and attachments in emails.** Do not click on any links or open any attachments in emails unless you know who sent it and what it is.
- **Avoid clicking on webpage ads.** Sometimes legitimate and trustworthy websites may inadvertently feature malicious ads. Avoid clicking on these ads to minimize the risk of malware.
- **Download and install software only from websites you know and trust.** Downloading free games, file-sharing programs and customized toolbars may sound appealing, but free software can come with malware.
- **Minimize “drive-by” downloads.** Make sure your browser security setting is high enough to detect unauthorized downloads.
- **Use a pop-up blocker and do not click on any links within pop-ups.** Close pop-up windows by clicking on the “X” in the title bar.

Q. How can I tell if there's malware on my computer?

A. Monitor your computer for unusual behavior. Your computer may be infected with malware if it slows down, crashes or displays repeated error messages, will not shut down or restart, serves up a barrage of pop-ups or displays web pages you did not intend to visit, or sends emails you did not write. Other warning signs of malware include new and unexpected toolbars in your browser, new and unexpected icons in your shortcuts or on your desktop, your antivirus gets disabled and you cannot turn it back on, a sudden or repeated change in your computer's internet home page or a laptop battery that drains more quickly than it should.

Q. What can I do if there's malware on my computer?

A. There are a number of steps you need to take if there is malware on your computer. First, in order to avoid exposing yourself any further, stop shopping, banking and doing other online activities that involve usernames, passwords or other sensitive information. Then, update your security software, run it to scan your computer for viruses and spyware and follow whatever instructions it provides. If your computer is covered by a warranty that offers free tech support, contact the manufacturer. It may be able to help walk you through fixing the problems. If you are not comfortable doing what needs to be done, or are unable to fix the problem after working on it, you may need to take your computer to a repair store or hire a repair person to come into your home. Remember to always research the credentials and capabilities of any store or repair person as you do not want to make a bad situation worse. It is wise to change your passwords for your computer and online accounts once you know that your computer is freed of malware.

Using Social Media

Q. Who can see the information I post onto social media sites?

A. That depends on your privacy/security settings and the forum where you are posting information. With regard to other online platforms or social media platforms, you have some control over these settings but not total control. You should regularly check your privacy/security settings to ensure that only the people you want to see your postings can see them. Before setting up an account with any social networking site, ask yourself: Am I willing to learn all the privacy/security settings and keep up with them as they change? Privacy/security policy revisions happen from time to time, so social media users should periodically check to ensure that the site operator has not changed any of the privacy/security settings. If you have any questions with regard to security questions, you should not hesitate to ask someone for assistance.

Keep in mind that even if the information you post is just shared with a small group of friends, someone may unexpectedly take screenshots or forward a post or photo to a much wider audience, so always think before you post. Also, when you comment about someone else's post, you are subject to their privacy restrictions and a comment on someone else's post may be available to the general public even if you have much more limited privacy

settings. This danger is especially an issue with Twitter where a post can unexpectedly get retweeted to a much larger audience.

Q. When I delete something from a social media site, when is it truly gone?

A. There is no true delete on the internet. Every picture and every post you put on a social media site exists indefinitely on that site's servers, even when no longer publicly on display. Also, photos and posts can be forwarded, retweeted or shared, and when that happens, the photo or post will likely always be out there somewhere. The best approach to take is not to post anything to a social media site that you would not mind telling a school admissions dean or prospective employer.

Q. What do my social media activities have to do with my college admission or job prospects?

A. A great deal. In August 2018, CNBC reported that 70% of hiring managers reviewed applicants' social media accounts as a screening tool. Over half of these employers – 57% – said they saw social media activity which led them to decide not to hire someone. According to Kaplan Test Prep, one third of all college admissions officers run Google searches on applicants or review their publicly available information from Facebook or other social networking sites.

Q. What do I need to know about games, plugins or other add-on applications on social media sites?

A. As a general matter, each game, plugin or add-on applications is run by someone other than the social media site you signed up for and will have its own totally different privacy settings. This means you have to be very careful that if you sign up for a third-party application, you take the exact same precautions you took when you signed up for the social media site, and ensure that you are sharing as little of your private information (GPS location, etc.) as possible. You can likely review and refine your privacy settings within the app or on your phone's general settings.

Q. What information should I be wary of sharing on a social media site?

A. This would depend upon the platform, but social media users should guard their identifying information (name, sex, age, phone numbers, addresses, exact birth dates, address, school, teams, etc.). You may think that you are anonymous on social media, but it only takes a little information for an online predator to identify you.

Q. Is there any harm in accepting all friend requests?

A. Just as in the physical world, do not accept friend requests from just anyone. If you are using a platform that shares information with this person, you should be cautious in accepting friend requests or requests to join networks. There are many predators on social media and it only takes a small amount of identifying information for someone to find your actual identity.

Q. Are chat rooms truly anonymous environments?

A. As is the case on social media platforms, just a small amount of identifying information could lead someone to find your true identity. Also, chat room ‘friends’ are not always who they say they are. Predators will prowl certain sites looking for people that they can somehow take advantage of.

Q. Is anyone going to really notice if I illegally download music or movies or use someone’s photo or video without his or her permission?

A. The rules of intellectual property apply to the online and social media world and illegal downloaders of music and movies are regularly sued by the owners of such content. You must also be cautious in using photos and other copyrighted materials for your own use. It is often necessary to obtain permission or to pay for the rights to use a photo or cartoon.

Q. I post frequently on social media – should I be concerned?

A. Think before you post! Once a comment is posted, it is not possible to later say, “never mind.” A post may seem funny or harmless when you write it and turn out to hurt or offend someone. It is always best to pause before posting and think about the possible ramifications of what you are posting. This is especially the case when you are angry and upset – if you post an aggressive or inflammatory comment online that you turn out to later regret, that may be something that employers or school admissions officers determine makes you a less attractive candidate. As noted above, since social media posts can never completely be deleted, it is important to make sure that you are willing to live with each and every post that you make.

Also, do not advertise “real time” information, for example, when you are going on vacation or are home alone.

Q. What can I do if someone shares intimate pictures of me without my permission?

A. In 2019, New York State Penal Law section 245.15 was amended to make illegal the “unlawful dissemination or publication of an intimate image” without the consent of the pictured individual. Section 245.15 is applicable to instances where an image or video (i) depicts an intimate part of the complainant’s body or the complainant engaging in sexual activity, (ii) is published, posted on the internet or disseminated in another fashion without the complainant’s consent, and (iii) is published with the objective and intent to harm the complainant emotionally, financially, or physically. Furthermore, the complainant must be identifiable—either directly through the picture or through other information or details provided by the image or publication. Finally, even if the image or video was not consensually created or shared, the complainant must also have had a reasonable expectation at the time it was created or shared that image or video would remain private, and the alleged abuser knew or had a reasonable expectation that the complainant intended for the image or video to remain private.

In criminal court, a conviction for the unlawful dissemination or publication of an intimate image is punishable by up to one year in jail. This law applies everywhere in New York state.

Online Privacy

Q. What is a cookie?

A. A cookie is information that a website saves to your computer using your web browser. A cookie allows sites to record your browsing activities – like what pages and content you have looked at, when you visited, what you searched for and whether you clicked on an ad. Data collected by cookies can be combined to create a profile of your online activities.

Q. Are cookies bad?

A. Cookies are not necessarily bad. In fact, they can speed up your web experience on sites you visit and use regularly by remembering your login name, preferences (such as where you live so information like news and weather is relevant to you), items in your shopping cart, pages you have read on the site, etc. But cookies can also be used to display ads that are intended to be tailored to your interests. For example, you may read an article about a new model car on one website and then when you visit another site, an advertisement for that car may be shown to you. While marketers, like the car advertiser, think that ads are more effective when displayed to people they know are interested in the product, seeing an ad on one website about an item you read about on another may feel creepy, as if your online activity is being stalked. Also, we do not always know what information is being collected from the cookies and by whom.

Q. How can I control cookies?

A. Various web browsers have different ways to let you delete cookies or limit the kinds of cookies that can be placed on your computer. You may want to consider which browser (for example, Internet Explorer, Firefox, Safari, Chrome) suits your privacy preferences best. Different browsers have different methods to view and change your cookie settings (often you can use the ‘Help’ tab or look under ‘Tools’ for settings like ‘Options’ or ‘Privacy’). Once you find the right place, you may be able to delete cookies or control when they can be placed. Some browsers allow add-on software tools to block, delete or control cookies. And security software often includes options to make cookie control easier. Today, many sites ask for your consent in accepting cookies upon visiting the site. Along with asking for your consent, they also provide details on their privacy policies so you can make an informed decision.

Q. What is “Do Not Track”?

A. Do Not Track is a tool that allows you to express your preference not to be tracked across the web. Turning on Do Not Track through your web browser sends a signal to every website you visit that you do not want to be tracked. Companies then know your preference. If they have committed to respect your preference, they are legally required to do so. Some

browsers already support Do Not Track. If you want to use Do Not Track, check to see if the browser you use offers it – or use a browser that does.

Q. What is the Right to Delete?

- A. It is the right of Californians 17 and younger to delete web postings, starting in 2015. It can be described as the right to an “eraser button,” essentially the right to delete any personal information that they have posted. However, this protection has significant limitations: it does not allow young people to remove personal information that someone else posts and while the information will have to be taken off the website, it does not have to be removed from the site operator’s server. This law may eventually be adopted by some other states, but is not currently the law in New York. In 2021, legislators introduced a bill which would enable New Yorkers to better manage the privacy of personal information online, so it is useful to keep an eye out for new developments.

Q. Can I expect other people not to read my email?

- A. You have a reasonable expectation of privacy for any emails sent from your personal computer via an internet service provider. However, there are no absolute guarantees that your email will remain private. An employer or school may have rights to see emails sent on their computers or via their internet service provider. Also, once you send an email, you are at the mercy of the recipient. That person can take it upon himself or herself at any point, even years later, to forward that email to anyone and you will have no ability to stop him or her.

CHAPTER 6

CIVIL RIGHTS

Q. What are civil rights?

A. Civil rights are personal rights guaranteed and protected by the U.S. Constitution, as well as federal laws enacted by Congress. Civil rights include the freedom of speech, the right to vote, due process of law, equal protection of the laws and protection from unlawful discrimination. Under some circumstances, organizations such as charities, advocacy groups, unions and even corporations can also rely on certain civil rights, most notably rights to free speech, free association, and due process of law.¹ State Constitutions, such as the New York State Constitution, also establish and protect many civil rights, and New York State and New York City have statutes and rules that also establish and protect civil rights.

Q. Where do these rights come from?

A. Our civil rights are provided by the U.S. Constitution and the amendments to the Constitution, as well as laws passed by Congress such as the Civil Rights Act of 1964 and other state and local laws. The protection of civil rights is one of the most fundamental political values in American society. Courts, most notably the U.S. Supreme Court, play a crucial role in interpreting the scope and extent of civil rights. A single Supreme Court ruling can change the recognition of a right throughout the nation. State Constitutions, such as the New York State Constitution, also establish and protect many civil rights, and New York State and New York City have statutes, ordinances and rules that also establish and protect some civil rights.

Q. What is the Bill of Rights?

A. The first ten amendments to the U.S. Constitution are known as the Bill of the Rights. The Bill of Rights contains important guarantees, including freedom of religion, freedom of speech, freedom to assemble, and the right to bear arms, as well as freedom from unreasonable searches and seizures, the right to remain silent and avoid self-incrimination, and the right to a fair trial.

Q. What additional rights are guaranteed by the Constitution?

A. Subsequent amendments guaranteed the right to vote regardless of race or color, the right to elect senators and the right for women and 18-year-olds to vote.

Q. What rights are provided by the Civil Rights Act of 1964?

A. The Civil Rights Act of 1964 ended segregation in public spaces like restaurants, hotels, theaters, and retail stores. It also banned employment discrimination on the basis of race,

1. See, e.g., *NAACP v. Alabama*, 357 U.S. 449, 466 (1958)

color, religion, sex or national origin. In subsequent years, Congress expanded the Act and passed additional laws aimed at bringing equality to African Americans, such as the Voting Rights Act of 1965.

Q. Can my civil rights be taken away?

- A. Your civil rights cannot be taken away unless you are currently incarcerated or have had certain types of felony convictions. In those circumstances, your voting rights can sometimes be taken away, either temporarily or permanently. With the exception of The District of Columbia, Maine, and Vermont, most states have laws that restrict the voting rights of convicted felons. Nationally, as of 2020, an estimated 5.2 million Americans are denied the right to vote because of laws that prevent voting by people with certain felony convictions. Other rights cannot be taken away unless the Constitution is amended, although the recognition of a right or the degree of protection it has may be affected by court decisions or statutes.

A 2018 executive order in New York State established the right for an automatic review of the restoration of voting rights following release from incarceration. Information regarding applying for restoration can be found at: <https://www.ny.gov/services/apply-clemency>.

Q. What is discrimination?

- A. Discrimination occurs when the civil rights of an individual are interfered with or denied without any basis or solely because of the person's membership in a particular group or class, including race, gender, ethnicity and religion.

Q. If I have been discriminated against, where do I file a complaint?

- A. Depending on the nature of the discrimination, you may file a complaint with the government agencies listed below (and, in some cases, you must file a complaint in order to protect your rights.) You may also consult with civil rights organizations, such as those listed below, or a private attorney.

FILING A COMPLAINT WITH THE NEW YORK CITY COMMISSION ON HUMAN RIGHTS

Types of Complaints Handled

This Commission handles complaints within New York City that relate to discrimination in employment, housing and public accommodations based on race, color, creed, age, national origin, citizenship status, gender (including sexual harassment), sexual orientation, gender identity or expression, disability, marital status, or partnership status. In addition, the Commission also ensures protection against discrimination in employment based on arrest or conviction records.



<http://www.nyc.gov/html/cchr/html/home/home.shtml>



311 or (212) 416-0197

Where to Go

If you believe you have been the victim of discrimination in the City of New York, you may file a complaint with the Law Enforcement Bureau of the NYC Commission on Human Rights, located at 22 Reade Street, in lower Manhattan. Commission services are free of charge.

You cannot file a complaint with the NYC Commission on Human Rights if you have already filed the same complaint with the New York State Division of Human Rights, the Equal Employment Opportunity Commission, or in any court.

Time Limit

The NYC Human Rights Law requires that all complaints must be filed within one year of the last alleged act of discrimination, except for complaints alleging gender discrimination must be filed within three years.

Appointment

To schedule an appointment, please call 311 or 1-212-722-3131, although walk-ins are also accepted. If you are unable to travel to its offices, the Commission will make alternative arrangements. When you visit the Commission, you will meet with a staff attorney to discuss the allegations of discrimination.

What to Bring

To expedite the interview process, please bring all relevant information covered in the complaint with you, such as names, addresses and phone numbers of the people or organizations you are charging and the exact dates of the events. You must also bring a photo identification.

FEDERAL AND STATE GOVERNMENT AGENCIES

Office for Civil Rights, U.S. Department of Education

This Office ensures that all students are provided with access to education and do not face discrimination in the school setting. It also oversees schools to ensure that they comply with civil rights codes.

All complaints must be filed within 180 days of the discriminatory act and can be filed online at: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>.



<http://www2.ed.gov/about/offices/list/ocr/index.html>



1-636-428-3800

Office of Fair Housing, U.S. Department of Housing and Urban Development

This Office enforces the federal laws that ensure all Americans have equal access to the housing of their choice.



<https://www.hud.gov/fairhousing>



212-542-7519 or 1-800-669-9777

Office for Civil Rights, U.S. Department of Health and Human Services

This Office investigates all claims related to the HIPAA Privacy Rule, which covers protection of health information privacy rights by health care providers.



<https://www.hhs.gov/hipaa/index.html>



1-800-368-1019

United States Equal Employment Opportunity Commission

This Commission handles all complaints of discrimination in the workplace related to age, sex, race, religion, disability status or national origin. It also deals with other workplace issues, such as sexual harassment and equal pay.



<http://www.eeoc.gov>



1-800-669-4000

Division of Human Rights, New York State

The Division of Human Rights ensures equal opportunity in employment, housing, public accommodation, education and credit within New York State. The Division also enforces the New York Human Rights Law, an important way of investigating and resolving complaints of discrimination.



<http://www.dhr.ny.gov>



1-888-392-3644

Q. If I have been a victim of police misconduct in New York City, where do I file a complaint?

A. Individuals' rights to be free from unreasonable searches, uses of force and arrests without probable cause by police are protected by the Fourth and Fourteenth Amendments, as well as other constitutional and statutory provisions. The City of New York maintains several organizations that investigate various forms of police misconduct. You may also discuss

your complaint with civil rights organizations, such as those listed below, or consult a private attorney.

FILING A COMPLAINT WITH THE NEW YORK CITY CIVILIAN COMPLAINT REVIEW BOARD

(CCRB)

Types of Complaints Handled

The CCRB is an agency of the City of New York that uses civilian (not police) investigators to investigate complaints against police officers within New York City that relate to improper uses of force (F), abuses of authority (A), discourtesy (D) and offensive language (O) toward civilians: FADO for short. The CCRB only investigates FADO complaints, and refers other misconduct complaints to New York Police Department Internal Affairs or other organizations.



<http://www.nyc.gov/html/ccrb/html/home/home.shtml>



311 (or 1-212-NEW-YORK) or 1-800-341-2272

Where to Go

If you believe you have been the victim of FADO misconduct by police in the City of New York, you may file a complaint with the CCRB at their offices, located at 40 Rector Street, 2nd Floor, in lower Manhattan or via their website, 311, the CCRB toll-free hotline, or at any police precinct. CCRB services are free of charge.

Time Limit

The CCRB must complete all investigations into an incident within a year and a half (18 months) of the incident taking place.

What to Bring

To expedite the interview process, please bring with you all relevant information covered in the complaint, such as names, addresses and phone numbers of the people or organizations you are charging and the exact dates of the events. You may be asked to sign releases for the CCRB to retrieve additional information. You must also bring photo identification.

Civil Rights Organizations:

Civil Rights – American Civil Liberties Union
<http://www.aclu.org>

Civil Rights – New York Civil Liberties Union
<http://www.nyclu.org>

Civil Rights – Center for Constitutional Rights
<http://ccrjustice.org>

Civil Rights – The National Association for the Advancement of Colored People (NAACP)
<http://www.naACP.org>

Civil Rights – LatinoJustice PRLDEF
<http://latinojustice.org>

Civil Rights – National Action Network
<http://nationalactionnetwork.net>

Useful Websites:

Advocates for Children of New York, Inc.
<http://www.advocatesforchildren.org>

American Civil Liberties Union
<http://www.aclu.org>

First Amendment Center
<http://www.firstamendmentcenter.org>

National Constitution Center
<http://constitutioncenter.org>

National Youth Rights Association
<http://www.youthrights.org/>

New York Civil Liberties Union
<http://www.nyclu.org>

NYCLU Teen Activist Project
<http://www.nyclu.org/issues/youth-and-student-rights/teen-activist-project>

CHAPTER 7

RIGHTS AT SCHOOL, AT WORK, AND AS EMANCIPATED MINORS

Rights to Special Education

Q. What is the Individuals with Disabilities Education Act (IDEA)?

A. In 1975, Congress passed Public Law 94-142, now called the IDEA, to ensure that all students with disabilities receive a free appropriate public education, which emphasizes special education and related services designed to meet each student's unique needs.

Q. What is the No Child Left Behind Act of 2001 (NCLB)?

A. The NCLB is the 2001 reauthorization of the 1965 Elementary Secondary Education Act (ESEA). The ESEA emphasizes equal access and opportunity to education. The NCLB is important to students with disabilities because it requires increased accountability from schools by requiring schools to make adequate and appropriate annual progress toward proficiency standards for all students, including those with disabilities.

Q. What are the steps involved in the special education process?

A. There are five steps involved in the special education process: (1) initial referral for Special Education Services, (2) individual evaluation, (3) determining eligibility for Special Education Services, (4) Individualized Education Program (IEP), and (5) annual review/reevaluation.

Q. What is the first step in the special education process?

A. If a student is suspected of having a learning disability that requires special education, the student's parent, teacher, doctor, or other professional involved in their education may refer the student to a multidisciplinary team called the Committee on Special Education or the Committee on Preschool Special Education for evaluation. A student over the age of 18 and under the age of 21 who is an emancipated minor may refer him or herself. The Committee will then arrange for an evaluation of the student's abilities and needs.

Q. What decisions must a student's school make in the special education process?

A. As part of the referral process, the district must provide you with written information (notice), informing you of the actions that the school wants to take. This includes deciding that you do not need to be evaluated for special education. If the school wants to proceed with the evaluation, written consent of a parent or guardian (or of the student if he or she is over the age of 18) is needed.

Q. What evaluation must your school perform?

A. If the referral process indicates that you may need special education and related services, the school must do a full and individual evaluation to determine if the student has a

disability and needs special education services. The results of an evaluation help determine if special education services or programs are needed. An evaluation includes various assessment tools and strategies. These tests determine what the student's learning difficulties may be and how those difficulties affect his or her participation and progress in the general education curriculum.

Q. What is the Committee on Special Education (CSE)?

A. The CSE meets at least once a year to develop an Individual Education Program (IEP) for all students with disabilities. Student's parents are members of the CSE committee and their participation is vital to developing students' education programs. If the CSE committee determines that a student has a disability and needs special education services, the parent(s) or guardian(s) (or the student him or herself, if they are over the age of 18) will be asked to give written consent for the school to provide such special education. As long as a student receives special education, there will be a CSE meeting held at least once a year to develop the student's individual education program. For more information on the CSE, consult: <https://www.schools.nyc.gov/learning/special-education/help/committees-on-special-education>.

Q. What is the Individual Education Program (IEP)?

A. The IEP is a comprehensive written plan designed specifically for individual students. It includes information about the student's unique abilities and needs, and addresses the student's need for special services. In other words, it is an agreement between the school and the student's parents that addresses how the student will be educated. The IEP must be reviewed at least annually. More information about the IEP can be found at: <https://www2.ed.gov/parents/needs/speced/iepguide/index.html>.

Freedom of Speech Rights at School

Q. Do you have a right to express your opinions and beliefs in school?

A. Yes. The Supreme Court's decision in *Tinker v. Des Moines Independent Community School District* held that students in public schools do not "shed their First constitutional rights to freedom of speech or expression at the schoolhouse gate." This means that students' right to free speech is protected under the First Amendment, and therefore students can express their opinions in writing or orally so long as the expression does not cause a material and substantial disruption in the classroom or on school grounds.

Q. What are the limits on your freedom of speech?

A. While students' right to free speech is protected under the First Amendment, courts recognize a few narrow categories of free speech that schools may restrict. These categories include: (1) speech that is verbally abusive (harassment), (2) speech that promotes illegal drug use or that is lewd and profane, and (3) speech where school officials can show facts that reasonably lead them to conclude that the speech will cause an actual, substantial disruption to the school's operation. If you are making a threat at school or outside of school, you are not protected under the Freedom of Expression Clause.

Q. Is students' free speech protected in cyberspace?

A. Yes. Students' right to free speech is protected in cyberspace. This includes writing an email, creating a homepage, or posting in a chat room. However, use of these electronic devices to harass or bully your classmates or school administrators, or to make threats or libel someone, is not protected speech and can lead to discipline or even civil or criminal liability. (See Chapter 23, Detentions, Searches and Criminal Arrests.)

Q. Does the school have a final say on material in a school-sponsored newspaper?

A. If you are producing a school-sponsored newspaper where the newspaper bears the school's name, uses significant school resources, is designed by the school to be a learning experience, or has a faculty advisor, then the school has the final say over what can and cannot be published. However, the decision to remove a topic must be based upon a valid educational purpose. An article cannot be removed from the school newspaper simply because the administration disagrees with the views expressed. In addition, if the school uses the newspaper as an open forum for all students' views, then the school gives up control over the content of the newspaper.

Q. Does the school have a final say on a student-run newspaper?

A. If you have a student-run newspaper that does not use any school resources but is handed out at school, then the school does not have a final say about the content of your paper as long as the paper is not "indecent" and you do not "materially and substantially" disrupt school activities. The school may also place reasonable limits on when, where, and how the newspaper is distributed.

Q. Are you allowed to criticize their teacher in their own publication?

A. Yes, students are allowed to criticize their teachers as long as the criticism is true. However, a student cannot print something that they know or should know is not true or constitutes bullying or harassment.

Q. Is a dress code allowed in school?

A. Yes. Courts have allowed schools to place boundaries on attire in school, with codes covering topics including the length of skirts and shirts and prohibiting clothing with sexual or obscene messages or gang-related apparel.

Q. Are students required to say the pledge of allegiance?

A. No. Students may not be compelled to recite the pledge of allegiance. The First Amendment protects a student's right not to engage in certain speech. It is a violation of students' First Amendment rights for a school to make a student say something that they do not want to say. You have the right to remain silent during the pledge of allegiance.

Q. Can students be searched in school?

- A. Yes. Students can be searched in school but, as a general matter, their constitutional rights do not stop at the school door. Due to the special responsibilities of school officials to protect the well-being of the young people in their care and custody, the courts apply a different standard when reviewing school search cases from that of “probable cause,” which applies to searches of persons in other circumstances. In general, a search of a student is justified if there is a “reasonable suspicion that a search will produce evidence that the student is violating the law or a school rule.” Whether a search is considered reasonable depends upon whether the scope of the search was justified in the first place and whether it was “excessively intrusive in light of the age and sex of the student and the nature of the infraction.” For example, a school official’s search for a weapon can be more intrusive than a search for a missing cell phone.

In general, the constitutional rights of minors can be limited more than those of adults.

Rights When Suspended

Q. What disciplinary measures may be imposed when a student misbehaves in school in NYC?

- A. The New York City Department of Education offers citywide age specific standards called the Discipline Code for disciplining students who misbehave. The Discipline Code explains what kinds of behaviors are unacceptable and lists the disciplinary and intervention measures that may be used to respond to a student’s misbehavior. Allowable disciplinary measures range from school staff admonishing a student to a teacher scheduling a parent conference or removing the student from the classroom for up to four days. If a student is removed from class, he or she will be sent to a location inside the school where he or she will continue to receive educational services, including classwork and homework. As a last resort, a student may be suspended by his or her Principal or Superintendent. To review the discipline code, visit: <https://www.schools.nyc.gov/school-life/know-your-rights/discipline-code>.

Q. Under what circumstances may a Principal suspend a student in NYC?

- A. A Principal may suspend a student from school for up to five days for disorderly or disruptive conduct, or conduct that presents a clear and present danger of physical injury as authorized by the Discipline Code. This is known as a *principal’s suspension*.

Q. What must a Principal do to suspend a student in NYC?

- A. A student must be given notice of the charges and if the student denies the charges, the student must be provided with an explanation of the basis for the suspension. Any charges against a student must specify date, time, place and a brief but exact description of the incident. The student’s parent or guardian must be provided with written notice of the suspension immediately (within 24 hours) and where possible, by telephone. The principal must set up a conference with the student’s parent or guardian within five days of the parent receiving notice of the suspension. The parent must be provided the opportunity to explain

the student's version of events and to question a school official who is familiar with what happened. The student must remain in class until after the principal's conference with the parent unless the principal believes that the student's presence in school poses a continuing danger or threat of disruption to the academic process or property. A suspended student must be provided with alternative instruction.

Q. What must be done to suspend a special education student in NYC?

A. If a special education student is suspended, the Chancellor's Regulation provides that alternate instruction must be provided by the DOE. When a student with an IEP is suspended for more than 10 days (consecutively or as a cumulative pattern), the DOE must perform a Functional Behavior Assessment (FBA), or review an FBA conducted previously, and conduct a Manifestation Determination Review (MDR), as well as prepare or review a Behavioral Intervention Plan (BIP). For more details, see <http://www.nyc.gov/html/acs/education/discipline.html>.

Q. Can a student be suspended for longer than five days in NYC?

A. Yes. Suspension of a student from school for more than five days is called a *Superintendent's suspension*. This is because suspensions that exceed five school days must be approved by the superintendent of the school district. A Superintendent's Suspension is often sought for more serious offenses (level 3-5 offenses) as listed in the Discipline Code and can last for up to one year.

Q. What must be done to suspend a student for more than five days in NYC?

A. A Superintendent's hearing must be held to decide whether a student will receive a long-term suspension. The parent or guardian and the student must receive a copy of a notice explaining his or her rights at the hearing and the date of the hearing. Following a hearing before the Superintendent or the Superintendent's designee (representative), a student may be suspended from school for more than five days. Alternative instruction must be arranged by the school and may be arranged through an offsite location that provides a full day program for elementary and middle school students and a two-hour program for high school students. The student's parent or guardian must receive written notice that includes a statement of the charges and the date of the infraction. The student's parent may request a copy of the "suspension packet" which includes copies of witness statements and other evidence in addition to the student's school records and IEP (if applicable).

Q. What rights does a student have at a Superintendent's hearing in NYC?

A. At a Superintendent's hearing, only "substantial and competent evidence" can be used to prove the charge. The school must present people to testify who have first-hand knowledge of the incident, such as student witnesses, teachers, or security agents. If the school does not bring a complaining witness or eyewitness, the charges should be dismissed. A student can be represented by a lawyer, but the school is not required to provide one. A student has the right to obtain a transcript or tape recording of the hearing and may appeal the decision to the Department of Education. A student should ask for a copy of the suspension packet for their own record.

Q. What rights does a student have if he or she is suspended for more than five days in NYC?

A. A student is entitled to alternative instruction during a Superintendent’s suspension.

Q. Can physical force be used against students in schools in New York State?

A. The use of physical force to punish a student is known as corporal punishment. The Rules of the New York State Board of Regents and the Commissioner’s Regulations prohibit the use of corporal punishment in New York State. However, the Regents’ Rules do not prohibit the use of reasonable physical force by school staff when necessary to protect themselves or another from physical injury, to protect the property of the school or others, or to restrain or remove a student who refuses to comply with a request to stop being disruptive.

Bullying

Q. What is bullying?

A. Bullying behavior is not always easy to define. Teasing, like bullying, can cause feelings of anger or embarrassment. However, teasing is less cruel than bullying and is usually done with humor rather than with intent to hurt or harm. Teasing often consists of an exchange between people rather than a one-sided dose of intimidation. Generally, bullying happens when someone hurts or scares another person on purpose, and the person being bullied has a hard time defending himself or herself. An example is Cyberbullying, discussed later in this chapter. Also, bullying often happens over and over. (See Chapter 9, Sexual Harassment.)

Q. What is cyberbullying?

A. Cyberbullying is the practice of electronic harassment through the use of electronic technology, such as social media, cell phones, computers or tablets, to communicate intimidating or threatening messages or emails, spread rumors, or send embarrassing pictures, videos, websites, or fake profiles.

Q. Are bullying and cyberbullying illegal?

A. Yes. The State of New York has an anti-bullying law that prohibits harassment, bullying and discrimination. (See Chapter 23, Detentions, Searches and Criminal Arrests.) It also requires all public and charter schools to operate under the anti-bullying policy, which includes a prohibition on bullying and harassment.

Q. How does New York anti-bullying laws define bullying and cyberbullying?

A. According to New York anti-bullying laws and regulations, harassment, bullying and cyberbullying are defined as follows: “‘Harassment’ and ‘bullying’ shall mean the creation of a hostile environment by conduct or by threats, intimidation or abuse, including cyberbullying, that (a) has or would have the effect of unreasonably and substantially

interfering with a student’s educational performance, opportunities or benefits, or mental, emotional or physical well-being; or (b) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; or (c) reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student; or (d) occurs off school property and creates or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property. Acts of harassment and bullying shall include, but not be limited to, those acts based on a person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex. For the purposes of this definition the term “threats, intimidation or abuse” shall include verbal and non-verbal actions. ‘Cyberbullying’ shall mean harassment or bullying as defined in subdivision seven of this section, including paragraphs (a), (b), (c) and (d) of such subdivision, where such harassment or bullying occurs through any form of electronic communication.” NY CLS Educ § 11 (2012). Visit the following website for more resources: <https://www.stopbullying.gov/resources/laws/new-york>.

Q. How does bullying happen?

A. Bullying happens in many ways, such as punching, shoving and other acts that hurt people physically; spreading bad rumors about people; talking about people in a mean way, such as name calling, constant mocking and laughing at another person’s expense; and getting certain people to “gang up” on other people. Bullying can also happen by computer or cellphone (cyberbullying). Cyberbullies use technology like email, instant messaging, internet chat rooms, blogs and electronic cell gadgets, such as camera cellphones, to spread hurtful images or messages about someone.

Q. What other types of bullying are there?

A. Sexual bullying involves unwanted physical contact of a sexual nature and/or inappropriate comments of a sexual nature. (See Chapter 9, Sexual Harassment.) Racist/ethnic bullying involves racial or ethnic slurs, offensive gestures and/or jokes about someone’s race or ethnic traditions. Stalking occurs when a person repeatedly follows or harasses another person and makes threats, causing the person who is being followed to fear death or bodily injury.

Q. What are the policy requirements for schools to prevent and respond to bullying behavior?

A. New York school districts are required to establish and implement policies and procedures to create a school environment that is free from harassment, bullying, and discrimination. Some key policy and procedural elements of school district policies include, but are not limited to: (1) implementing procedures for reporting, investigating, and documenting incidents of harassment, bullying, and discrimination, (2) designating a school employee responsible for receiving such reports, (3) implementing preventative measures against harassment, bullying and discrimination and take prompt actions reasonably calculated to end suspected harassment, bullying or discrimination, and (4) requiring notification of law

enforcement for any incident of harassment, bullying, or discrimination that constitutes criminal conduct. Visit the following website for more resources: <https://www.stopbullying.gov/resources/laws/new-york>

Q. What should you do if you are being bullied?

A. If you are being bullied, always tell an adult such as your parent or guardian. Also, tell a teacher, principal, coach, or other school personnel because they can help stop the bullying.

Q. What can you do to help prevent bullying?

A. Stay in a group or use the buddy system as bullies often like to pick on people who are by themselves a lot. Although bullying does take place in front of others, a buddy may help deter the bully. You can plan to buddy up with a friend or two on the way to school, on the bus, in the hallways or at recess or lunch or wherever you think that you might meet up with the bully. Do the same for a friend who is having trouble with a bully. If you are being bullied online, do not reply, as a reply may make the bullying worse. Make sure to tell an adult and block any more communications from a bully. Save evidence of any online bullying (print it out) so that you can show an adult. If you witness bullying as a bystander, report the bullying to an adult and support the person being bullied.

Rights at Work

Q. Can minors be employed?

A. Minors must obtain an employment certificate, known as working papers, before they may work. Generally working papers are available to those who are 16 and 17. Non-factory working papers are available to those who are 14 and over.

Q. Can minors leave school to work full-time?

A. Generally, minors under 16 years old must attend full-time school. High school graduates, regardless of age, are not required to continue attending school, however they must provide an employer with working papers until they turn 18.

Q. Can minors be employed without working papers?

A. There are many exceptions to the rule that minors require working papers. Minors who are at least 12 years old may work for their parents on non-commercial outdoor work assist with selling produce either at a farmers' market stand owned by a close family member or guardian or from a farm owned by a close family member or guardian, or as a bridge caddie without working papers. Minors who are at least 14 years old may be employed without working papers before or after school as babysitters, yard workers, household workers and caddies on golf courses. When not required to be in school, minors who are at least 16 years old may work on farms without working papers. Also, minors may work in the school cafeteria during lunch hours without working papers. If the minor is in college, he or she may work for a fraternity, sorority or the college he or she attends without working papers.

Q. Are there other circumstances when minors can work?

A. Special working papers are available in the following circumstances: newspaper carriers who are at least 11; produce pickers who are 12 or 13; street trade workers, such as shoeshiners, who are at least 14; farm workers who are 14 and 15; and child models and performers under the age of 18.

Q. How do I obtain working papers?

A. You can obtain working papers from your school or from the Superintendent of schools in your area. New York City requires a student to fill out the New York State application available on the NY State Education Website (<http://www.p12.nysed.gov/sss/pps/workingpapers/>) and submit it to the designated person in their high school or middle school. Applications must include a certified birth certificate, baptismal record, passport or other evidence of age; the document must have been in existence for at least two years. Written consent of a parent or guardian is also required and a certificate of physical fitness must be submitted. In New York City, a 16-year-old who is leaving school permanently must have a pledge of employment signed by the prospective employer that shows the number of work hours per day and days per week and the nature of the work to be done. All minors who apply for full-time jobs must forward school records and, if the minors are still in school, their parent(s) must appear in person to sign the employment certificate.

Q. How much must minors be paid?

A. Under the Minimum Wage Act, all employees in New York State, including minors, must be paid at least \$12.50 per hour. However, there are numerous exceptions based on industry and location that require a higher minimum wage, which may increase the minimum up to \$15 per hour. After 2021, the New York State Department of Labor may make additional increases. And if the federal minimum wage is higher, minors must receive the higher amount. Current New York minimum wage information can be found at: <https://dol.ny.gov/minimum-wage-0>

Q. What if I am paid less than the minimum wage?

A. The New York State Department of Labor helps collect underpayments for workers who have not received the minimum wage. Also, if the federal minimum wage is higher, minors must receive the higher amount. To file a claim, visit: <https://dol.ny.gov/unpaidwithheld-wages-and-wage-supplements>

Q. Must wages be paid directly to a minor?

A. An employer of a minor is required to give the minor's wages to the minor's parents if a written request is made by the parents within the first 30 days of employment. A parent can still make a request after 30 days, but the minor would get to keep what they earned before the request. However, minors have a right to money that legally belongs to them, and if they deposit any money into a bank account then the money can only be used or withdrawn by the minor. For minors who work as performers, their employer is required to put a portion of their earnings into a bank account until they become an adult.

Emancipated Minor's Rights

Q. What does it mean to be an emancipated minor?

A. "Emancipation" is a term that applies to youth between the ages of 16 and 18 who live apart from their parents, do not receive any financial support from them, are not in foster care, and have a job as their main source of income. In New York, there is no emancipation statute and no such thing as a court-ordered declaration of emancipation. However, the law still recognizes the status of an emancipated minor in certain situations where the parent has renounced his or her legal obligations towards the child.

Q. What are some of the pros and cons of being emancipated?

A. If you are emancipated from your parents, you will have to pay for and find a place to live, pay for your own health care and buy and cook your own food. It is important to remember that if the minor is emancipated, the minor cannot demand food, clothing and shelter from his or her parents. However, every situation is unique and there are some circumstances under which becoming emancipated from your parents could be a good idea. For example, if you are legally married or financially independent, or if your parents are abusive, neglectful, or harmful to you, establishing emancipation could be beneficial.

Q. How do I know if I am emancipated?

A. New York State does not have an emancipation statute, but there are factors used to determine if a minor, over the age of 16, is in fact emancipated. These factors include: whether or not the minor lives apart from his or her parents and does not intend to return home; whether or not the minor is dependent on his or her parents for food, shelter, clothing or other necessities; and whether or not the minor supports himself or herself and manages his or her own financial affairs. Minors who are married are automatically emancipated, as are minors who are in the military.

Q. What rights does an emancipated minor have?

A. After establishing emancipation, the minor can retain his or her own wages, can sue for parental support if the parent forced the minor to leave the home, can establish his or her own legal residence, can attend school where he or she establishes his or her residence, and can consent to medical care without parental consent. In addition, the emancipated minor may be able to receive public assistance through a shelter allowance, Medicaid, and SNAP benefits, depending on eligibility. An emancipated minor may be able to file for federal student aid as an independent minor, which eliminates the need to include parental income in the FASFA application.

Q. Does an emancipated minor have adult status in all areas?

A. No. Even if emancipation is established, the minor is not treated as an adult in all situations. For example, the minor is not allowed to vote, cannot bring a lawsuit on his or her behalf, must get parental consent for working papers, cannot get a learner's parent or driver's license without parental consent, and cannot join the military without parental consent.

Moreover, the age and consent requirements for marriage still apply even if the minor is emancipated.

Useful Websites:

A Parent's Guide to Special Education in New York State Ages 3-21
<http://www.p12.nysed.gov/specialed/publications/policy/parentsguide.pdf>

EricDigests.org – Educational Articles
<http://www.ericdigests.org>

KidsHealth
<http://www.kidshealth.org>

New York Anti-Bullying Laws & Policies
<https://www.stopbullying.gov/resources/laws/new-york>

New York City Career Centers: Workforce 1
<https://dol.ny.gov/location/nyc-workforce-1-career-center>

New York City Department of Education – K-12 Student Bill of Rights
<https://www.schools.nyc.gov/get-involved/students/student-bill-of-rights>

New York State Department of Education – Application for Working Papers
<http://www.p12.nysed.gov/sss/pps/workingpapers/>

New York State Department of Education – Student Support Services
<http://www.emsc.nysed.gov/sss/>

New York State Department of Labor – Laws Governing the Employment of Minors
[https://dol.ny.gov/laws-governing-employment-minors-p882#:~:text=Minors%20under%2016%20years%20of,is%20later\)%%20and%205%20AM.](https://dol.ny.gov/laws-governing-employment-minors-p882#:~:text=Minors%20under%2016%20years%20of,is%20later)%%20and%205%20AM.)

New York State Department of Labor – Minimum Wage
<https://dol.ny.gov/minimum-wage-0>

New York State Department of Labor – Unpaid or Withheld Wages
<https://dol.ny.gov/unpaidwithheld-wages-and-wage-supplements>

Students' Rights
<https://www.aclu.org/know-your-rights/students-rights/>

Students' Speech Rights at School
<https://www.lambdalegal.org/know-your-rights/article/youth-speech-rights>

U.S. Health Resources and Services Administration – Stop Bullying on the Spot
<https://www.hrsa.gov/behavioral-health/stop-bullying-spot>

[Citywide Behavioral Expectations to Support Student Learning Grades 6-12 \(Sept. 2019\)](https://www.schools.nyc.gov/docs/default-source/default-document-library/discipline-code-grade-6-12-english)
<https://www.schools.nyc.gov/docs/default-source/default-document-library/discipline-code-grade-6-12-english>

CHAPTER 8

WOMEN'S RIGHTS

Q. When did American women achieve the right to vote?

A. The 19th Amendment was passed and approved by the U.S. Senate in June 1919 and was ratified August 1920. On August 26, 1920, the 19th Amendment to the U.S. Constitution took effect and guaranteed women the right to vote everywhere in the United States.

Q. When did married, American women become entitled to own property?

A. During the 19th century, some women began to challenge state laws that denied them the right to own property after they married. The states, one by one, responded to this movement and enacted laws allowing married women to own separate property. For example, Mississippi passed a law in 1839, followed by New York in 1848 and Massachusetts in 1855.

Q. How are women protected in the workplace?

A. Title VII of the Civil Rights Act, passed by Congress and signed into law in 1964, bars discrimination in any aspect of employment on the basis of sex (as well as other categories). This includes hiring, firing, pay, promotions, and assignments. Sex discrimination means treating a woman applicant or employee unfavorably because of her sex or harassing a woman because of her sex. (See Chapter 9, Sexual Harassment.) Title VII is administered and enforced by the U.S. Equal Employment Opportunity Commission (<http://www.eeoc.gov> or 1-800-669-6820).

Q. Are women entitled by law to receive equal pay in the workplace?

A. Yes. The Equal Pay Act of 1963 prohibits sex-based wage discrimination between men and women in the same workplace. The law provides that men and women who perform jobs that require substantially equal skill, effort and responsibility under similar working conditions are entitled to equal pay. The Equal Pay Act is administered and enforced by the U.S. Equal Employment Opportunity Commission (<http://www.eeoc.gov/> or 1-800-669-6820).

Q. Are there additional protections for pregnant women?

A. Yes. The Pregnancy Discrimination Act of 1978 (which amends Title VII of the Civil Rights Act of 1964) prohibits discrimination in any aspect of employment against pregnant women because of pregnancy, childbirth, or disabilities related to pregnancy or childbirth. Under the Act, a woman cannot be fired or denied a job or a promotion because she is or may become pregnant, nor can she be forced to take a pregnancy leave if she is willing and able to work. It is also unlawful to harass a woman because of pregnancy, childbirth or disabilities related to pregnancy or childbirth.

The Family Medical Leave Act (FMLA) of 1993 is also a federal law requiring covered employers to provide employees with job-protected, unpaid leave for qualified medical and family reasons. A pregnant woman can take FMLA leave for incapacity due to pregnancy (for instance, severe morning sickness that renders her unable to go to work), for prenatal care, to recover from childbirth, or for other serious health conditions related to pregnancy, such as a miscarriage.

Additionally, New York state provides legal protections for pregnant women. Under New York law, employers are required to provide accommodations for pregnancy-related medical conditions, unless the accommodation would place an undue burden on the employer. Example accommodations include occasional breaks to rest or drink water, a modified work schedule, leave for related medical needs, available light duty assignments, and transfers away from hazardous duty.

Q. How are female students protected from sex discrimination in schools?

A. The U.S. Constitution's 14th Amendment Equal Protection Clause protects female students from sex discrimination by public Schools and other government actors.

Title IX of the Education Amendments of 1972 bans sex discrimination in schools. It requires that schools provide opportunities for female students that are equal to the opportunities available to males. All programs and activities at schools, including academic, recreation, physical education, and athletics, must operate in a non-discriminatory manner. The United States Department of Education Office for Civil Rights enforces Title IX and female students can file a complaint with this office if they feel they are a victim of sex discrimination at school (<http://www.ed.gov/ocr>, OCR@ed.gov or 1-800-421-3481). (See Chapter 7, Rights at School, at Work and as Emancipated Minors.)

Q. What should a woman do if she feels that she has been discriminated against?

A. If a woman feels she has been discriminated against in employment, housing, education, credit, or access to public accommodations, she can file a complaint with the New York City Commission on Human Rights (<https://www1.nyc.gov/site/cchr/about/report-discrimination.page> or 1-212-416-0197) or the New York State Division of Human Rights (<https://dhr.ny.gov/complaint> or 1-888-392-3644). She can also file a complaint based on employment discrimination with the U.S. Equal Employment Opportunity Commission (<https://www.eeoc.gov/how-file-charge-employment-discrimination> or 1-800-669-4000).

The EEOC and some FEPAs (states and local agencies that enforce laws prohibiting employment discrimination, which the EEOC refers to as Fair Employment Practices Agencies, or FEPAs) have work-sharing agreements in place to prevent the duplication of effort in charge processing. According to these agreements, if you file a charge with either EEOC or a FEPA, the charge also will be automatically filed with the other agency. This process, which is defined as dual filing, helps to protect charging party rights under both federal and state or local law. If you file a charge at a state or local agency, you can let them know if you also want your charge filed with the EEOC.

Q. Are there laws that protect women against rape?

A. Yes. State criminal laws provide for the prosecution of rape. Additionally, the Violence Against Women Act of 1994 imposes federal penalties on sex offenders, funds services, increases protections for victims of rape and domestic violence, and provides special training for police officers. The Act, originally passed in 1994, was reauthorized and expanded in 2013.

Q. What should you do if you are raped?

A. First, get to a safe place. To report the crime, notify the police immediately. Call a friend, family member or someone else you can trust who can help support you. Preserve all physical evidence – for example, do not shower, bathe, brush your teeth, eat or drink – and get medical care as soon as possible. Even if you do not have physical injuries, the medical exam will help preserve evidence of the assault. Write down as much as you can remember about the incident. Talk with a counselor who is trained to assist rape victims. For more information, see <https://www.rainn.org> and <https://www.plannedparenthood.org/learn/relationships/sexual-consent/what-should-i-do-if-i-or-someone-i-know-was-sexually-assaulted>

Q. Is abortion legal in the United States?

A. The legality of abortion depends on the state in which you are seeking an abortion in the United States. A case called *Roe v. Wade* decided by the U. S. Supreme Court in 1973 established, pursuant to protection under the U.S. Constitution, a woman’s right to a safe and legal abortion until the fetus is “viable,” *i.e.*, about six months into the pregnancy. In *Planned Parenthood v. Casey*,² decided in 1992, the Supreme Court reaffirmed a woman’s right to abortion, but allowed states to regulate the procedure so long as these regulations do not impose an undue burden on a woman. For example, the *Planned Parenthood* decision found that a 24- hour waiting period did not impose an undue burden on a woman’s right to an abortion. But in June 2022, the Supreme Court decided *Dobbs v. Jackson Women’s Health Organization*, which overturned *Roe v. Wade* by holding that there was no constitutionally protected right to abortion in the United States.

As a result of *Dobbs*, the issue of whether abortion is legal was left up to each individual state to decide. After the *Dobbs* decision was issued, a number of states immediately enacted laws that either severely limit or ban abortion in their respective states. In anticipation that *Roe* might eventually be overturned, several states had already passed “trigger laws” through their respective legislatures. These trigger laws went into effect after the *Dobbs* decision was issued. This issue remains in flux throughout the states, so individuals seeking an abortion should make sure to educate themselves on their state’s most recent legislation concerning abortion access. As of the publication of this Manual, the states that have effectively banned all instances of abortion include Alabama, Arkansas, Missouri, Mississippi, Louisiana, Oklahoma, and South Dakota. A number of other states protect access to abortion, either through their own state constitution or enacted laws. As of the publication of this Manual, the states that have enacted legislation to protect access to abortion or have recognized the right to abortion under their state constitution include

California, Connecticut, Illinois, Hawaii, New Jersey, New York, Oregon, Vermont, and Washington.

In New York state, while laws protecting abortion have been in effect since 1970, the legislature has yet to amend the New York state constitution to ensure that the right to abortion is guaranteed under the state constitution. On July 1, 2022, the New York state legislature passed an initial measure that, if fully enacted, would amend the New York state constitution to protect access to abortion and contraception.

For more information on abortion access in individual states, visit: <https://reproductiverights.org/maps/what-if-roe-fell/>

Q. What is meant by a woman’s reproductive rights?

A. Reproductive rights refer to the rights to decide freely the number, spacing, and timing of children and to have the information and means to do so. Reproductive rights also include the right to make decisions concerning reproduction free of discrimination, coercion and violence.

Q. How can women learn about reproductive choices?

A. School health clinics, physicians, hospitals, and organizations such as the Center for Reproductive Rights and Planned Parenthood can provide information. In light of the politicization of abortion access, when searching for organizational resources on reproductive choices, always make sure you are consulting with a trusted organization that focuses on offering you non-biased, legitimate medical advice.

Government Agencies:

United States Equal Employment Opportunity Commission
<http://www.eeoc.gov>

New York State Division of Human Rights
<http://www.dhr.ny.gov>

New York City Commission on Human Rights
<http://www.nyc.gov/cchr>

Office for Civil Rights, U.S. Department of Education
<http://www.ed.gov/ocr>

Office for Civil Rights, U.S. Department of Health and Human Services
<http://www.hhs.gov/ocr>

Office of Fair Housing, U.S. Department of Housing and Urban Development
<http://www.hud.gov/fairhousing>

Useful Websites:

Center for Reproductive Rights
<http://www.reproductiverights.org>

Planned Parenthood
<http://www.plannedparenthood.org>

“Women’s History in America Presented by Women’s International Center”
<http://www.wic.org/misc/history.htm>

An Overview of Abortion Laws, State Policies in Brief
http://www.guttmacher.org/statecenter/spibs/spib_OAL.pdf

CHAPTER 9

SEXUAL HARASSMENT

Q. What is sexual harassment?

- A. Unwelcome sexual advances or conduct of a sexual nature that creates a hostile environment are two forms of sexual harassment. While “hostile work environment” is a legal term of art, meaning that the courts have curated a specific meaning for this phrase, there are some behaviors that are typically found to create a hostile work environment. These behaviors include: unwanted touching of a sexual nature; inappropriate comments about a co-worker or fellow student’s clothing, appearance or physique; display or distribution of sexually explicit pictures or writing; jokes of a sexual nature; and speculation or rumors regarding a student’s or co-worker’s sexual habits, sexual orientation or history. If you are being harassed simply because you are a male or female, this can be sexual harassment as well. To be considered the cause of a hostile environment, the conduct must be severe or constant enough to create an environment that a reasonable person would consider intimidating, hostile, or abusive. Harassment may also involve threats of violence and blackmail for coerced sex acts.

Another type of sexual harassment occurs when the victim is offered a benefit, such as a promotion or a raise, in exchange for complying with a sexual advance, or when the victim is threatened with suffering a consequence, such as a bad performance evaluation, if the victim refuses to comply with the sexual advance. In a school setting, an example would be a teacher offering a good grade in exchange for a sexual favor or threatening a bad grade if the favor is withheld.

Sexual harassment can be spoken, written, or physical. It can be directed at a specific individual or pervasive throughout the environment.

Q. Who can be a victim of sexual harassment?

- A. Anyone can be a victim of sexual harassment, male or female, young or old. Victims can be of the same or the opposite sex of their harasser. In many, but not all, instances of sexual harassment, the harasser may be in a more powerful position than the victim.

Q. Where can sexual harassment occur?

- A. Sexual harassment can occur anywhere, but in American law, sexual harassment usually refers to behavior in the workplace, school, or other setting where objecting to the conduct can have negative consequences.

Q. What laws protect against sexual harassment?

- A. In the workplace, sexual harassment is prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, as well as by state law. In educational settings, it is banned by Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681 *et seq.*

Q. What should I do if I am the victim of sexual harassment at work?

A. Your employer should have a policy telling you how to report sexual harassment. You can also ask the person harassing you to stop, or if you feel uncomfortable doing that, tell your supervisor or the harasser's supervisor about the unwelcome behavior. If possible, keep a written log of all instances of sexual harassment and the dates on which they occurred.

Q. Who can I complain to if my employer will not take action?

A. You may complain to the Equal Employment Opportunity Commission (EEOC) (<http://www.eeoc.gov> or 1-800-669-4000), the New York State Division of Human Rights (<https://dhr.ny.gov/> or 1-718-741-8400) or the New York City Commission on Human Rights (<http://www.nyc.gov/html/cchr> or 1-212-306-5070) – but not all three – if the sexual harassment occurs at work. There are strict time limits for filing a complaint, so it is important to report the incident as soon as possible after the harassment occurs.

Q. Can my employer fire me if I complain?

A. No. Employers are prohibited by federal and state law from retaliating against an employee for an honest complaint of sexual harassment, even if the complaint is ultimately found to be meritless. This means that your employer cannot unfavorably change the terms and conditions of your employment (for example, fire you or demote you) as a result of your reporting sexual harassment or cooperating with an investigation of a sexual harassment complaint or lawsuit.

Q. What can I do about sexual harassment at school?

A. Sexual harassment is a serious problem at all levels of the educational system, from elementary school through college. Harassment can occur anywhere, including in the classroom, playground, dormitory, and cafeteria, during sports and other extracurricular activities. The U.S. Department of Education Office for Civil Rights (OCR) (<http://www.ed.gov/ocr> or 1-646-428-3900) is the federal agency charged with preventing sexual harassment in the academic environment. The OCR requires schools to develop specific policies clearly stating that sexual harassment is unacceptable and also requires schools to develop grievance procedures to resolve sexual harassment complaints.

Q. If I think I have been sexually harassed at school, what are my options?

A. You should immediately report the harassment to a responsible school official and your parents. If you feel comfortable doing so, you can inform the harasser that his or her conduct is unwelcome and should stop. You may also file a complaint with the school and use the school's internal grievance procedure, which may be found on the school's website or printed code of conduct.

Q. Who can I complain to if my school will not take action or I am not satisfied with my school's response?

A. If you are not satisfied with the school's resolution of the issue, you may file a complaint with the OCR. Usually, OCR complaints must be filed within 180 days of the last occurrence of harassment. You may also consider filing a complaint with the New York State Division of Human Rights or the New York City Commission on Human Rights.

Q. Should I contact the police if I believe I am a victim of sexual harassment?

A. If the harassment involves physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. If you believe you have been the victim of a crime, you should file a report at your local police precinct.

Useful Websites:

United States Equal Employment Opportunity Commission
<http://www.eeoc.gov>

New York State Division of Human Rights
<http://www.dhr.ny.gov>

New York City Commission on Human Rights
<http://www.nyc.gov/html/cchr>

Office for Civil Rights, U.S. Department of Education
<http://www.ed.gov/ocr>

CHAPTER 10

RIGHTS AND CONCERNS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER, QUEER AND INTERSEX (LGBTQI+) NEW YORKERS

Q. Is there a law in New York prohibiting discrimination against people on the basis of their sexual orientation?

A. Yes. There are city, state, and federal laws making it illegal to discriminate against people on the basis of their sexual orientation in areas such as employment, housing, public accommodations, education, and credit. The statewide law, known as the Sexual Orientation Non-Discrimination Act (SONDA), was initially introduced in the New York State Legislature in 1971 and passed in 2002. New York City has had a similar law in place since 1986. Federal law, specifically Title VII of the Civil Rights Act of 1964 (Title VII), also prohibits discrimination on the basis of sexual orientation. On June 15, 2020, in the case *Bostock v. Clayton County*, the Supreme Court ruled that Title VII made it illegal for an employer to rely on an employee's sex when deciding to fire that employee. It ruled that "[a]n employer who fires an individual merely for being gay or transgender defies the law." Additionally, the Employment Non-Discrimination Act (ENDA) is a proposed bill in the United States Congress that would specifically prohibit discrimination in hiring and employment on the basis of sexual orientation or gender identity by employers with at least 15 employees. As of the date of this publication, ENDA was passed by the Senate; however, the House of Representative has not yet considered the bill.

Q. Is there a law in New York State prohibiting discrimination against transgender people on the basis of their gender identity or expression?

A. As of the date of this publication, at least thirteen cities (including New York City) and six counties in New York State have enacted local laws prohibiting discrimination based on gender identity and/or expression in areas such as private employment, housing, and public accommodations. These local laws vary in scope. New York City Local Law 3, passed in 2002, prohibits discrimination based on gender identity and expression in areas such as employment, housing, and public accommodation. In January 2019, the State Legislature in Albany passed as the Gender Expression Non-Discrimination Act (GENDA), which added a provision to the State's Human Rights Law prohibiting discrimination against transgender persons throughout the entire state. GENDA prohibits discrimination on the basis of gender identity or expression in all areas covered by the Law and added transgender New Yorkers to those protected by the state's Hate Crimes Law. In addition, SONDA can apply when a transgender person is discriminated against based on his or her or their sexual orientation. While SONDA does ensure protection from discrimination based on sexual orientation, the passage of GENDA in New York extended the State's protections against discrimination on the specific basis of gender identity and expression. At the federal level, the Equal Employment Opportunity Commission recently held that Title VII also prohibits discrimination against transgender people.

Q. Are same-sex couples permitted to marry in New York?

- A. Yes. The Marriage Equality Act, which was signed into law on June 24, 2011, gives same-sex couples the right to marry in New York State.² The law extends to same-sex couples the same rights, responsibilities, and benefits under state and local law that opposite-sex couples have.³

After the ratification of the 14th Amendment, the U.S. Supreme Court heard a number of cases determining if the 14th Amendment establishes inferred or substantive due process rights not enumerated in the Constitution. One of the rights identified by the Court was the fundamental right to marriage. *Obergefell v Hodges* is a landmark case, which the U.S. Supreme Court ruled that the fundamental right to marriage is guaranteed to same-sex couples.

Q. Is there an LGBT Community Center in New York offering youth-related services?

- A. Yes. The LGBT Community Center (208 West 13th Street, between 7th and 8th Avenues—<http://www.gaycenter.org>), is one example. By using the “find groups & services” link, you can find out more about the different groups that meet each week at the Center.

You can also learn about the Center’s Youth Enrichment Services (YES) program on the Center’s website. The YES program is open to lesbian, gay, bisexual, transgender, and questioning young people between the ages of 13 and 21.⁴ Everything in YES is free and confidential. The YES program offers support services, drop-in counseling, creative arts activities, leadership training and peer education, a Safe Schools Campaign, and a week-long Summer Community Camp.

The LGBT Community Center also houses The National Archive of Lesbian, Gay, Bisexual and Transgender History. The website for the archive is <http://www.gaycenter.org/community/archive>.

Q. Is there a place or an organization in New York that offers resources and information for parents and friends of lesbian, gay, bisexual, or transgender people?

- A. Yes. Parents, Families and Friends of Lesbians and Gays NYC (PFLAG—<http://www.pflagnyc.org>) is such a group. It supports the LGBT community and its friends and families. The LGBT Community Center also provides resources and support groups for family and friends of the LGBT community.

2. <http://www.ag.ny.gov/civil-rights/lgbt-rights>

3. *Id.*

4. <http://www.gaycenter.org/youth>

Q. Where can I go for health information and assistance tailored specifically to the needs of LGBT New Yorkers?

A. Some of the leading LGBT health-related and HIV/AIDS service organizations in the world are located in New York City.

Gay Men’s Health Crisis (<http://www.gmhc.org>);
God’s Love We Deliver (<https://www.glwd.org>);
Housing Works (<http://www.housingworks.org>); and
Callen-Lorde Community Health Center (<http://www.callen-lorde.org>).

Callen-Lorde is New York City’s only primary health care center dedicated to meeting the health care needs of the lesbian, gay, bisexual, and transgender communities and people living with HIV/AIDS, regardless of any patient’s ability to pay. Callen-Lorde is welcoming to all, regardless of sexual orientation or insurance coverage.

Useful Websites:

Immigration Equality
<http://www.immigrationequality.org>

Lambda Legal
<http://www.lambdalegal.org>
<http://www.gaycenter.org>

The ACLU LGBT Rights & AIDS Projects
<http://www.aclu.org/lgbt-rights>

Equal Employment Opportunity Commission
<http://www.eeoc.gov>

The Gay and Lesbian Alliance Against Defamation
<http://www.glaad.org>

The Hetrick Martin Institute – Home of the Harvey Milk High School
<http://www.hmi.org>

The Human Rights Campaign
<http://www.hrc.org>

The National Center for Lesbian Rights
<http://www.nclrights.org>

The National Gay and Lesbian Task Force
<http://www.thetaskforce.org>

The New York City Commission on Human Rights
<https://www1.nyc.gov/site/cchr/index.page>

The New York City Gay & Lesbian Anti-Violence Project
<http://www.avp.org>

The New York State Attorney General, Civil Rights Bureau
<http://www.ag.ny.gov/bureau/civil-rights>

The New York State Division of Human Rights
<http://www.dhr.ny.gov>

The Service Members Legal Defense Network
<http://www.sldn.org>

The Sylvia Rivera Law Project
<http://www.srlp.org>

CHAPTER 11

HATE CRIMES LAW

Q. What is a hate crime?

- A. A hate crime is a crime involving violence, intimidation, or destruction of property where the victim is targeted because he or she belongs to a certain social group. People who commit hate crimes are motivated by bias and prejudice, and they usually target a victim based on race, gender, gender identity or expression, age, disability status, sexual orientation, or religion. It is important to remember that there must always be an underlying crime for an act to qualify as a hate crime. In the context of a criminal act, a hate crime requires criminal intent that the victim was targeted based on an immutable characteristic such as race or gender.

Q. Do hate crimes violate federal law or state law?

- A. Yes. Hate crimes can be prosecuted under federal law and state law. At the federal level, hate crimes are prosecuted under the Civil Rights Act of 1968, the Violent Crime Control and Law Enforcement Act of 1994, and the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009.⁵ In New York State, hate crimes are prosecuted under the New York State Hate Crimes Law of 2000. Under that law, a person commits a hate crime when he or she targets the victim based on race, color, national origin, ancestry, gender, religion, religious practice, age, disability, or sexual orientation.⁶

Q. If the act in question is already criminal in nature and punishable under the other criminal laws, why are there special hate crimes laws?

- A. Historically certain state crimes, such as murder, were difficult to prosecute on the local level if the crime was racially motivated. If a crime was racially motivated, hate crime legislation allowed certain crimes that were generally just adjudicated on the state level to be brought in federal court.

If a crime is found to be a hate crime, the penalty is increased. This is because crimes that are motivated by prejudice and hate send a strong message of intolerance to all members of the social group to which the victim belongs. Further, according to the New York State Legislature, hate crimes pose a unique threat to public order and safety and disrupt the civility that is necessary for a democratic society to function properly. Essentially, hate crimes are often more severe and far-reaching than other crimes, and they require special treatment and enhanced punishment.⁷

5. 18 U.S.C. § 245 (b)(2)(1968); 28 U.S.C. § 999 note Sec. 280003 (1994); 18 U.S.C. § 245 (b)(2) (2009).

6. N.Y. Penal Law § 485.05 (McKinney 2000).

7. N.Y. Penal Law § 485.00 (McKinney 2000).

Q. Where can I read the actual text of New York’s Hate Crimes Law?

A. You can read the full text at: <https://www.nysenate.gov/legislation/laws/PEN/485.05>

Useful Websites:

New York State Anti-Hate Crime Resource Guide

<https://www.ny.gov/we-are-one-new-york/new-york-state-law-enforcement-hate-crimes-resource-guide>

Anti-Defamation League:

<https://www.adl.org/>

Federal Bureau of Investigation:

<https://www.fbi.gov/investigate/civil-rights>

Human Rights Campaign:

<https://www.hrc.org/resources/hate-crimes>

National Institute of Justice:

<http://www.nij.gov/topics/crime/hate-crime/welcome.htm>

CHAPTER 12

RIGHTS OF PEOPLE WITH DISABILITIES

Q. What is a disability?

- A. There are different kinds of disabilities, including physical disabilities, cognitive disabilities, psychiatric or psychological disabilities, and learning disabilities. Under the law, a person with a disability is someone with a physical or mental impairment that limits one or more major life activities, such as walking, moving, seeing, hearing, speaking, breathing, working, and learning. Conditions such as temporary illnesses, a broken arm, a pregnancy, height, or weight within the normal range are not considered disabilities.

Q. What kind of assistance is available to someone with a disability?

- A. Many services are available to assist people with disabilities, largely depending on the type of assistance needed. This may include help getting around, financial assistance (for medical treatment, housing, or food), special housing or transportation (including special parking permits or wheelchair-accessible buses), interpreters, scholarships, special recreational activities, medical care or discounted medications, and accommodations in school. Such accommodations may range from transportation to school to a separate testing room with a bathroom and extra time for an exam. Eligible children with disabilities under the age of 18 may apply for Supplemental Security Income (SSI) payments.

Q. What is Supplemental Security Income (SSI)?

- A. SSI is a federal monthly benefit paid by Social Security to people with low income and limited resources who are blind, disabled, or 65 years of age or older. A child younger than age 18 can qualify if he or she meets Social Security's definition of disability for children, and if his or her income and resources fall within the eligibility limits. For the eligibility limits, see <https://ssabest.benefits.gov/>. Please check your local Social Security Office for further information about New York State's total SSI payment.

Q. What is the process in applying for SSI?

- A. When a child under age 18 applies for SSI, a number of factors are considered, such as the child's condition, income and resources. The income and resources of family members living in the child's household are also considered. Detailed information about the medical condition and how it affects his or her ability to function on a daily basis are needed to properly assess disability. The Social Security Administration (SSA) will ask permission for the doctors, teachers, therapists, and other professionals who may have information about the child's medical conditions to send such information to SSA. You can apply for Social Security or SSI payments by calling Social Security toll-free at 1-800-772-1213 or by visiting your local Social Security office. You can also visit <https://www.ssa.gov/benefits/disability/apply-child.html> for more information on SSI for Children.

Q. How long does it take to receive SSI benefits and what conditions entitle you to immediate SSI payments?

A. It can take three to five months for the state agency to decide whether or not you satisfy the definition of disabled and therefore qualify for SSI benefits. However, for some medical conditions, SSI payments are made right away while the state agency decides on the application for SSI benefits. Some conditions that may qualify for immediate SSI payments are: HIV infection, total blindness, total deafness, cerebral palsy, down syndrome, muscular dystrophy, severe intellectual disorder (age 7 or older), and birth weight below 2 pounds, 10 ounces.

Q. What is SSI's definition of disability?

A. In order to qualify for SSI, someone must meet all of the following requirements: (1) must not be working or earning more than \$794 a month (this earnings amount may change annually), (2) must have a physical or mental condition, or a combination of conditions that results in "marked and severe functional limitations" (this means that the conditions seriously limit daily activities) and (3) condition(s) must have been disabling or be expected to be disabling for at least 12 months. If one or more of these requirements are not met, then SSA will find that the applicant is not disabled.

Q. What is a mental disability?

A. A mental disability is a cognitive impairment (problems with learning or understanding) or a psychological or psychiatric impairment (emotional problems or mental illness) that substantially interferes with a person's daily life.

Q. What is a psychiatric disability?

A. A psychiatric or psychological disability is an emotional or mental illness that substantially impairs a person's daily life. Psychiatric disabilities refer to a wide range of behavioral or psychological problems that are characterized by mood swings, depression, and anxiety. These behaviors may persist over time, even with medications and psychotherapy.

Q. What is a cognitive disability?

A. Cognitive disabilities come in many forms and can be difficult to recognize. A person with a cognitive disability has difficulty performing mental tasks, such as learning, understanding, or remembering. While a person with severe cognitive disabilities may need help with almost all daily activities, a person with a minor cognitive disability may be so successful at work or school that he or she never discovers the disability. Cognitive disabilities include learning disabilities and problems caused by certain genetic disorders and brain injuries.

Q. What are the genetic disorders and brain injuries (often called developmental disabilities) that cause cognitive disabilities?

A. Genetic disorders and brain injuries that cause cognitive disabilities may also cause physical disabilities. This type of genetic disorder includes Down syndrome, mental retardation, autism, and dementia, among others. A person with a developmental disability may never be able to learn, live alone, make complicated decisions, or perform daily functions in the same way as others. Lifelong assistance may be required.

Q. What is a learning disability?

A. Learning disabilities affect how a person processes information. A person with a learning disability may have a hard time understanding what he or she sees or hears, or he or she may find it difficult to make connections between different pieces of information. Learning disabilities may affect someone's ability to read, speak, or do math. It is a mistake to think someone with a learning disability is "stupid" or "slow" compared to others. People with learning disabilities often do very well in subjects not affected by the learning disability and many highly successful and creative people throughout history have developed ways for managing their learning disabilities. Common types of learning disabilities include dyslexia, a language disability often resulting in writing, reading, or spelling problems, and Attention Deficit Disorder (ADD), a term for a variety of distractibility and concentration problems.

Q. How do I find out if I have a learning disability?

A. If you think you may have a learning disability, start by talking to your parents, a teacher, or a guidance counselor. They can help direct you to the testing, tutoring, or other help that you might need. You can also contact the New York State Education Department (<http://www.nysed.gov> or 1-518-474-3852) for more information.

Q. If I have a learning disability, do I have to go to a special school?

A. It depends on the type and severity of the disability. Students with learning disabilities generally attend regular classes, and once they get the necessary help, may even be able to handle more difficult classwork than before. For students with more severe disabilities, there are special schools and programs designed to meet their individualized needs.

Q. Can I go to college if I have a learning disability?

A. Yes. In fact, there are even financial assistance programs especially for people with learning disabilities. Most colleges and universities have designated offices to coordinate the special needs of people with learning (and physical and/or other health-related) disabilities. Disability accommodations at colleges may include extended time for tests, workshops, books on tape, note-takers to assist students who have a hard time taking useful class notes, tutors, and psychiatric/psychological support services. To qualify for special accommodations, you may need to provide the college with test scores and records that document your disability. If you do not have this paperwork, the college should be able either to conduct the necessary testing or to direct you to someone who can. Some students

who seemed to have no learning problems in high school may even discover in college that they have a learning disability and need some help.

Q. What assistance is available to adults with disabilities?

- A. The Social Security Administration provides two types of benefits for persons who are or become disabled. Social Security Disability Insurance (SSDI) is available only when the claimant has paid sufficient taxes into Social Security and becomes disabled while insured. Supplemental Security Income (SSI) is a means-based system (based on the claimant's current level of income), which provides financial support to disabled workers. The central issue in both systems is whether the claimant is disabled and therefore unable to perform substantial gainful activity. The SSA employs a five-step analysis to determine whether a claimant is disabled. For further information, please contact your local Social Security Office or visit <https://www.usa.gov/disability-financial-support> to learn more about other programs and types of assistance available.

Q. What employment-support programs are available for young people with disabilities?

- A. If the young person is receiving SSI, is younger than 22 years of age, and is a student who regularly attends school, more of his or her earnings are excluded each month in figuring the benefit. With a Plan to Achieve Self-Support (PASS), a child who is age 15 or older can save some income and resources to pay for education and other things needed to be able to work. The saving income is not figured into income for SSI purposes.

Q. Are children with disabilities eligible for Medicaid and Medicare?

- A. Medicaid is a health care program for people with low incomes and limited resources. Children who get SSI payments qualify for Medicaid in most states. Medicare is a federal health insurance program for people aged 65 or older and people who have been getting Social Security disability benefits for at least two years. A person can get Medicare immediately if he or she has a chronic renal disease and needs a kidney transplant or maintenance dialysis, or has Lou Gehrig's disease. Please check with your local Social Security Office about eligibility.

Q. Who is considered a disabled veteran?

- A. A disabled veteran is a U.S. citizen or legal resident who served in the U.S. military, Navy or Air Force and suffers from a disability that occurred while he or she served in the line of duty.

Q. Are disabled veterans entitled to any services in addition to those available to the general disabled public?

- A. Yes. Disabled veterans are entitled to receive a variety of benefits through the Department of Veterans Affairs (VA). These benefits include medical care, job training and placement assistance, and even direct loans for housing.

Disabled American Veterans (DAV) is a private organization that can help disabled veterans understand and apply for special government assistance. There are over 90 local DAV chapters in New York State that help raise money for and provide assistance to disabled veterans in their area. See <http://www.dav.org>.

Q. Are there other types of disabilities?

A. Yes. The elderly may qualify as disabled persons for purposes of receiving certain benefits and protection from discrimination. In addition, by federal law, recovered alcoholics and recovered drug addicts may qualify as disabled.

Q. Are persons with disabilities protected against discrimination?

A. Yes. The Americans with Disabilities Act of 1990 (ADA) assures equal opportunities for persons with disabilities. One part of the Act requires employers to provide reasonable accommodations to employees or prospective employees who have disabilities. Another section requires that companies providing services to the public provide access to persons with disabilities.

Q. What can I do if I believe that I have been discriminated against because of a disability?

A. If you believe you have been the victim of disability discrimination in New York City, you can file a complaint with the Law Enforcement Bureau of the New York City Commission on Human Rights (<https://www1.nyc.gov/site/cchr/index.page> or (212) 416-0197) or the New York State Division of Human Rights (<https://dhr.ny.gov/> or 1-888-392-3644), but not both.

Q. Are there things about physical disabilities that I should know in an emergency?

A. Many people with physical disabilities need help in the case of an emergency. Find out if your workplace or school has an emergency plan and if, for example, there is anyone assigned to help carry someone in a wheelchair in the event of a fire or other problem. If you know someone who is physically disabled, you may also want to ask him or her what kind of help may be needed and if there is a specific person you should contact in an emergency. Someone with epilepsy, for example, may have a seizure (characterized by uncontrollable shaking), which can be scary if you do not know what is happening. By talking to him or her beforehand, both of you can be reassured that someone will know what to do if anything happens. Remember, you can always call 911 and an operator can get you and the disabled individual the necessary help.

Q. Where can I go for more information about physical disabilities?

A. There are disability-specific support groups for individuals with disabilities and their families that offer places to meet and talk to others living with the same issues. These groups are also a great source of information on government benefits and protections and how to obtain them. In addition, there is generally at least one organization focused on each of a broad array of disabilities (such as the National Multiple Sclerosis Society) with its

own website dedicated to research, education and raising money. These organizations often have state chapters or branches to provide state-specific information and assistance. You can also contact these organizations to find out about ways you can volunteer to help people with disabilities.

Q. Where can I get more information?

- A. There are a variety of government agencies that can help if you feel that you are a victim of disability discrimination. On the federal level, you can contact the U.S. Equal Employment Opportunity Commission (<http://www.eeoc.gov> or 1-800-669-4000), U.S. Department of Transportation (<http://www.dot.gov> or 202-366-4000), Federal Communications Commission (<http://www.fcc.gov> or 1-888-CALL-FCC/1-888-225-5322), and U.S. Department of Education Regional Disability and Business Technical Assistance Centers (<http://www.adata.org> or 1-800-949-4232), depending on the nature of the discrimination.

In New York City, you can contact the City Commission on Human Rights (<http://www.nyc.gov/html/cchr> or 212-416-0197), whose “Equal Access Program” provides disability access, assistance and education to people with disabilities and to senior citizens. There are similar programs around the state that help disabled individuals identify available resources, advocate on behalf of the disabled with their landlords and other service providers, and even initiate legal action.

Useful Websites:

Ability Magazine

<http://www.abilitymagazine.com>

A guide to understanding government assistance, including an online questionnaire to help you find out if you may be eligible for any types of government assistance

<https://www.benefits.gov/>

Americans with Disabilities Act: Questions and Answers

<https://adata.org/guide/americans-disabilities-act-questions-and-answers>

Disabled American Veterans

<http://www.dav.org>

Federal government’s homepage for disability-related information and resources

<https://www.ssa.gov/disability/>

Links to various types of disability information and resources

<http://www.makoa.org/index.htm>

National Multiple Sclerosis Society

<http://www.nmss.org>

National Multiple Sclerosis Society-New York chapter
<http://www.msny.org>

New York City Mayor's Office for People with Disabilities
<http://www.nyc.gov/html/mopd/home.html>

New York State Education Department Vocational and Educational Services for
Individuals with Disabilities
<http://www.acces.nysed.gov/vr>

Social Security Administration
<https://www.ssa.gov/>

CHAPTER 13

CONSUMER RIGHTS: PURCHASES, CREDIT AND IDENTITY THEFT

Purchasing Goods and Services

Q. What is a contract?

- A. A contract is an agreement between two parties such as individuals or companies. The elements of a contract include an offer, acceptance, consideration, capacity, and legality. People or companies who make contracts are legally obligated to do what they have agreed to do. A breach of a contract (failure to follow all the terms) by one party may allow the other party to seek a remedy in court, such as damages or a court order requiring performance by the breaching party. The contract may first require that the parties submit their dispute to a dispute resolution process, such as mediation or arbitration, which are described later in this chapter in the section “How to Resolve Disagreements with Sellers.”

Q. How are contracts made?

- A. Generally, when two parties agree to exchange goods or services for payment, a contract is created. A contract can be written or oral. Signing a contract indicates that you agree to the terms of the contract. The important terms of a contract for goods or services include the purchase price, method of payment, method of delivery, warranties, return policy, and time for performance (the date you will receive the purchased goods).

Q. How can a contract affect a consumer?

- A. When a consumer buys something from a seller and agrees to a contract, the consumer and the seller are both required to comply with the contract. For example, if you agree to buy a television and agree to pay \$100 each month for a year, then each month for a year you must pay \$100. You cannot change your mind unless the seller agrees or the contract itself allows you to do so under certain circumstances. For example, if a product offers a “100 percent satisfaction guarantee or your money back” and you comply with the terms of that guarantee, the seller must also comply and return your money. You must be sure to read, ask questions, and carefully consider the terms of the contract before signing or agreeing to the contract. As a rule of thumb, do not sign a contract if you do not understand what you are signing or if any terms of that agreement have been left blank or are confusing to you. Be extremely cautious if you are being pressured to sign a contract immediately; this is a “red flag” that you may be giving up important rights without your knowledge or understanding.

Q. May minors enter or enforce contracts?

- A. Minors may enter into and enforce contracts and leases against the other party. However, contracts and leases may not be enforced against minors. There are several exceptions to this rule: minors who are military veterans, sports professionals, and entertainers may be held legally liable and responsible for some of their contracts. Minors, unless they are married, are not allowed to buy or sell real property (land or a house).

Q. What is a warranty?

- A. A warranty is a promise, made by a seller, that the item that you buy will work and do everything that it is supposed to do. Warranties generally come in two forms; express or implied.

An express warranty is one that is clearly stated either verbally or in writing. An example could be an agreement between a seller/dealer and the buyer that the seller/dealer will provide repair or replacement of a product. An implied warranty does not have to be stated (although it can be stated) and is presumed to be made in the sale of real property. Two key types of implied warranties are merchantability and a guarantee that the purchased product functions in the manner designed.

Q. How do warranties benefit consumers?

- A. With a warranty, you may return an item you bought that does not work in exchange for one that works or, in some cases, for a refund of your money. There are different types of warranties that provide different remedies to you. Be sure to read and understand how to enforce the warranty before purchasing the product. For example, if the item is defective, the person to write to, the address, and whether a copy of the receipt/proof of purchase is necessary are all important warranty terms that you should review.

Q. How do I get a warranty?

- A. The warranty that a product will work is automatic, you do not have to do anything to get it. However, a seller may limit the warranty by stating in writing that a product has a limited warranty, as long as the limitation is allowed by law. The warranty is then limited to whatever the writing states. Always read whatever you sign, whatever notices are posted in the store, and whatever notices are provided with the product.

Q. If I decide I do not want a product that I bought, may I return it?

- A. Once you buy something, you own it, and you may not return it unless the contract gives you that right, or the seller allows you to return it or the product is defective. If there is nothing wrong with the product, the seller does not have to let you return it unless he or she told you that you would be allowed to do so. Your receipt or a sign in the store should clearly and obviously state the return/refund policy. In New York, sellers are not required to offer a specific term policy such as your money back. However, sellers are required to clearly post the terms of their return policy and then abide by that stated policy. For example, it is not enough for a seller to only inform you that no returns are allowed AFTER you have made your purchase. Under usual circumstances, if products are defective, the sellers are obligated to take them back because when they sell a defective product, sellers did not uphold their side of the contract.

Q. What can I do if I have a dispute with a seller and I cannot resolve it?

- A. Unless the contract states otherwise, you may have the option to sue or bring legal proceedings against the seller in Small Claims Court if the amount is below \$5,000. If you

are younger than 18, your parent or guardian may file the claim for you. Before attempting to sue, you may choose to resolve your dispute through other means such as mediation.

Mediation is a non-binding, voluntary process in which a neutral third party (the mediator) assists the two disputing parties in resolving the dispute to their mutual satisfaction. The mediator does not decide who is right or wrong, but helps the parties to communicate, exchange concerns, ideas and areas of disagreement and come to an acceptable resolution. Many consumer-business disputes are successfully resolved through this usually quick and inexpensive (often free) process. Arbitration is a process where the disputing parties submit their dispute to a neutral third party (the arbitrator) who gathers all of the relevant facts, examines the claims of each party, weighs the evidence and renders a decision that is generally legally binding on both parties (this means that you generally cannot go to a court on the same dispute following such a decision).

Q. How do I take a seller to Small Claims Court?

A. If you have a dispute over an item or service that costs \$5,000 or less in New York, you can file a claim at your local Small Claims Court. The court clerk will give you the forms to fill out and answer your questions regarding the procedures that apply to you and your claim. You will be required to pay a small fee. The current filing fee is \$15 for claims of \$1,000 or less and \$20 for claims above \$1,000.

Q. What will happen in Small Claims Court?

A. A judge or arbitrator will listen to your side and the seller's side of the story and resolve the dispute. You should bring to court all papers related to the dispute. In addition, you should bring to court any witnesses who have information about the dispute. If the judge or arbitrator decides in your favor, he or she will determine the amount of money that the seller must pay you. If the case is decided in the seller's favor, then the amount that you must pay the seller, if any, will be determined by the court.

If you are entitled to any money, the court will supply you with information on how to collect what is owed to you.

Q. What is a door-to-door sale?

A. A door-to-door sale occurs when you purchase something from someone who comes directly to your home rather than at a store.

Q. Are there any special laws governing door-to-door sales?

A. Yes. If you buy an item that costs over \$25 from a door-to-door salesperson you may, within three business days after a signed contract has been entered into, cancel the order without any charge or penalty (this is referred to as a "cooling-off" period). This rule applies no matter what the salesperson might say.

Q. What is a mail order sale?

A. A mail order sale occurs when you buy items through the mail.

Q. Are there any special laws governing mail order sales?

A. Yes. If you order an item through the mail, it must be shipped to you within 30 days from the date the company receives your order, unless the order form states otherwise or you fail to provide sufficient payment or a complete address for shipping. Most order forms state that merchandise will take four to six weeks to arrive. You should consider paying by credit card to give you extra protection for the purchase.

Q. If I receive something in the mail that I did not order, must I pay for it?

A. No. If you receive something that you did not order, you do not have to pay for it. You may pay for it, return it, or keep it as a gift. You have no obligation to pay for it or return it. You may return unopened goods without paying any shipping and handling fees by writing "Return to Sender" on the unopened package.

Q. Are there special things to consider when shopping online?

A. Yes. Keep in mind that, unlike the storeowner down the block, someone you can see and talk to, anyone can set up shop online under almost any name. It is important to do everything you can to find out who you are dealing with. Confirm the online seller's physical address and phone number in case you have questions or problems. And if you get an email or pop-up message that asks for your financial information while you are browsing, do not reply or follow the link. Legitimate companies do not ask for information that way. When you buy online, you cannot see or test an item, like you can in a store. Make sure you read the seller's description of a product very carefully, especially the fine print. Words like "refurbished," "vintage," or "close-out" may indicate that the product is in less-than-mint condition, while name brand items with bargain basement prices could be counterfeits. Check out the terms of the deal, like refund policies and delivery dates. Can you return the item for a full refund if you are not satisfied? If you return it, who pays the shipping costs or restocking fees? When will you get your order?

A Federal Trade Commission (FTC) rule requires sellers to ship items as promised or within 30 days after the order date if no specific date is promised. Many sites offer tracking options, so you can see exactly where your purchase is and estimate when you will get it.

Q. Should I be concerned about using a credit card for online purchases?

A. There are actually several advantages to using a credit card for online purchases. If you pay by credit or charge card online, your transaction will be protected by the Fair Credit Billing Act. Under this law, you can dispute charges under certain circumstances and temporarily withhold payment while the creditor investigates them. In the event that someone uses your credit card without your permission, your liability generally is limited to the first \$50 in charges. Some companies guarantee that you will not be held responsible for any unauthorized charges made to your card online; some cards provide additional

warranty, return, and purchase protection benefits. But NEVER email your credit card information to make a purchase online. Reputable sellers will never ask you to email this information. If you are dealing with a seller that does, think twice about proceeding. Credit card information should only be entered on a secure website, such as one with a URL that begins with https (the “s” stands for secure).

Q. What else can I do to protect my information?

- A. Check the privacy policy of any site to which you are sending information. That policy should spell out in detail what personal information the website operators are collecting, why, and how they are going to use the information. If you cannot find a privacy policy -- or if you cannot understand it -- consider taking your business to another site that is more user friendly.

Additionally, the NY SHIELD Act (Stop Hacks and Improve Electronic Data Security Act) enacted March 21, 2020, obligates companies to notify you in case of a security breach potentially exposing your data.

Q. What is an internet auction and what are my rights?

- A. Internet auction is the term commonly used to describe a website that allows people to sell a wide range of goods in a number of ways, including through competitive bidding (for example, as on eBay). As online auctions become increasingly popular, you must exercise additional caution. Keep the following tips in mind when participating in online auctions:

Remember that you are not usually buying from the auction site itself so the site will not have to accept responsibility if things go wrong with the goods. Most online auction houses act only as intermediaries or middlemen between buyers and sellers during the bidding process and do not get involved in arranging for shipment and payment and often will not resolve disputes. Be sure to check the auction site’s rules. Keep copies of advertisements, descriptions, or auction site printouts for any product you purchase. Keep copies of any correspondence you have with a buyer or seller (including email). If the seller is a business, first check its rating and complaint history with its local Better Business Bureau. If the product is being offered by an individual, obtain and verify information such as name, address and telephone number with the seller’s local telephone company. Check the “feedback” areas of online auction sites; they are often a good source for learning about other buyers’ past experiences with a seller.

Telemarketing and Do Not Call Lists

Q. What is telemarketing?

- A. Telemarketing is the use of the telephone by businesses and other organizations to sell goods or services directly to prospective customers. Most telemarketing calls are “cold calls,” meaning the recipient of the call has not requested that the telemarketer contact him or her.

Q. How can I prevent calls from telemarketers?

- A. State and federal governments have enacted new laws and created “Do Not Call” registries to allow consumers to take control of their phone lines and safeguard their privacy. The laws prohibit telemarketers from calling consumers who have placed their residential and/or cellphone numbers on the national “Do Not Call” registry. To register up to three phone numbers, go to <https://www.donotcall.gov>. “Do Not Call” lists generally do not prohibit a vendor with whom you already do business (such as your bank) from calling you.

Junk Mail

Q. Can I stop people from sending me junk mail?

- A. You can stop many types of junk mail, especially prescreened offers from credit card and insurance companies. If you decide that you do not want to receive prescreened offers of credit and insurance, you have two choices: you can opt out of receiving them for five years or opt out of receiving them permanently.

To opt out for five years: Call toll-free 1-888-5-OPT-OUT (1-888-567-8688) or visit www.optoutprescreen.com. The phone number and website are operated by the major consumer reporting companies.

To opt out permanently: You may begin the permanent Opt-Out process online at www.optoutprescreen.com. To complete your request, you must return the signed Permanent Opt-Out Election form, which will be provided after you initiate your online request.

When you call or visit the website, you will be asked to provide certain personal information, including your home telephone number, name, Social Security number and date of birth. The information you provide is confidential and will be used only to process your request to opt out.

If you do not have access to the Internet, you may send a written request to permanently opt out to each of the major consumer reporting companies. Make sure your request includes your home telephone number, name, Social Security number and date of birth.

Experian
Opt Out
P.O. Box 919
Allen, TX 75013

TransUnion
Name Removal Option
P.O. Box 505
Woodlyn, PA 19094

Equifax Information Services LLC
P.O. Box 740123
Atlanta, GA 30374

Innovis Consumer Assistance
P.O. Box 495
Pittsburgh, PA 15230

Credit and Credit Problems

Q. What is a credit card?

- A. A credit card is a plastic card offered to you by a bank, store, or other business entity that you can use instead of money to buy goods or services. When you accept the card, you accept the terms and conditions for its use. It is very important to read the credit card agreement before accepting a credit card. When you use a credit card, you are borrowing money from the bank or business to purchase goods or services, so you must pay back the bank or business that issued you the credit card. Payment on a credit card is deferred, which means that you have choices about when to pay the bank or business back. With a credit card, you have the privilege of charging up to a set limit.

Q. How much must I pay the bank?

- A. Each month, the bank or business that gave you the credit card will send you a statement in the mail or by email telling you what you bought and how much you owe. You have three choices: you can pay all the money that you owe (your entire balance); you can make the minimum required payment (most companies set the minimum payment at 2% of the balance); or you can pay any amount between the minimum required payment and the entire balance. If you pay the entire balance by the due date, then you no longer owe any money. If you pay only the minimum required payment, or an amount between the minimum required and the entire balance, then you will still owe the difference between what you paid and the entire balance due. In addition, you will have to pay additional money (called interest) because you have not paid the full amount of money you owe. In effect, you have taken a loan from the credit card company. If you are able to do so, it is always best to pay the entire balance when it is due to avoid having to pay interest on your unpaid balance. Interest rates can vary from 5% up to 30%, so make sure you read the fine print in the credit card agreement. For example, if you charged \$500 and paid only the minimum required payment of \$20 the first month, you would owe interest on the remaining balance of \$480. If the interest rate on your credit card is 15%, you would owe an additional \$6 in interest. When you receive your next monthly statement, the entire balance would be \$486. Interest payments result in your paying more for goods or services than the original purchase price. If you pay only the minimum payment over three years, you could pay up to three times the original purchase amount.

Q. How can I avoid owing interest on my credit card balance?

- A. The only way to avoid owing interest is to pay your entire balance when it is first due. For any month in which you do not pay your entire balance, you will owe interest on the unpaid

balance. Sometimes businesses will offer to sell you products on credit with no payments due for a specified number of months and no interest. Before making any such purchase, be very careful to read and understand all of the terms of that sale. Once you are required to start making the payments, they may be substantially larger than expected and the 0% interest rate may only have been for a short “promotional” period of time. Consumers often purchase products under such circumstances without carefully considering whether they can truly afford the item at a later date. This can lead to excessive debt, bad credit, and serious financial problems.

Q. What happens if my credit card is lost or stolen?

A. You should call the credit card company immediately if you discover that your credit card has been lost or stolen. If the card is stolen, you should also file a report with the local Police Department. The credit card company will cancel your lost/stolen card and most likely issue you a new card with a new number. If there are any unauthorized purchases made with your lost or stolen card, then the company will investigate those transactions. If you report the loss/theft before the card is used at all, you cannot be held responsible for any unauthorized charges on that credit card. If your card is lost or stolen, most companies will reimburse you for any unauthorized card transactions up to the amount of the loss, when reported within 60 days from the statement date. However, if you do not promptly report the loss or theft, then you may be liable for all unauthorized purchases.

Q. What is a debit card?

A. A debit card works the same way as a credit card in that you can use it instead of cash to pay for goods or services. However, when you use a debit card, you do not have to pay a monthly bill because the money is immediately deducted directly from your checking or savings account. When you use a debit card, you have to make sure you have enough money in your account to cover what you are buying. If you do not have enough money in your account, you will be unable to make your purchase. With a debit card, you are not borrowing any money and will not have to pay any interest. Some debit cards charge a fee for transactions so read your debit card agreement carefully. In addition, it is worth noting that when you use a debit card you may not get some of the benefits that you receive with credit cards, such as resolving disputes with retailers over charges and returns.

Q. What is an ATM card?

A. An ATM card is a plastic card much like a credit or debit card. It is issued by a bank and it allows you to withdraw money from an Automatic Teller Machine (called an ATM). Similarly to the way a debit card operates, the money is immediately deducted from your bank account. If you do not have enough money in your account, you will be unable to withdraw the money with your ATM card. An ATM card will also allow you to make deposits at an Automatic Teller Machine. Many banks charge a fee, especially if you are using your ATM card at a bank that is different from your own. Many banks will issue a combined ATM and debit card.

Credit Reports

Q. What is a credit report?

A. A credit report is a document generated by a consumer reporting company that contains information about you and your credit history. Among other things, as explained below, a credit history shows whether you have paid your bills on time in the past, as well as the amount of your current outstanding debt. A credit report is used by a bank or other lender to help determine whether to lend you money and, if so, at what rate of interest. Generally, the better your credit history and “rating or score,” the lower your interest rate (the less you have to pay). For example, if you want to buy a car and apply for a loan, the car dealership will get a credit report to see whether you have a good history of paying off prior loans and making credit card and other payments when they were due. Your credit report might also be checked when you apply for a credit card, to rent an apartment, or to get a job.

Q. Do I have a right to know what is in my credit report?

A. Yes. You have the right to know what is in your report, but you have to ask for the information. The consumer reporting company must tell you everything in your report and give you a list of everyone who has requested your report within the past year or the past two years if the requests were related to employment.

Q. How can I get a copy of my credit report?

A. Each of the nationwide consumer reporting companies, Equifax, Experian and TransUnion, is required to provide you with a free copy of your credit report once every 12 months, if you ask for it. The three nationwide consumer reporting companies use one website, one toll-free telephone number and one mailing address for consumers to order their free annual report. To order a report, click on www.annualcreditreport.com, or call 877-322-8228, or complete the Annual Credit Report Request Form and mail it to: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281. (You can print the form from <https://www.consumer.ftc.gov/sites/www.consumer.ftc.gov/files/articles/pdf/pdf-0093-annual-report-request-form.pdf>) To obtain a report, you need to provide your name, address, Social Security number and date of birth.

Q. What information is collected and how is it used?

A. Consumer reporting companies collect and sell four basic types of information:

- (1) Identification and employment information: including your name, birth date, Social Security number, spouse’s name, employer, employment history, home ownership, income, and previous address.
- (2) Payment history: including information on accounts with different creditors, how much credit has been extended, and whether and to what extent you have paid on time.

- (3) Inquiries from creditors: including a list of all creditors who have asked for your credit history within the past year and a record of individuals or businesses that have asked for your credit history for employment purposes for the past two years
- (4) Public record information: including events that are a matter of public record, such as bankruptcies, foreclosures, or tax liens.

Q. How can my credit report affect later purchases?

- A. Your credit history follows you into the future. A good credit record comes from paying your debts on time and it will be easier for you to get loans with lower interest rates. Lower interest rates generally mean smaller monthly payments.

Q. What if there is a mistake on my credit report?

- A. If there is an error on your credit report, you must tell the consumer reporting company, in writing, what information you think is inaccurate and include copies of documents that support your position (be sure to retain the original copies). In addition to providing your complete name and address, your letter should clearly identify each item in your report that you dispute, state the facts and explain why you dispute the information, and request that the information be deleted or corrected. You may want to enclose a copy of your report with the items in question circled. Send your letter by certified mail, return receipt requested, so you can document that the consumer reporting company received your request. Consumer reporting companies must investigate the items in question. When the investigation is complete, the consumer reporting company must give you the written results and a free copy of your report, if the dispute results in a change. Because there may be mistakes, it is very important to view your credit report at least once a year to confirm its accuracy and make necessary corrections.

Debt Collection and Debt Management

Q. If I am being harassed by someone to whom I owe money, what can I do?

- A. You are required to pay money that you legitimately owe. However, abusive debt collection practices are illegal. Illegal debt collection practices include:
- (1) calling before 8:00 a.m. or after 9:00 p.m.; or calling too frequently; or
 - (2) threatening to tell your employer that you owe money; or
 - (3) imitating a law enforcement or judicial official; or
 - (4) lying to you about legal action that may be taken if you do not pay your debt.

If you have questions or believe you are the victim of illegal debt collection practices, you may contact the New York State Consumer Protection Board (1-212- 290-4180), New York State Attorney General (1-212-416-8345) or Federal Trade Commission (1-212-264-1207).

Q. What steps can I take to make sure I do not have too much debt?

- A.
- (1) Pay off the balance in full each month. Do not just pay the minimum.
 - (2) Review and balance your monthly statements. Know where your money is going and watch out for fraudulent charges.
 - (3) Treat your cards like cash. Keep them in a safe place and do not write down your PIN or use a number someone can easily figure out.
 - (4) Do not use your credit cards to get cash. Your credit card might have a low rate for purchases, but the rate for cash advances is much higher. And there is no grace period on cash—you are charged interest right away.
 - (5) Use your credit card for larger purchases and emergencies, not for small everyday purchases. If you spend too much, leave your card at home (in a safe place).
 - (6) Be aware of your annual credit card rates and do not be afraid to ask for a lower rate. A call to your credit issuer can save you a lot in interest charges. Those 0% offers sound like a good idea until you miss a payment or the introductory period ends.

Identity Theft

Q. What is identity theft?

- A. Identity theft occurs when someone obtains some piece of your personal information, such as your Social Security number, credit card number, date of birth, address, and/or phone number, and uses it without your knowledge to buy items using your name (with your credit or debit card), apply for loans or additional credit cards, and access your accounts. When the thieves do not pay the bills, the delinquent account is reported on your credit report. You may receive bills for items you have never purchased or get turned down for a loan or mortgage based on a bad credit history due to unknown debts on your record.

Q. How do identity thieves get your information?

- A. Identity thieves obtain personal information in many different ways. They sometimes rummage through your trash (a practice known as “dumpster diving”). They also try to “hack” records from your computer. Sometimes, they call banks and pose as a landlord, employer, or someone else who may have a right to access your records, including your credit report. They may attempt to illegally fill out a false “change of address” form with the Post Office to divert your mail to another address (often a P.O. Box). Other methods include stealing wallets, purses, and mail containing identification and credit and bank cards. Do not assume that identity thieves are always strangers; they may be people that you personally know, including relatives.

Q. How can I determine if I am a victim of identity theft?

A. If you have unexplained charges on your credit card statement or withdrawals from your bank account, you should suspect identity theft. Another indication of interference with your identity is if you stop receiving a bill or other mail and you miss a usual billing cycle. Also, receiving credit cards for which you did not apply, denial of credit for no apparent reason or calls from debt collectors or companies about merchandise or services you did not buy are all indications of identity theft.

Q. What is “phishing”?

A. “Phishing” is a form of internet fraud where a website is set up to look like a legitimate company. As consumers believe they are making purchases through the site, valuable personal identification information (credit card number, Social Security number, bank account numbers, user IDs, and passwords) are collected illegally.

Q. What steps can I take to avoid identity theft?

A. To avoid identity theft, regularly monitor the balances of your financial accounts and watch for unexplained charges or withdrawals. Protecting and managing your personal information is key to minimizing your risk of becoming a victim of identity theft. Keep an eye on your purse or wallet, and keep them in a safe place at all times. Do not leave financial or other personal documentation in areas of your home or on the job or at school where others may have easy access to them. Do not carry your Social Security card with you unless absolutely necessary for a specific purpose. Do not share your personal information with random people you do not know, even if they say they are from a bank, internet service provider or a government agency. Do not respond to unsolicited emails seeking personal information; if you maintain an account with the business/bank listed on the email, you may contact it directly using your own verified contact information. Shred your charge receipts, credit card offers, checks and bank statements, expired charge cards and any other documents with personal information before you put them in the trash. Consider opting out of unsolicited credit card offers (contact 1-888-50PT-OUT) and limit the number of credit cards that you carry with you. Most importantly, if you suspect a problem, take action immediately and check it out. Careful monitoring and immediate action are the best ways to avoid identity theft.

Q. What do I do if I am a victim of identity theft?

A. If you suspect that your personal information has been used to commit fraud or theft, take the following steps immediately:

Report any problems to your bank and creditors. Contact all three of the nationwide consumer reporting companies to “red flag” your account and place a fraud alert on your credit report. Fraud alerts can help prevent an identity thief from opening any more accounts in your name. Although the consumer reporting company you call is required to contact the other two (which will place an alert on their versions of your report as well), you may contact all three just to be safe.

Equifax: 1-800-525-6285; www.equifax.com
Experian: 1-888-EXPERIAN (397-3742); www.experian.com
TransUnion: 1-800-680-7289; www.transunion.com

Close the accounts that you know or believe have been tampered with or opened fraudulently. Contact the security or fraud department of each company where you know or believe accounts have been tampered with or opened fraudulently. Follow up all calls in writing. Send your letter by certified mail and request a return receipt so you can document what the company received and keep copies for your files. File a report with your local police or the police in the community where the identity theft took place. Get a copy of the police report or at least the number of the report as it can help you deal with creditors who need proof of the crime. You can also file a complaint online with the Federal Trade Commission at www.consumer.gov/idtheft. If you do not have internet access, call the FTC's Identity Theft Hotline, toll-free: 1-877-IDTHEFT (438-4338); TTY: 1-866-653-4261; or write: Identity Theft Clearinghouse, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

When you open new accounts, use new Personal Identification Numbers (PINs) and passwords. You should also request new PIN numbers for any accounts that have not been closed. Remember also to order your credit report from all three nationwide agencies to check for any further fraudulent activity and unknown debts. Check with the Post Office to confirm that no unauthorized change of address has been filed. Finally, maintain a full written file of all reports you have filed, actions you have taken and their dates. This will be your proof if you need it in the future.

Useful Websites:

New York Attorney General: Consumer Issues
<https://ag.ny.gov/bureau/consumer-frauds-bureau>

Consumer Tips for Buying Online
<https://ag.ny.gov/consumer-frauds/tips-for-buying-online>

New York City Department of Consumer Affairs: Consumer Law
<https://www1.nyc.gov/site/dca/about/consumer-protection-and-licensing-laws.page>

Helpful Consumer Publications
<https://www1.nyc.gov/site/dca/consumers/get-tips.page>

Federal Trade Commission: Credit Report Information
<https://www.consumer.ftc.gov/articles/free-credit-reports>

Fair Credit Reporting Act Summary
<https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf>

Fair Debt Collection

<https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/fair-debt-collection-practices-act-text>

FTC Guide to Identity Theft

<http://www.consumer.gov/idtheft/>

FTC Guide to the Internet and E-Commerce

<https://www.ftc.gov/system/files/documents/plain-language/alt067-electronic-commerce-selling-internationally-guide-businesses.pdf>

Information Security Breach and Notification Act

<https://ag.ny.gov/new-york-state-information-security-breach-and-notification-act>
<http://assembly.state.ny.us/leg/?bn=A04254>

List of Common Internet Scams

<https://www.consumer.ftc.gov/features/scam-alerts>

New York State Consumer Protection Board

<https://dos.ny.gov/consumer-protection>

New York State Consumer Protection Board – Consumer Law Help Manual on Internet Issues

<http://161.11.225.182/assisting/clhm/default.htm>

New York State “Do Not Call” Enforcement

<https://dos.ny.gov/do-not-call>

New York State Unified Court System – The Consumer’s Guide to Small Claims Court and How to Use Federal and New York State Consumer Protection Statutes.

<https://ww2.nycourts.gov/courts/10jd/suffolk/dist/smallclaimsbook.shtml>

SafeShopping.org – American Bar Association Informational Site

<http://www.safeshopping.org>

Telemarketing

<https://www.ftc.gov/tips-advice/business-center/advertising-and-marketing/telemarketing>

CHAPTER 14

LANDLORD/TENANT LAW

Q. When I am ready to move out of my parents' house, how do I find an apartment?

A. In New York City, you look for an apartment in the newspaper, online, or through a real estate broker. There are a variety of websites where landlords and real estate brokers list apartments that are for rent or "on the market."

Q. What is a real estate broker?

A. A broker is a person who is licensed to conduct a real estate business.

Q. Who does a broker work for?

A. Usually, the owner of property who wishes to sell or rent will list the property with a broker.

Q. Who pays the broker?

A. When tenants rent apartments, they are often charged a broker's fee. In New York, only a licensed real estate broker can collect a broker's fee.

Q. What documents do I need to rent an apartment?

A. Usually, a landlord will ask for a number of documents: 1) a rental application; 2) your most recent bank statement; 3) two recent paystubs; and 4) a form of ID. In addition, you will probably be asked to agree to a background check and a credit score check. If you don't have paystubs or can't meet the landlord's income requirements, the landlord may ask for a guarantor – a co-signer who agrees to share liability for the rent if you have trouble paying. Landlords in NYC usually only accept co-signers who live in the Tri-State area. A guarantor can be a parent, guardian, sibling, or even an institutional guarantor.

Q. What is a security deposit?

A. Security is money collected from a renter to protect the landlord's interest in the apartment or house. A landlord cannot collect a security deposit or advance payment that is more than one month's rent. Therefore, if you pay a security deposit equal to a month's rent, then your landlord cannot charge you in advance for your last month's rent. In New York, if the rental apartment is located in a building with six or more other apartments, the landlord is required to deposit the security in an interest-bearing account with a bank. The interest that the bank pays on the money belongs to the person who rented the apartment. The renter should receive an interest statement annually from the landlord.

Q. Do I get my security deposit back when I leave the apartment?

A. You are entitled to the return of your security deposit if you leave the apartment in good condition. It is always a good idea to take a photo of the apartment when you move in, and

then repair holes in the wall you may have made and take a photograph of the apartment when you decide to move out. If your landlord wants to take any of your deposit to pay for damages, then they need to give you a receipt that lists out the damages and the costs to repair them. If the landlord refuses to refund your security deposit, you can file a complaint with the New York State Attorney General's Office. You can also ask your landlord to inspect your apartment before you move out and have them tell you what needs to be fixed or cleaned so that you can take care of it before you move out

Q. After your broker locates your ideal apartment, what happens next?

A. You and the owner of the apartment – the landlord – discuss the terms of the rental. You can agree on these terms orally or in writing. If you decide to do a writing of the terms, it is called a lease.

Q. What is a lease?

A. A lease is a written agreement between the owner of property (the landlord) and the renter (the tenant) in which the tenant agrees to make use of the landlord's property for a certain amount of time for a certain amount of money under certain conditions. The lease should always be in writing.

Q. How do you prepare for signing your lease?

A. Make sure you read the lease carefully. You should check to make sure the following information is present and correct:

- Your name and address;
- The landlord's name and address;
- The address of the building and apartment number;
- The rent amount;
- Duration of lease (one year, two years);
- Move-in date;
- The amount of time you need to give the landlord when you plan to move out at the end of the lease;
- Utilities the landlord may agree to pay for, such as gas or electricity.

Q. What are the other terms in a lease?

A. The landlord has to provide you with a place that you can live in comfortably. Some of the things you should expect are: a working lock on your front door, adequate heat and hot

water, working plumbing, working electrical fixtures, secure windows, and clean hallways, to name a few.

In turn, you agree to the terms of your lease, such as keeping the apartment in good condition, providing access when the landlord needs to make repairs or inspect, and paying the rent on time.

Q. After I signed my lease, can I change it?

A. No. Your lease is a legally binding agreement. Usually, it cannot be changed unless both you and the landlord agree to change it in writing.

Q. Can my landlord increase my rent after the lease is signed?

A. No. Your landlord can only increase rent after your lease is up and you want to renew the lease. If you do not live in a rent-controlled apartment, then your landlord can increase rent as much as the market will allow. However, if your landlord wants to raise your rent by more than 5%, then they need to give you advance written notice. If you have lived in the apartment for less than a year or have a lease for less than a year, then you are entitled to 30 days' notice. If you have lived in the apartment for more than one year, but less than two, you are entitled to 60 days' notice. If you have a two-year lease or have lived in the apartment for more than two years, then your landlord owes you 90 days' notice.

Different rules apply if you live in rent-controlled housing. If you live in a rent-controlled apartment, then the law puts limits on how much your landlord can raise your rent. The New York City Rent Guidelines Board determines how much your landlord can raise the rent. If your landlord can increase rent by the average of the Board's last 5 annual rent increases, or 7.5%, whichever is lower.

Q. What is a "month-to-month lease"?

A. Most leases are for one year or two years. However, some leases may be shorter than that. Tenants who do not have leases but still pay rent on a monthly basis are called "month-to-month" tenants. This is a legally accepted form of lease. In a month-to-month lease, either you or the landlord can seek to end the lease as long as you give enough notice. In New York City, 30-days-notice is required to vacate an apartment with a month-to-month lease.

The most common month-to-month lease scenario is where the tenant stays on after the written lease is expired and the landlord continues to accept rent. As with a written lease, if you have lived in the apartment for more than one year, but less than two, you are entitled to 60 days' notice before termination. If you lived in the apartment for more than two years, then your landlord owes you 90 days' notice.

Q. What are some of the things that go wrong in a landlord/tenant relationship causing the parties to end up in court?

A. The landlord could sue you if the rent is not paid or if you violate an important term in the lease agreement. Alternatively, if the landlord fails to keep the building in good condition or violates another provision of the lease, you may have rights to sue.

Q. Can the landlord lock you out of your apartment for not paying the rent?

A. No. The landlord must go through the court to resolve disputes with tenants. A landlord can evict a tenant only after the court issues a “Warrant of Eviction.” A Warrant of Eviction can only be carried out by law enforcement. If the landlord takes matters into his or her own hands, the landlord may be subject to substantial penalties. It is illegal for a landlord to break the lock on a tenant’s apartment, shut off services, or threaten a tenant with such action.

Q. How do you know if the landlord is taking you to court?

A. If a landlord intends to sue you in eviction court for non-payment of rent, the landlord must serve you with written notice at least 14 days in advance. Serve means handing the rent demand to you in person, or giving it to a roommate and sending by regular and certified mail, or leaving it on your door or under your door after at least two attempts to try to hand-deliver it and sending by regular and certified mail. If the landlord intends to sue you for another reason, the landlord needs to serve a notice. The time can be as little as 10 days in advance or as long as 90 days in advance depending on the circumstances.

Q. In which court are landlord/tenant disputes brought?

A. Residential landlord/tenant disputes are brought in the Housing Part of the Civil Court of the City of New York (“Housing Court”). Each year, over 200,000 cases are filed in Housing Court. Tenants who live outside of New York City are sued in a local court. This might be a large city court or a small village court.

Q. What do I do if my apartment needs repairs?

A. First, you may contact the building superintendent, if you have one, about the repairs. The superintendent may be able to make the repairs for you. If that does not work, you should notify the landlord in writing of the repairs that need to be done. If possible, take pictures and describe the problem(s) in detail so the landlord may address them.

Q. Can a tenant sue if the apartment is in need of multiple repairs or serious repairs?

A. Yes. If the landlord does not make the repairs, a tenant living in New York City can always bring what is called an HP Action. In this kind of case, you ask the court to direct the landlord to make the repairs. This proceeding has nothing to do with rent. At trial, you will need to prove you notified the landlord about the problems to be repaired and that the landlord has not repaired them. The best proof is a copy of the writing mailed to the landlord.

A tenant living outside of New York City can call their local building department. It is possible to sue a landlord for repairs but it is more complicated outside of New York City.

Q. What should you do if you are sued by your landlord?

- A. You should always attempt to get legal representation. In all New York City zip-codes, income eligible tenants facing eviction have a right to an attorney to defend their case. An expansion of the right to counsel law in April 2021 now ensures that all tenants who meet certain income eligible requirements, regardless of immigration status, in a New York City zip-code have access to an attorney when facing an eviction proceeding. If you have received a legal notice from your landlord or a lockout, you can contact City resources at (718) 557-1379 or (212) 962-4795 from Monday through Friday, between 9am and 5pm, or call 311 and ask for the Tenant Helpline. You can also email the NYC Office of Civil Justice at civiljustice@hra.nyc.gov and visit the following website for more information: www1.nyc.gov/site/hra/help/legal-services-for-tenants.page. The right to counsel does not extend to or exist in areas like Westchester and Long Island that are outside the City. There are organizations that provide free legal services in all parts of the state who have experience defending tenants and defending as many as they can. However, there is no guarantee they can take a case. Consult LawHelpNY.com or contact your state senator or assembly member to find out about organizations in your area

For cases in New York City, you may also contact The Legal Aid Society (<http://www.legal-aid.org>) or Legal Services/NYC (<http://www.lsnyc.org>). There is an office within the court where people can go to ask questions, called the Office for the Self-Represented (<https://ww2.nycourts.gov/COURTS/nyc/family/selfrepresented.shtml>).

Q. How can I sue my landlord?

- A. To sue your landlord for repairs, conditions in your apartment, or for harassment, you will need to go to Housing Court. Before suing for repairs or for unsafe conditions in your apartment, you need to try and have your landlord fix the problems before you can sue. Do your best to always make communications between yourself and your landlord in writing, and make sure to save copies of everything. You should bring copies of all of your relevant communications with you to court when you go to file your complaint.

Find your local housing court and speak to the clerk. The clerk will provide you with the forms you will need to begin an “HP Proceeding.” The clerk will also inform you of any fees associated with filing. If you cannot afford the filing fee, you can ask the court to waive it. Information about beginning an HP proceeding or finding your local housing court can be found at: <http://www.nycourts.gov/COURTS/nyc/housing/index.shtml>

Q. What happens if you leave the apartment before the agreed-upon term for the end of lease?

- A. You may be sued for the number of months remaining on the lease. When you sign a lease, you legally agree to pay your rent each month for as long as the lease lasts (one year or two years, usually). If you leave six months into a one-year lease, you owe the landlord for the other six months. The landlord can sue for the rent he or she would have collected if you

had stayed in the apartment, plus additional costs. However, your landlord is required to make a good faith effort to fill the apartment. If your landlord finds a new tenant who pays the same rent, or higher, as you did, then you are not liable for the rent.

Q. What is a legally regulated apartment?

A. Rent regulation was developed in New York State to help maintain affordable housing. Rent-regulated housing is privately owned housing the government has chosen to regulate. The two types are rent controlled and rent stabilized housing. Rent control laws may apply to some of the oldest apartments in New York City. Rent stabilized laws came into effect in the late 1960s and were amended in 1974. The New York State Division of Housing and Community Renewal oversees rent-regulated housing. In New York City, people consider themselves fortunate if they are able to live in either a rent controlled or rent stabilized apartment because there are rules about the amount that the landlord can charge for rent, how the apartment should be maintained and what type of services the landlord must provide in the building. This type of housing is disappearing as tenants move out, although certain family members may be eligible to remain in the regulated housing.

Q. What is Section 8 housing, and can you or another family member inherit a Section 8 apartment?

A. Section 8 is a federally funded program in which the government pays a rent subsidy for low-income people and families. The person with the Section 8 eligibility must prove each year that he or she continues to be income eligible. A family member may have the right to remain in the apartment if the person with the Section 8 eligibility has listed the family member as an occupant on the household composition and income certification forms he or she filed each year to recertify.

Q. Can you or another family member inherit your grandparents' or parents' New York City Housing Authority apartment?

A. NYCHA Public housing is a federally subsidized program. Eligibility for NYCHA is based on household income, household composition, citizenship status and what kind of tenant you would likely be. To live in public housing, you must be single or part of a family, included on the household composition and income eligible. If you move out, you must obtain permission to move back into the apartment. You must also obtain permission to inherit the apartment. If you are denied permission, you are entitled to a hearing to try to prove you should remain in the apartment. To find out more about public housing eligibility, you can visit the New York City Housing Authority's website: <https://www1.nyc.gov/site/nycha/index.page>.

Useful Websites:

Compilation of Landlord-Tenant law information by the Cornell Law School
<http://www.law.cornell.edu/wex/index.php/Landlord-tenant>

General resource for Landlord-Tenant law
<http://www.legalmatch.com/law-library/article/landlord-and-tenant.html>

General resource for tenants focusing on New York Landlord-Tenant law
<http://tenant.net>

New York City Housing Court
<http://www.nycourts.gov/COURTS/nyc/housing/index.shtml>

New York City Rent Guidelines Board
<https://rentguidelinesboard.cityofnewyork.us/>

General
https://ag.ny.gov/sites/default/files/tenants_rights.pdf

The Legal Aid Society
<https://legalaidnyc.org/>

Legal Services/NYC
<https://www.legalservicesnyc.org/>

Office for the Self-Represented
http://ww2.nycourts.gov/courts/1jd/supctmanh/Help_Center.shtml

New York State Department of Homes and Community Renewal
<https://hcr.ny.gov>

For COVID-19 Related Housing Questions
<https://portal.311.nyc.gov/article/?kanumber=KA-03329>

CHAPTER 15

COLLEGE TUITION ASSISTANCE

Q. What is the purpose of government assistance programs?

- A. Government assistance programs exist to provide essential services, such as food, clothing, shelter, and medical care to people and families who cannot afford these goods and services on their own. College tuition assistance programs help students and their families pay for higher education.

College Tuition Assistance

Q. What is college tuition assistance?

- A. College tuition assistance is a way to help you cover the costs of college; it can come in the form of loans, grants, or scholarships. Scholarships and grants are awarded to students by individual schools and organizations based upon financial need or academic merit; there is usually no requirement to pay the money back. However, loans must be paid back, so be aware of payment dates and interest rates.

To find out about tuition assistance programs offered through New York State, visit <https://www.hesc.ny.gov/pay-for-college/apply-for-financial-aid/nys-tap.html>. The New York State Tuition Assistance Program (TAP) provides grants to students planning to attend an approved New York State school. The form to apply for TAP is also available on this site. On this website, you can also find out about various tuition assistance programs. You can also apply for financial aid by filling out a Free Application for Federal Student Aid (FAFSA) form. In order to qualify for government-assisted financial aid, you must fill this form out each year you are in college. Using the Federal Student Aid Estimator, available at <https://studentaid.gov/aid-estimator/>, you can get an estimate of your eligibility for federal aid and learn how much government assistance you might get for college tuition before applying.

Q. If I want to attend college, how can I afford it?

- A. Most college students receive some kind of financial aid. Among the types of financial aid available are grants, scholarships, loans, and work-study.

Q. Where does financial aid come from?

- A. Some financial aid may come from the government; other aid may come from colleges, banks, and private organizations.

Q. Who is eligible for financial aid?

- A. Most government financial aid is need-based, which means based on your family resources; it is not dependent upon your grades. However, you will need to maintain good academic standing to renew your aid each year.

Aid from colleges, banks and private organizations may be dependent upon your grades. Therefore, the better your grades, the more opportunities you may have to obtain financial aid. However, you should not let your academic record deter you from applying for financial aid. Colleges, banks and private organizations may be willing to consider your unique circumstances. For example, if your grades are impacted because you have other obligations outside of school, such as caring for a family member or earning an income to assist with household expenses, many institutions will take that into account. All of your personal circumstances and obligations contribute to making you a unique and deserving applicant of financial aid, and sharing as many details as you feel comfortable disclosing may actually help you to receive more aid than you would otherwise.

Q. What factors are considered in calculating financial aid?

A. College financial aid officers consider family income, the number of family members in college, and medical expenses, among other factors. If you were/are in foster care or are emancipated, you may be eligible to apply for federal aid as an independent student which eliminates the need to show family income other than your own.

Q. What is a grant?

A. A grant is a gift of money to attend college. Most grants are need-based; they are awarded based on your family's financial situation and do not need to be repaid.

Q. Where do grants come from?

A. The largest source of grants is the federal government. Other grants may come from states, colleges, banks, and private organizations.

Q. What is a scholarship?

A. A scholarship is a merit-based gift of money to attend college. Unlike grants, a scholarship is awarded based on certain qualities, such as academic or athletic ability. Like grants, scholarships do not need to be repaid.

Q. Where do scholarships come from?

A. Many scholarships originate from colleges themselves, meaning that they can only be used at that specific school. Scholarships that come from private organization called "outside" scholarship can be used at any college.

Q. Will grants and scholarships cover all of my college tuition costs?

A. Grants and scholarships rarely cover the entire cost of college. Other sources of college tuition money may come from your family's savings, loans or work-study programs on campus.

Q. What is a loan?

A. A loan is money that is borrowed and that must be repaid with interest.

Q. Where do loans come from?

A. The federal government, state governments, colleges, and private organizations (i.e., banking institutions), all provide loans to college students.

Q. What kinds of loans are available to college students from the federal government?

A. The federal government offers both need-based loans and non-need-based loans to college students. Some federal loans are subsidized, meaning that the loans do not accrue interest while you are in school on at least a half-time basis and do not accrue interest during deferment periods. You may receive a deferment for unemployment or economic hardship.

Q. What kinds of loans are available to college students from New York State?

A. New York State does not offer loans to college students; however, it does offer many grants, scholarships, and awards. Please visit http://www.hesc.ny.gov/content.nsf/SFC/Grants_Scholarships_and_Awards for more information.

Q. What kinds of loans are available to college students from private organizations?

A. Loans available to college students can come from colleges, banks and other financial institutions and foundations. Banks and other financial institutions usually have the highest interest rates. Colleges may offer loans at lower interest rates than federal loans. Some private organizations and foundations may offer loans with lower interest rates than loans available from banks and other financial institutions.

Q. What types of loans are best for college students?

A. Need-based loans through the federal government are generally the best because they are subsidized by the government, have the lowest interest rates, do not require a credit check and do not need to be repaid while you are in school.

Q. How do I apply for financial aid?

A. The first step is to fill out the Free Application for Federal Student Aid (FAFSA). Then, contact the financial aid office of the college you wish to attend to learn what forms it requires. You should also research outside scholarship opportunities; this may necessitate filling out and submitting additional financial aid forms.

Q. Where can I find more information about outside scholarships?

A. You can search for outside scholarships at <https://bigfuture.collegeboard.org/>

Public Assistance

Q. What is public assistance?

- A. Public assistance (sometimes called “welfare”) provides money to families and individuals with limited income. The maximum public assistance benefit is determined by the number of people in the household, the rent level and the household’s income. A family may get less than the maximum benefit if it has income or pays little or no rent.

Q. How does a family obtain public assistance?

- A. Applications for public assistance in New York City should be made at local welfare offices or Job Centers located throughout the five boroughs. Information about the location of offices and Job Centers can be obtained by dialing 311 or at http://www.nyc.gov/html/hra/html/services/job_centers.shtml. During the COVID-19 pandemic, the Human Resources Administration (HRA) in the Department of Social Services, which administers many public assistance programs, closed many locations. While HRA is in the process of reopening locations, you can apply for SNAP, Cash Assistance, special grants and more online at <https://a069-access.nyc.gov/accesshra/>.

Outside New York City, families and individuals must apply to the New York State Department of Social Services.

SNAP Benefits

Q. What are SNAP Benefits?

- A. The Supplemental Nutrition Assistance Program (SNAP) is the name for the food stamp program. SNAP benefits are electronic benefits that are issued monthly and can be used just like cash at authorized stores. SNAP benefits help low-income working people, as well as senior citizens and the disabled, feed themselves and their families.

Q. How can I get SNAP benefits?

- A. Eligibility for SNAP benefits is based on income and family size. You can apply for SNAP benefits online at <https://mybenefits.ny.gov>. You can also apply by mail, fax or in-person at your local Department of Social Services (DSS) Office or SNAP Office by filling out an application. The application and instructions for completing it can be found at <https://otda.ny.gov/programs/apply/#snap>. To find out the location of the SNAP Office closest to you, contact your local DSS Office. For a complete list of DSS Offices, visit <https://otda.ny.gov/workingfamilies/dss.asp>.

Medicaid

Q. What is Medicaid?

- A. Medicaid is a program that enables individuals and families who have low incomes to obtain proper medical care and medical equipment, such as wheelchairs. With Medicaid, a person or family may get free medical care from many doctors and hospitals.

Q. How can I get Medicaid benefits?

- A. To determine if you or your family is eligible for Medicaid, visit <https://www.benefits.gov/benefit/1637>. In order to get Medicaid, you must fill out an application. For more information on the application process in New York State, visit: http://www.health.state.ny.us/health_care/medicaid. The main factors in determining eligibility are the number, age, and health of people in the family and the total income of the family. For example, to qualify for Medicaid in 2013, a single person could not earn more than \$750 per month; a family of four could earn no more than \$1,479 per month. Certain individuals, such as pregnant women, children, and disabled persons, may be eligible for Medicaid even if their income is higher than the levels listed above.

Q. If I get Medicaid, do I get free medical care from any doctor?

- A. No. The doctor must agree to accept Medicaid before any services are performed and not all doctors participate in the Medicaid program.

Medicare

Q. What is Medicare?

- A. Medicare helps pay certain health costs of people 65 years or older regardless of their incomes. Certain disabled persons under 65 may be eligible for Medicare after first receiving Social Security benefits for two years. Because Medicare does not cover 100 percent of medical expenses, persons receiving Medicare are responsible for part of their own expenses.

Q. Where do I apply for Medicare?

- A. Applications for Medicare are made to the Social Security Administration. Additional information on the program and how to apply can be found on the Social Security Administration's website at <https://www.ssa.gov/benefits/medicare/> or call their toll-free number at 800-772-1213. You may also visit the Medicare website for information on how to sign up at <https://www.medicare.gov/basics/get-started-with-medicare/sign-up/how-do-i-sign-up-for-medicare> or call Medicare's toll-free number at 800-633-4227.

HEAP

Q. What is HEAP?

- A. The Home Energy Assistance Program, or HEAP, provides heating and cooling benefits to eligible needy homeowners and renters. HEAP also offers emergency grants for households for heat-related energy emergencies. Money may be used to cover fuel, repairs of heating equipment and temporary relocation. The New York State Office of Temporary and Disability Assistance (<https://otda.ny.gov/programs/heap/>) can provide information and assistance on HEAP, as well as your local district HEAP contact (<https://otda.ny.gov/programs/heap/contacts/>).

Social Security

Q. What is Social Security?

- A. Social Security is a program that provides payments to insured workers when they become disabled or retire or to the families of deceased insured workers. In some cases, dependents, usually children or a spouse, can get benefits from their deceased relative's account. Social Security is an insurance program and is not based on need.

Q. Is everyone eligible to participate in Social Security?

- A. Everyone who is legally employed in the U.S. must be enrolled in the Social Security system and pay taxes to the system from their wages or net self-employment earnings.

Q. How do I enroll in the Social Security system?

- A. You apply to the Social Security Administration and receive a card when you are enrolled. The number on your card is your own individual Social Security number for your whole life. If your parents have not already made an application on your behalf, then you will need to apply.

Q. Do I have to have a Social Security number?

- A. Everyone who works must have a Social Security number. In addition, you may be required to have one to go to school or to get a bank account or insurance.

Q. How do I become eligible to collect Social Security benefits?

- A. Usually, you must work and pay taxes into the Social Security system to be able to receive benefits. By working and paying taxes, you earn credits. Since 1978, you can earn a maximum of four credits per year, and most people need 40 credits to be eligible for old-age benefits. There are additional eligibility requirements for disability benefits, such as having worked within the five years immediately preceding the onset of disability. Minors or disabled children may be eligible for benefits based on the account of a retired, disabled, blind, or deceased parent.

Q. How do I get work credits?

A. In 2022, you earn one Social Security or Medicare credit for every \$1,510 in covered earnings each year. You must earn \$6,040 to get the maximum four credits for the year. For more information on work credits, see the Social Security Administration’s publication “How You Earn Credits,” at <https://www.ssa.gov/pubs/EN-05-10072.pdf>.

Q. How much will I get from Social Security?

A. The amount you get depends on different factors, such as when you were born, how much you have earned and the type of benefits for which you are applying—disability, retirement, dependent, or survivor benefits.

Q. How do I find out how much I have contributed?

A. As long as you are over eighteen, have a valid email address, a Social Security Number, and a U.S. mailing address, you can create an account at <https://www.ssa.gov/myaccount/> to view your Social Security statements, which provide estimates of retirement, disability and survivors’ benefits. The statements also serve as a way for you to make sure that your earnings are being accurately reported to the Social Security Administration.

Q. What kind of benefits does Social Security pay to people who have 40 credits?

A. There are different kinds of benefits, including the following:

- (1) Retirement Benefits: individuals are eligible to receive monthly payments as early as age 62 or as late as age 70. Social Security replaces a percentage of your pre-retirement income based on lifetime earnings. The portion of your pre-retirement wages that Social Security replaces is based on your highest 35 years of earnings and varies depending on how much you earn and when you choose to start benefits. For more information on retirement benefits, see <https://www.ssa.gov/benefits/retirement/learn.html>.
- (2) Disability Benefits: the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs provide assistance to people with disabilities. The SSDI program pays benefits to you and certain family members if you are “insured.” This means that you worked long enough and recently enough and paid Social Security taxes on your earnings. The SSI program pays benefits to adults and children with disabilities who have limited income and resources. While these two programs are different, the medical requirements are the same. If you meet the non-medical requirements, monthly benefits are paid if you have a medical condition that is expected to last at least one year or result in death. For more information on disability benefits, see <https://www.ssa.gov/benefits/disability/> and Chapter 12, Rights of People with Disabilities.
- (3) Survivors: Social Security survivors benefits are paid to widows, widowers, and dependents of eligible workers. This benefit is particularly important for young families with children. For more information on survivors benefits, see

<https://www.ssa.gov/benefits/survivors/> and <https://www.ssa.gov/pubs/EN-05-10008.pdf>.

Q. What if I did not earn enough credits to get Social Security?

A. If you have not worked long enough to get Social Security, you may be able to get public assistance or Supplemental Security Income (SSI). The SSI program provides monthly payments to adults and children with a disability or blindness who have income and resources below specific financial limits. SSI payments are also made to people age 65 and older without disabilities who meet the financial qualifications. For more information on the SSI program eligibility and how to apply, see <https://www.ssa.gov/benefits/ssi/>.

Q. If I qualify for SSI, do I receive payments right away?

A. Generally, it takes about 3 to 5 months to receive a decision on an application for SSI benefits.

Other Need-Based Benefits

Q. What other need-based benefits may be available?

A. Other federal need-based services include Lifeline, which is the FCC's program to help make communications services more affordable for low-income consumers. Lifeline provides subscribers a discount on qualifying monthly telephone service, broadband Internet service, or bundled voice-broadband packages purchased from participating wireline or wireless providers. The discount helps ensure that low-income consumers can afford 21st century broadband and the access it provides to jobs, healthcare, and educational resources. To apply for Lifeline, visit the National Verifier application system at <https://www.checklifeline.org/lifeline>.

New York State also provides other need-based benefits, such as two Cash Assistance programs. For more information on New York State need-based benefits, visit <https://www.nycbar.org/get-legal-help/article/public-benefits/>.

Other benefits may be available to veterans. For more information on veterans' benefits, visit <https://www.va.gov/>, which has information on benefits for service members and benefits for family members of service members.

Other Useful Websites:

U.S. Department of Housing and Urban Development
<https://www.hud.gov/>

Information on New York City Public Assistance
<http://www.nyc.gov/html/hra/html/services/services.shtml>

New York City Housing Authority
<https://www1.nyc.gov/site/nycha/index.page>

New York City Job and Service Centers

http://www.nyc.gov/html/hra/html/services/job_centers.shtml

New York State Department of Health Medicaid

http://www.health.state.ny.us/health_care/medicaid/index.htm

New York State Homes and Community Renewal

<https://hcr.ny.gov/>

New York State Office for the Aging, Medicare Information

<https://aging.ny.gov/programs/medicare-and-health-insurance>

Social Security Administration

<https://www.ssa.gov>

Social Security Publications Listing

<http://www.ssa.gov/pubs>

CHAPTER 16
VOTING RIGHTS

Q. Who can register to vote?

A. There are six qualifications that you need to meet in order to register to vote in New York State: (1) you must be a U.S. citizen, (2) you must be 18 years old by Election Day, (3) you must live at your present address at least 30 days prior to Election Day, (4) you may not be in jail or on parole for a felony conviction, (5) you must not have been previously adjudged mentally incompetent by a court, and (6) you cannot claim the right to vote in another state.

Q. How do I register to vote?

A. You can register at your county Board of Elections or at certain state government offices such as the Department of Motor Vehicles (DMV), public assistance agencies and agencies serving people with disabilities. You can register at these places on any business day of the year. You can also download an application online at <http://www.elections.ny.gov/VotingRegister.html> or call 1-800-FOR-VOTE.

Q. When is the next general election?

A. General Election Day is always on the first Tuesday after the first Monday in November.

Q. Where do I go to vote?

A. You vote at your polling place. To find out where your polling place is, go to <https://www.vote.org/polling-place-locator/> or contact your county Board of Elections at 1-800-FOR-VOTE.

Q. What do I need to bring to my polling place on Election Day?

A. Bring some form of identification even if you have voted before. Acceptable forms of identification include a current and valid photo ID or a copy of a current utility bill, bank statement, government check, paycheck or government document showing your name and address.

Q. What if my name is not on the list of registered voters?

A. You might be in the wrong place or the poll worker might have missed your name. Ask the poll worker to check again, or if he or she is unable to find your name, ask the poll worker if there is a phone number you can call to verify the address of your polling place. If you are in the right place and your name is not on the list, you should ask for an affidavit ballot, which is a paper ballot that you have the right to use for voting.

Q. Can I take time off from work to vote?

A. N.Y. Election Law § 3-110 allows any employee who does not have enough time to vote outside of his/her work hours to take up to 2 paid hours off from work to vote. At least two days but no more than 10 days of advanced notice to an employer is required.

Q. What if I cannot be at my polling place on Election Day?

A. You might be able to vote by absentee ballot or early vote.

Q. What is early voting?

A. In New York, Early Voting is similar to voting on Election Day. Early voters submit their completed ballot just after filling it out. You may visit ANY of the Early Voting Centers in the county where you live, EXCEPT in New York City, where voters are assigned by address to ONE early voting site.

Q. How do I early-vote?

A. You can find your early voting site by going to <https://www.voteearlyny.org/>, and entering your address. For Primary, General, and Special elections, every local Board of Elections must provide voters with nine days to vote in person prior to Election Day. The Early Voting period begins on the second Saturday prior to Election Day and ends on the Sunday prior to Election Day Tuesday.

Q. What are my early voting rights?

A. In New York, you have the right to early vote. Further, voter suppression (or someone telling you that you cannot vote), is illegal. While voter eligibility may be challenged when voting, abuse of the challenge process (bad-faith or baseless challenges) is a crime that can intimidate and suppress voters. If you are the victim of voter suppression, file a report with the NYS Attorney General's Hotline at 800-771-7755 or online; to Election Protection (866-OUR-VOTE); to NYDLC (866-NYDLC-01).

Q. Who can vote by absentee ballot?

A. You can vote by absentee ballot if you meet ANY of these four qualifications: (1) you will be absent from your county on Election Day, (2) you are unable to appear at the polls due to illness or disability, (3) you are a patient in a Veterans Administration Hospital, or (4) you are detained in jail awaiting Grand Jury action or confined in prison after conviction for an offense other than a felony.

Q. How do I vote by absentee ballot?

A. You must complete an application for an absentee ballot, which is available at your county Board of Elections. You can also download an application at <https://www.elections.ny.gov/NYSBOE/download/voting/AbsenteeBallot-English.pdf>. After you have completed your application, you must mail it to your county board no later

than the seventh day before the election or deliver it in person no later than the day before the election. You must mail your ballot to your county board no later than the day before the election or deliver it in person no later than the close of the polls on Election Day.

Q. How should I deal with any unforeseen problems on Election Day?

- A. The best way to deal with problems is to avoid them altogether. Read all instructions carefully, make sure that you have identification and arrive early at the polls to avoid long lines and the last-minute rush. If you make a mistake on your ballot, you can ask for up to two new ballots. If you cannot read the ballot due to literacy limitations or physical impairment, you can ask for help in the voting booth from anyone you want, except from your boss or an officer from your union. You can also ask anyone you want to help translate English language materials or you can request voting materials in a different language (if available). You can find instructions on how to use a polling machine, as well as what machine your polling place uses at <http://www.vote-ny.com/english/voting-machines.php>. If any other problem should arise, ask a poll worker for help.

Q. What if I am harassed at my polling place?

- A. You should inform one of the Poll Monitors present at the polling site.

Q. What are Special Elections?

- A. Special elections are held to temporarily fill vacant offices resulting from an elected official's resignation, removal, death, or permanent incapacitation. They take place in a shorter time period than general or primary elections. The mayor will usually announce the special election's date within three days following the vacancy.

Useful Websites:

Federal Election Commission
<http://www.fec.gov>

American Civil Liberties Union
<http://www.aclu.org/voting-rights>

Election Protection Coalition
<http://www.866ourvote.org>

New York City Board of Elections
<http://vote.nyc.ny.us>

New York Civil Liberties Union
<http://www.nyclu.org/issues/voting-rights>

New York State Board of Elections
<http://www.elections.ny.gov>

Project Vote Smart
<http://votesmart.org>

New York City - County Boards of Elections: (<http://vote.nyc.ny.us>)

Bronx County Board of Elections
1780 Grand Concourse - 5th Floor
Bronx, NY 10457
Phone: 1-718-299-9017

Kings County Board of Elections
345 Adams St. - 4th Floor
Brooklyn, NY 11201
Phone: 1-718-797-8800

New York County Board of Elections
200 Varick St. – 10th Floor
New York, NY 10014
Phone: 1-212-886-2100

Queens County Board of Elections
118-35 Queens Boulevard
Forest Hills, NY 11375
Phone: 1-718-730-6730

Richmond County Board of Elections
1 Edgewater Plaza - 4th Floor
Staten Island, NY 10305
Phone: 1-718-876-0079

CHAPTER 17

IMMIGRATION LAW: STATUS, BECOMING A LAWFUL PERMANENT RESIDENT OR CITIZEN, PROTECTIONS, AND BENEFITS

Q. Who is a non-immigrant or temporary visitor?

A. A non-immigrant or temporary visitor to the U.S. is someone who may enter on a temporary basis for education, tourism, business, medical treatment and other types of temporary work.

Q. How does someone become a temporary visitor?

A. In order to become a U.S. temporary visitor, many foreign nationals must obtain a visa, which is a stamp on their passport indicating the purpose and duration of their visit to the U.S.

Q. How does a visitor get a visa?

A. Usually, someone who wants a visa must go to a U.S. embassy or consulate in his or her home country and fill out an application. There, the applicant is photographed, fingerprinted, and checked against databases of ineligible persons maintained by the United States Department of State. Consular officers will attempt to determine if the applicant truly intends the visit to be temporary, and applicants may be asked if they have a home or family in their home country as evidence that they intend to return. For citizens of the 39 countries participating in the U.S. Visa Waiver Program and who will visit the U.S. for no more than 90 days as tourists or for business, the U.S. currently does not require a visa. The participating countries include Japan, Taiwan, South Korea, and most of Western Europe. Canadians entering the U.S. are not generally required to have visas but must have passports for identification. Citizens of Mexico must have a non-immigrant visa or “border crossing card.”

Q. Who is a lawful permanent resident?

A. Under U.S. law, a lawful permanent resident (LPR) is a foreign-born individual who has received an immigrant visa to live and work in the United States permanently. A person granted LPR status is also known as having “immigrant status” and has received an identification card called a “green card.”

Q. How do you become a lawful permanent resident?

A. An alien (a non-citizen) seeking to become a lawful permanent resident does this in one of three ways. The first way is through family-sponsored immigration, in which a qualifying relative in the U.S. files a “Petition for Alien Relative,” along with proof of his or her relationship to the person seeking permanent residency. Qualifying relatives include the spouse, the parents (over age 21), and the unmarried children (under age 21) of a citizen. The second way is through employment-based immigration, where an employer sponsors a foreign national to become a permanent resident based on a permanent job offer. The

third way is by winning a place in the Diversity Visa Program, also known as the Visa Lottery, which allows for a certain number of immigrant visas each year from countries with low rates of immigration to the U.S.

Q. What public benefits are lawful permanent residents eligible to receive?

A. A lawful permanent resident is entitled to many benefits in the U.S. For example, he or she may be entitled to Supplemental Security Income (SSI), Medicaid, SNAP benefits and other federal and state benefits.

Q. What is naturalization?

A. Naturalization is the process by which a lawful permanent resident becomes a citizen of the U.S.

Q. How does a lawful permanent resident become a naturalized citizen?

A. The application process for naturalization consists of filing an application for citizenship, passing an examination, and taking the oath of allegiance to the U.S. However, to be eligible for naturalization, the application must satisfy a number of requirements. Wait time for naturalization is currently a little over 12 months.

Q. What are the eligibility requirements and the process?

A. The first requirement is “continuous residency.” Usually, this requires that the applicant must have lived in the U.S. for five years as a permanent resident, have been actually present in the U.S. for at least 30 months out of those five years, and have lived within the same state or district for at least three months. However, if the applicant is married to and living with a U.S. resident, the required residency period is only three years, of which the applicant must have actually lived in the country for 18 months.

Continuous residency is broken by absence from the U.S., in some cases for six months, and in all cases for one year. If continuous residency is broken, the waiting period begins again. Naturalization candidates are also required to exhibit good character by behaving in a legal and acceptable manner. Activities that may prevent naturalization include drunk driving, illegal gambling, or lying to gain immigration benefits. Finally, naturalization generally requires that the applicant speak English, have an understanding of U.S. history and government, and understand and accept the principles of the U.S. Constitution. Applicants may be exempt from the English requirement and can take the civics test and interview in their native language if they are 50 years or older and have lived in the U.S. for at least 20 years or are 55 years or older and have lived in the U.S. for at least 15 years.

Q. How do minors become naturalized citizens?

A. When either of your parents becomes a U.S. citizen, you may become a U.S. citizen automatically through derivative citizenship. To qualify for derivative citizenship, you must be under age 18, unmarried and a lawful permanent resident. You must also be in the legal and physical custody of your citizen parent. In addition, you may have acquired

citizenship at birth if one or both of your parents were citizens at the time when you were born outside of the United States.

Q. What are some of the rights and responsibilities of a naturalized citizen?

A. A citizen, whether naturalized or native born, has certain rights and responsibilities that a non-citizen does not. For instance, only a citizen may nominate candidates and vote in federal elections, serve on a jury and travel with a U.S. passport. Citizens enjoy advantages in obtaining government jobs and benefits and in paying taxes. Citizens may file a “Petition for an Alien Relative” for a wider range of family members than a permanent resident may.

Q. What are some of the rights and responsibilities of a naturalized same-sex couple?

A. On June 26, 2013, the U.S. Supreme Court struck down Section 3 of “Defense of Marriage Act” (DOMA), which prevented the federal government from recognizing same-sex marriage, because it violated the Equal Protection Clause of the Constitution. With this ruling, the federal government recognized benefits under DOMA, which allows same-sex, binational couples to sponsor foreign-born spouses for United States residency.

Q. What is a removal hearing?

A. If the Department of Homeland Security believes a non-citizen living in the U.S. should be removed, it begins a removal proceeding with one of the 200 Immigration Judges in the one of the 53 Immigration Courts that are part of the Department of Justice. Removal proceedings used to be called and are still often referred to as deportation proceedings. In the New York area, these proceedings are held at Varick Street or 26 Federal Plaza in New York City or Newark, New Jersey to name a few.

Q. Under what circumstances may a non-citizen be removed from the United States?

A. For a non-citizen to be ordered removed, he or she must first have a hearing before an Immigration Judge. The Immigration Judge must generally make three findings: first, that the person is a non-citizen; second, that the person has overstayed his or her legal status or has committed a criminal offense that makes him or her removable from the U.S.; and third, that he or she is not eligible for any form of relief from removal. Those at risk for removal include those who have been convicted of serious crimes (even if the crime happened years ago and the person never went to jail), those who have overstayed their visas or otherwise have no immigration status, and those who entered the U.S. illegally. If a non-citizen fails to appear for a removal proceeding, an Immigration Judge may enter a removal order in his or her absence.

Q. What should you do if a family member is detained?

A. The New York City Council passed two bills on February 27, 2013, to restrict the cooperation between the city and federal immigration authorities and reduce the deportation of immigrants who present no threat to public safety. In addition, on October 31, 2017, the City Council passed Intro 1568-2017, establishing that no New York City resources can be used for federal immigration enforcement purposes. This legislation

makes it illegal for the NYPD, or any city agency, to engage in, or assist federal authorities with, immigration enforcement. Immigrants who have been convicted of felonies or serious misdemeanors within ten years are not protected against being detained. However, the law would protect against detention for immigrants who face most misdemeanor charges, excluding sex crimes, drunk driving, charges relating to weapons and criminal assault. For help with an immigration matter, regarding removal defense, immigration benefits, concerns about public charge, or advance planning for non-citizen parents, you can call the Legal Aid Society's Immigration Law Unit Helpline: 844-955-3425. Interpreters are available for all languages. The helpline operates Monday through Friday from 9 a.m. to 5 p.m.

Q. What is the difference between a refugee and an asylee?

- A. A refugee is an individual who has been forced to leave his or her country because of war, persecution or violence. Refugee status may only be claimed by someone outside his or her country and outside the U.S. A refugee applies for relief at a refugee camp or at a U.S. consulate in a country to which he or she has fled from persecution.

In contrast, someone claiming refugee status who has already entered the U.S. must apply for asylum. The Immigration and Nationality Act provides that a non-citizen granted refugee or asylee status may remain in the U.S. in safety and under no circumstances returned to the country where he or she was persecuted.

Q. What is the process by which you claim to be a refugee or seek asylum?

- A. As described above, refugees apply for help while outside the United States. The first step is a screening process administered by the United Nations High Commissioner for Refugees. Those who pass through this process are then interviewed in person at a U.S. embassy, which follows the refugee policies of the Department of State. Those who are approved as refugees then travel to the U.S.

A non-citizen in the United States can apply for asylum in two ways. First, he or she may claim asylum "defensively," that is, as a defense to a removal proceeding instituted by the Department of Homeland Security. Alternatively, a non-citizen may file an "affirmative" asylum application with the Bureau of Citizenship and Immigration Services. This route leads to an interview with an Immigration Officer in one of the eight "asylum offices," in which the officer seeks to determine the quality and credibility of the claim. If the Immigration Officer determines the applicant to be eligible for asylum, then asylum is granted. However, if the Immigration Officer does not approve asylum, the application is usually referred to Immigration Court, where removal proceedings are commenced, and the applicant must prove that he or she satisfies the definition of "refugee" described above to avoid being removed. Even if someone qualifies for relief as a refugee or asylee, there are still grounds for denial of asylum if that applicant has committed a serious crime.

Q. What public benefits are immigrants, refugees and asylees eligible to receive?

- A. Because refugees and asylees often leave their homelands under adverse circumstances, the federal government has established programs to provide resettlement assistance.

Although most recent immigrants are ineligible for Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI) or Medicaid, refugees are eligible for TANF for the first five years after gaining refugee status and for SSI and Medicaid for their first seven years in the U.S. Additionally, while new immigrants are generally barred from receiving SNAP benefits for their first five years, refugees and asylees are eligible. A refugee may also be eligible for the U.S. Department of Health and Human Services' Refugee Cash and Medical Assistance Program, which is administered by the state in which the refugee resides. Refugees and asylees may also apply for employment authorization, travel authorization and adjustment of status to permanent resident after one year. Once someone has been granted asylum, he or she may request "derivative asylum" for a spouse or child not included in the original claim.

Q. What are the waiting times for applications for immigration benefits?

A. There have been increasing processing times from 2017 to 2021 to obtain green cards, with an average processing time of 10.4 months. As of November 2020, the average wait time to replace a green card was between 6 and 9.5 months. Adjustment of status take around 13 months and it takes 6 months to process work permit applications.

Q. What protections do immigrants have?

A. The New York State Immigration Assistance Services Fraud Act protects immigrants against "immigration assistance service providers" who have taken advantage of consumers in a variety of ways: charging excessive fees or doing fraudulent or low-quality work, pressuring customers, offering to bribe government officials, obtaining illegal results, asking customers to sign blank forms, and engaging in other forbidden practices. For more information, visit the website for the New York State Consumer Protection Board, which features a number of guides on dealing with immigration assistance services.

For more information, visit <https://dos.ny.gov/consumer-protection> or call (518) 474-8583.

Q. What are the requirements for an immigrant to obtain a driver's license in New York State?

A. In New York, federal and state laws require applicants for driver's licenses to present a valid Social Security number to the Department of Motor Vehicles (DMV). However, though it is difficult, it is still possible to obtain a driver's license without a Social Security number. You must provide the DMV with: (1) a letter from the Social Security Administration stating you are ineligible for a Social Security number, (2) valid immigration documents that demonstrate that valid immigration status was granted for one year or more and at least six months of status remain, and (3) other documents proving identity that, when combined with other acceptable documents, total at least "six points" under the DMV's rules. Remember that it is crucial to be truthful when applying for a driver's license, because presenting false documentation to the DMV is punishable by arrest and prosecution.

Q. What are the requirements for an immigrant to obtain an IDNYC?

- A. IDNYC is a card for all New Yorkers, from all backgrounds, and from all five boroughs. Your immigration status does not matter. The free, municipal identification card for New York City residents, ages 10 and up, provides access to a wide variety of services and programs offered by the City. You can schedule an appointment through [IDNYC's Online Portal \(https://a069-idnyconlineportal.nyc.gov/IOPWeb/#/\)](https://a069-idnyconlineportal.nyc.gov/IOPWeb/#/) to apply for an IDNYC in person at an IDNYC Enrollment Center or an IDNYC Pop-Up Enrollment Center. During your appointment, you will fill out an application and present proof of identity and New York City residency. Many types of documents are accepted, all of which are listed on the Document Calculator (<https://www1.nyc.gov/site/idnyc/card/documentation.page>). After you submit your application and if your application is approved your card will be sent to you in the mail.

For cardholders 16 and older, cards are valid for five years from the date the application was approved. For cardholders under the age of 16, cards are valid for two years from the date the application was approved. IDNYC Middle School cards, issued to students at designated Department of Education middle schools, expire on the student's graduation date. The application process is accessible to people with limited English proficiency and people with disabilities.

For more information on the IDNYC, visit:
<https://www1.nyc.gov/site/idnyc/about/about.page>

Q. If you are undocumented, can you still go to college?

- A. Yes. There is no federal or state law that prohibits the admission of undocumented students to U.S. colleges, public or private. Students are not required by federal or state laws to prove citizenship in order to enter U.S. institutions of higher education. However, institutional policies vary on admitting undocumented students. Please check with the institution for details on admission requirements.

Q. If you are undocumented, are you eligible for lowered tuition in state colleges?

- A. No. While public institutions in many states accept undocumented students, these students are often regarded as foreign students. They are thus ineligible for lowered tuition offered to state residents and are charged out-of-state tuition fees, even if the student is a longtime resident of the state. However, as of July 2021, at least 19 states, including New York, have provisions allowing for in-state tuition rates for undocumented students. For further resources on in-state tuition, please visit: <https://www.nilc.org/issues/education/basic-facts-instate/>.

Q. If you are undocumented, are you eligible for financial aid and scholarship?

- A. Undocumented students cannot legally receive any federally funded student financial aid, which includes loans, grants, work-study assistance, or scholarships. For example, many scholarships for higher education require United States citizenship, such as the Rhodes Scholarship, Fulbright Program and the United States Academies. However, because

private institutions set their own financial aid guidelines, scholarships for undocumented students vary.

For a list of scholarship resources available to undocumented students, please visit: <https://professionals.collegeboard.org/guidance/financial-aid/scholarship-search>

Q. What protections are available for undocumented children?

- A. On June 15, 2012, the Secretary of Homeland Security announced that, under the Deferred Action for Childhood Arrivals (DACA) process, individuals who came to the United States as children and meet key guidelines may request consideration for deferred action for a two-year period. In order to be considered for deferred action, you must have been under the age of 31 as of June 15, 2012, have come to the U.S. before the age of 16, and have not been convicted of a felony, among other criteria.

Deferred action is a discretionary determination to defer removal or deportation of an individual. This is subject to prosecutorial discretion and does not provide an individual with lawful status. On September 5, 2017, former President Donald J. Trump ended the DACA program, putting a halt to all applications for legal status. On June 18, 2020, the U.S. Supreme Court issued a decision finding that the Trump administration's termination of DACA was judicially reviewable and done in an arbitrary and capricious manner, in violation of the Administrative Procedure Act (APA). Thus, on November 14, 2020, and effective Dec. 7, 2020, the United States District Court issued an order requiring the Department of Homeland Security to reinstate the DACA policy. For further information about this process, please visit: <http://www.dhs.gov/deferred-action-childhood-arrivals#0>. You may also contact the National Customer Service Center through the Department of Homeland Security at 1-800-375-5283.

Q. What is the DREAM Act?

- A. The DREAM Act is a bill to legalize undocumented high school graduates who were brought to the United States at a young age. Its latest version was written in 2011. Under the DREAM Act, most students who came to the U.S. at age 15 or younger at least five years before the date of the bill's enactment and who have maintained good moral character since entering the U.S. would qualify for conditional permanent resident status upon acceptance to college, graduation from a U.S. high school, or being awarded a GED in the U.S. Students would not qualify for this relief if they had committed crimes, were a security risk, or were inadmissible or removable on certain other grounds. Under the Senate bill qualifying students must be under age 35, whereas under the House bill they must be under age 32. The bill has not yet been adopted by the US Congress.

Useful Websites:

Allan Wernick—Lawyer and Chairman of the City University of New York's Citizenship and Immigration Project:
<http://www.allanwernick.com>

Applying for Citizenship through Naturalization
<https://www.uscis.gov/citizenship/apply-for-citizenship>

Citizenship and Immigration Services
<https://www.uscis.gov/topics>

Citizenship and Immigration Services for Employers
<https://www.uscis.gov/USCIS/Resources/E2en.pdf>

Code of Federal Regulations
<https://www.govinfo.gov/app/collection/cfr>

College Board Resources for Undocumented Students
<http://professionals.collegeboard.com/guidance/financial-aid/undocumented-students>

Department of Homeland Security, Immigration Case Status
<http://www.dhs.gov/how-do-i/check-immigration-case-status>

Department of Justice, Executive Office of Immigration Review
<http://www.justice.gov/eoir/>

Department of Labor, Immigration Programs
<https://www.dol.gov/agencies/whd/immigration>

Department of State
http://travel.state.gov/visa/visa_1750.html

Department of State, Diversity Visa Program
<https://travel.state.gov/content/travel/en/us-visas/immigrate/diversity-visa-program-entry/diversity-visa-submit-entry1.html?wcmode=disabled>

Federal Register
<https://www.federalregister.gov/>

Government Printing Office
<https://www.gpo.gov/>

Metropolitan Center for Urban Education
<https://steinhardt.nyu.edu/metrocenter>

NYS Department of Motor Vehicles
<https://dmv.ny.gov/driver-licenses>

The American Immigration Lawyers Association
<http://www.aila.org>

The Executive Office for Immigration Review (Manages the Immigration Courts)
<http://www.usdoj.gov/eoir/>

The New York Immigration Coalition
<https://www.nyic.org/>

The New York State Consumer Protection Board
<https://dos.ny.gov/consumer-protection>

Visa Waiver Program
<https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html>

CHAPTER 18

MOTOR VEHICLES: LICENSE, INSURANCE, PURCHASE

Q. What is meant by the term “motor vehicle”?

A. The term “motor vehicle” includes cars, trucks, motorcycles, and most other vehicles that move using any energy other than muscle power and that are driven on public streets or highways. This chapter deals with cars.

Q. Can you drive if you are under 16 years old in New York?

A. If you are under 16 years old, you are not allowed to drive in New York under any circumstances. This is true, even if you hold a permit or a driver’s license from another state.

Q. If you are from out of state, can you drive in New York?

A. If you are 16 or older, already have a full driver’s license from another state, and are visiting New York, then you may drive legally in the state. However, if you become a resident of New York, you must get a New York Driver’s License within 30 days and surrender your previous out-of-state license. The law considers you a “resident” when you make New York your “fixed and permanent” place to live. If you live in a house, apartment, room, or other similar place for 90 days or more in New York, then it is considered “presumptive evidence” that you are a resident of New York. The Department of Motor Vehicles (DMV) will not notify you if you are considered a resident of New York or if you must get a New York driver’s license. You are responsible for going to the DMV and registering in accordance with the law.

Q. If you are from out of state, how do you obtain a New York driver’s license?

A. If you already hold a full driver’s license from another state, then you must take and pass the New York driver’s test before you may obtain a New York Driver’s License. If you hold an out-of-state learner’s permit, you cannot exchange it for a New York Permit or License. You must apply for a New York permit and meet all New York guidelines.

Q. What are the requirements for obtaining a driving license if you are 16 or older in New York?

A. If you are 16 years old, you must obtain a Learner’s Permit. If you are at least 16 years and 6 months old, then you must get a Junior License. If you are 17 years old and have taken a driver’s education course, then you must get a Senior License. If you are 18 years old or older, you do not need a driver’s education course and must get a Senior License.

Q. What are the requirements for obtaining a New York Learner’s Permit?

A. If you are at least 16 years old, you are eligible for a New York Learner’s Permit. In order to obtain your permit, you must go to your local DMV office and provide proof of your

identification and date of birth, submit a completed application for a driver's license with your parent or guardian's signature of consent, pass the written permit test or submit a completed Driver Education Certificate, pass the vision test and pay the permit fee. If you are 17 years old and already have a Driver Education Certificate, you do not need your parent's or guardian's consent to obtain a Learner's Permit.

Q. How do you get a Senior Driver's License?

A. Once you turn 18 years old and if you already have a Junior Driver's license, then you will be automatically upgraded to a Senior Driver's license. Your new license will arrive in the mail to the address you indicated on your license application.

If you are 17 years old, you may upgrade your Senior Driver's License if you have taken a driver's education course. You must bring your Driver's Education Certificate to the DMV with your Junior Driver's License to be issued a Senior Driver's License.

Q. Are you required to have insurance?

A. Yes. New York law requires that you be covered by auto insurance whenever you drive. However, if you are learning to drive, depending on what type of permit or license you have, you may or may not be covered by the insurance of the person who is supervising you while driving.

Q. What is Learner's Permit insurance?

A. If you are in your teens with a New York Learner's Permit, you may be covered under the insurance of the adult licensed driver who is in the car with you. This may be your parent, guardian, supervising driver, or driving instructor. If you do not have any one of these adult licensed drivers in the car with you, you either need to have your parent or guardian put you on their policy or get your own auto insurance.

Q. What is Junior Driver's License insurance?

A. In order to obtain a Junior License, teens are required to show proof of insurance at their road test. You have the option of being added to your family's existing auto insurance policy or obtaining your own auto insurance. You may also qualify for discounts, rates, and coverage. For more information, please visit <http://www.dmv.org/insurance/teen-guide-to-car-insurance.php>.

Q. How do you register to become an organ donor through your driver's license?

A. You may register to become a donor by indicating so when you apply for or renew your Driver's License or state ID card. You may also mail or e-mail a completed donor form to the listed address on the following application: <https://donatelife.ny.gov/register/>. Please note you must be at least 16 years old to become an organ donor. For more information, please visit <https://www.ny.gov/services/become-organ-donor>.

Q. How can you register to vote at the DMV?

- A. You can register to vote in person at your local DMV office when you apply for a Driver's License or state ID card. You may also register by completing a voter registration form and mailing it to your County Board of Elections. The voter registration form may be found at: <https://www.elections.ny.gov/NYSBOE/download/voting/voteregform-eng-fillable.pdf>. For more information, please visit <https://www.elections.ny.gov/VotingRegister.html>.

Q. Why should you obtain an identification card if you do not drive?

- A. You may need an ID card to cash a check, apply for a job, open a bank account, get an apartment, board an airplane, or apply for college. If you do not drive, you can obtain an identification card that can be used to verify your age, birthday, and residency.

Q. How do you obtain an identification card?

- A. You may obtain a New York non-driver photo identification card at your local DMV. You do not need an appointment to obtain an ID card, but you will need to pay a fee between \$9 and \$43. You must bring proper identification and proof of birth date.

You may obtain an ID card at any age, but if you are under 16 years old, you must have parental consent. For further information, if you have difficulty obtaining proper identification information for an ID card because you were born outside of the U.S., do not have U.S. citizenship, are in foster care or have a criminal record, visit: <https://dmv.ny.gov/id-card/get-non-driver-id-card-ndid>.

Q. How do you obtain an International Driver Permit?

- A. The International Driver Permit (IDP) allows you to drive outside of the United States in conjunction with a valid U.S. Driver's License. If you would like to obtain an International Driver Permit, you must fill out an application on the AAA website and pay the processing fee. The IDP is valid for one year, after which you must reapply. For further information on IDP and how to obtain one, visit: <https://www.aaa.com/vacation/idpf.html>.

Q. What should I do if I get into a traffic accident?

- A. The first thing you should do is stop your car because failing to stop may be a crime. Stop as close to the scene of the accident as possible without obstructing traffic or creating a danger to yourself or others and remain at the scene. Call the police and, if people are injured, call an ambulance.

All accidents involving injuries or property damage in excess of \$1,000 must be reported to the police and to the DMV within 10 days. Failure to do so is a violation of the law.

You must also exchange your information (driver's license, registration, insurance company, etc.) with any other involved drivers.

Q. Why should I call the police?

- A. You should call the police because they will provide an impartial report of what the scene of the accident looked like. This information is often required if you need to make an insurance claim. Insurance claims allow you to get paid for repairs to your car if it is damaged in an accident and to get paid for medical bills from any injury that resulted from an accident. Make sure to ask the police officer how to get a copy of the accident report and be sure to write down the accident report number, the police officer's name and his or her badge number.

Failure to call the police may be a violation of the law if there is damage or if there is an injury to another person or to a domestic animal.

Q. What information should I get from the other driver?

- A. Get the other driver's name, address, phone number, driver's license number, car's registration number, name of the insurance company insuring the driver and the car, insurance policy number, and a description of the car. Most of this information can be acquired from the other driver's license, the car's registration certificate and the driver's insurance card. If the other driver does not own the car (that is, the name on his or her driver's license does not match the name on the car's registration), then get the car owner's name, address, and phone number from the car's registration certificate.

Q. Is there any other information that I should get?

- A. Yes. Get the names, addresses, and phone numbers of all passengers in the other driver's car and of all witnesses. Make notes about the time of day, the weather, the road and lighting conditions, the length of any skid marks, and a description of the people involved, including obvious injuries and any complaints of pain or soreness. If you have a camera or camera phone, take pictures of the scene and the damage.

Q. What should I do if I think I may have caused an accident?

- A. You must stop and cooperate with the other driver if you are in an accident. However, you have no obligation to admit responsibility for the accident. You may find out later that it was the other driver who caused the accident or that the other driver was also at fault.

Q. If I have been in an accident, should I see a doctor?

- A. If you or your passengers have suffered injuries, even those that may not be readily apparent, you should see a doctor. The cost of your treatment should be covered by insurance.

Q. Do I need to call my insurance company?

- A. You should call your insurance company because if you do not call, the company may not provide you with insurance coverage for any claims. After you call, send a letter to the

company and keep a copy of the letter for your records. The cost of your insurance will most likely go up after a claim.

Q. What must I do if I hit a parked car?

A. If you hit a parked car, you must leave a note with your name, telephone number, and a description of what happened, noting the time of day.

Q. What is my responsibility if I lend my car to someone?

A. Generally, if an accident occurs, both the owner and the driver are responsible for any damages and injuries. If the driver receives summonses for moving violations, only he or she is responsible for answering the summonses and paying any fines. Any parking tickets issued are the responsibility of the registered owner of the vehicle.

Q. What should I do if my car is stolen?

A. Immediately report a stolen car to the police and to your insurance company.

Q. What should I do if my license plates are stolen?

A. Immediately report stolen license plates to the police and ask the police to fill out an MV-78B report, which is available only from the police. If the theft occurred outside of New York state, ask the police in that state to issue a report on their letterhead describing the loss/theft. You must then bring the form/report to the DMV to obtain a new registration.

Q. What is my responsibility for any summonses or accidents after my car is stolen?

A. Report the theft as soon as possible. The owner is not responsible for any accidents that occur or for any summonses that are issued after the car is reported stolen.

Q. What should I do if I get a ticket for a non-criminal moving violation such as speeding, failing to stop for a school bus, following too closely or improper passing?

A. In New York City, moving violations are handled by the DMV Traffic Violations Bureau (TVB). You should answer the ticket promptly (within 15 days) by following the instructions on the ticket. Otherwise, you can be found guilty, a judgment will be entered against you and you may have your license suspended if you do not pay the fine.

Q. What choices will I have when responding to a non-criminal ticket?

A. You can plead “not guilty” by checking that box on your ticket. If you plead “not guilty,” the DMV will send you a letter telling you when and where to go for a hearing. Hearings are open to the public so you may go to any TVB office to watch hearings to get an idea of what to expect at your hearing. If you plead “guilty” by checking that box on your ticket, you may pay your fine (charges are listed on the ticket) by check, money order or credit card when you mail back your ticket or you may bring your payment to any TVB office.

Q. What can happen if I am found to have been driving under the influence of alcohol or drugs?

- A. Much depends on the circumstances of the case, the amount of alcohol (or type and amount of drugs) consumed and the degree of intoxication. If you are under the age of 21, you may be detained by the police even for a small amount of alcohol and may have your license suspended or revoked if and when the facts are confirmed at a subsequent DMV hearing. In cases of greater alcohol or drug consumption, regardless of age, you will be subject to arrest and prosecution in court for driving while intoxicated (DWI), driving while impaired by drugs (both are crimes) or the less serious traffic violation (depending on amount and degree) of driving while impaired. These charges may result in jail sentences and fines, as well as suspension or revocation of your license.

The law requires that your license be taken away for at least six months for the first alcohol or drug-related violation if you are under age 21. If you are over 21, your license may be suspended for up to one year, depending on the extent of intoxication or the existence of prior violations.

Q. Do I have to take a breathalyzer test?

- A. No. But, in the case of a person under 21 who has consumed a small amount of alcohol, if a hearing confirms that he or she refused to take a breathalyzer test that may have indicated the blood alcohol concentration, that refusal will result in a minimum suspension of his or her driver's license for six months and a fine of at least \$300. For all others, regardless of age, if charged with DWI or the other offenses mentioned above, their license will be suspended pending the outcome of the court case, unless that suspension is lifted by the DMV after a hearing.

Q. Will I be able to get my license back?

- A. To get your license back, you must apply to the DMV at the end of the suspension or revocation period.

Q. How else can my license get suspended?

- A. Your license may also be suspended for less serious moving violations that are committed in a short period of time. A point value is assigned for each violation, such as speeding. If you accumulate 7-10 points in 18 months, you will receive a warning letter from the DMV. If you accumulate 11 or more points in 18 months, your license may be suspended. Suspension may also be imposed by the DMV for failure to maintain proper insurance or for a violation of a Child Support Order.

Q. Can I do anything to reduce the points on my license?

- A. You can reduce your point total by up to four points (and save up to 10% on your car insurance) by taking a DMV-approved accident prevention course.

Q. What happens if I drive when my license is suspended?

A. Driving with a suspended license is a crime that may result in fines of up to \$5,000, jail, or confiscation of your car.

Q. How is a car bought or sold?

A. When a car is bought or sold, the seller must transfer the Certificate of Title, a document showing who owns the car, to the buyer by writing the buyer's name on the Certificate and signing it.

Q. What must I do when I buy a car?

- A. (1) Before registering the car, the buyer must obtain automobile liability insurance.
- (2) The buyer must then register the car with the Department of Motor Vehicles in the state where the buyer lives. The state then issues a registration and a new Certificate of Title in the buyer's name.
- (3) The buyer must pay a tax when registering the car.
- (4) The buyer must have the car inspected. In New York, a safety inspection is required within 10 days of the registration of the car.

Note: If you buy a car from a car dealer, the dealer will usually assist you with or, for a fee, perform some of the above tasks.

Q. Does the new owner always get to keep the Certificate of Title?

A. In New York, the Certificate of Title is kept by the owner and indicates if the car is financed (that is, purchased with a loan). In other states, if a car is financed, the lender may require that the Certificate of Title be left with him or her until the loan is paid. Until then, the lender has a right to receive what is owed, even if the car is sold.

Q. If I sell the car, do I still have to pay the loan?

A. Yes. You still must pay a car loan even if you sell the car. Until the loan is paid, you remain responsible for loan payments and the lender has what is called a "lien" on the title, which may prevent the sale of the car. This means that if the loan is not paid, the lender may take the car in order to obtain what is owed.

Q. What happens if I pay my loan but still cannot sell my car?

A. Sometimes a loan gets repaid but the lender does not notify the DMV (known as "not removing the lien"). To remove the lien, you must obtain a "Letter of Satisfaction" or form MV-901 from the lender to verify that the money owed has been paid. You must then file the "Letter of Satisfaction" or the MV-901 in the county clerk's office so that you may sell your car. The DMV will then issue a Certificate of Title without the lien.

Q. Should I buy a car if the Certificate of Title indicates that someone has a lien on the car?

A. No. You should not buy a car with a lien on it unless you are willing to pay the amount remaining on the loan.

Q. What happens if I buy a new car that does not work properly?

A. New York and other states have passed laws to protect buyers of new cars, called “Lemon Laws.” New York’s Lemon Law requires sellers of new cars to repair, free of charge, all material defects that are discovered within the first 18,000 miles or two years from date of delivery—whichever comes first. If more than four repairs are needed or the car is out of service for more than 30 days, the buyer may be entitled to receive a partial refund.

Lemon Laws do not apply to defects that do not substantially affect the value of the car (such as a broken radio) or conditions that are caused by the buyer (such as flat tires).

Q. What protection is there when I buy a used car?

A. Some states extend their Lemon Laws to include used cars purchased from car dealers. (A dealer is someone who has sold or leased more than three vehicles in the previous 12 months.) In New York, if the car is sold by a car dealer rather than by an individual seller, has more than 18,000 miles (and fewer than 100,000 miles), or is more than two years old and was purchased for at least \$1,500, it is covered by the Used Car Lemon Law.

Q. What warranty do I get on a used car?

A. Under New York State law, the warranty on a used car purchased from a dealer must include at least the following covered parts: engine, transmission, drive axle, brakes, radiator, steering, starter, and ignition system. The time periods for the warranty are as follows:

- (1) if the car has between 18,000 and 36,000 miles on it, the warranty is for 90 days or at least 4,000 miles;
- (2) if the car has between 36,000 and 80,000 miles on it, the warranty is for at least 60 days or 3,000 miles;
- (3) if the car has between 80,000 and 100,000 miles on it, the warranty is for at least 30 days or 1,000 miles;
- (4) a car with more than 100,000 miles on it does not have to have any warranty.

If more than three repairs are needed or if the car is out of service for repairs for at least 15 days during the warranty period, the buyer may be entitled to a refund.

Useful Websites:

City of New York

<https://www1.nyc.gov/>

Courts of New York

<https://www.nycourts.gov/courts/>

Edmunds.com (Consumer Website on how to buy or lease a car)

<http://www.edmunds.com>

New York State Department of Motor Vehicles

<https://dmv.ny.gov/>

New York State Department of Transportation

<https://www.dot.ny.gov/index>

New York State Vehicle and Transportation Laws

<http://public.leginfo.state.ny.us/lawssrch.cgi?>

VLWO: Office of the New York State Attorney General – Consumer Issues

<https://ag.ny.gov/consumer-frauds/Filing-a-Consumer-Complaint>

State of New York Insurance Department (Informal Opinion issued regarding New York State's Lemon Laws)

<https://www.dfs.ny.gov/insurance/ogco2002/rg205105.htm>

CHAPTER 19

ENVIRONMENTAL LAW

Q. Where does New York City’s water come from?

A. Most of New York City’s public water supply—the water that runs to the homes and businesses in New York City and to its fire hydrants—comes from reservoirs located in the regions north of New York City. The water flows to New York City through three aqueducts, which are large tunnels or pipes. A small percentage of New York City’s public water supply in southeastern Queens is pumped to the surface from aquifers that lie deep beneath the surface. An aquifer is a layer of rock or soil that is able to store water.

Q. Is New York City’s water safe to drink?

A. Yes. Water taken directly from the reservoirs is not safe to drink, but before the water reaches homes and businesses in New York, chlorine is added to kill bacteria and fluoride is added to help prevent tooth decay. The New York City Department of Environmental Protection (DEP) tests the water in the reservoirs and continuously monitors the water in the distribution system by testing it at various sampling points throughout the City to ensure it is safe to drink.

Q. Are there any risks to drinking water in NYC?

A. Yes. Many buildings in New York City are very old and so are the pipes that carry water through the building. Some old pipes are made of lead and when the pipes corrode with age the lead can dissolve into the water. If lead builds up in the body, it can cause damage to the brain, red blood cells, and kidneys. The greatest risk is to young children and pregnant women.

Both the federal and New York State governments have established maximum levels for what they consider to be safe levels of lead in drinking water.

Q. How can I be sure that the water I drink is safe?

A. New York City residents can request a free lead test by calling the City of New York’s information line at 311. Testing the water is essential because you cannot see, taste, or smell lead in drinking water. If a water test shows that the drinking water drawn from a tap in your home contains lead above 15 parts per billion, the maximum level considered safe by the federal government, then you should take precautions to protect yourself from lead poisoning.

Q. What can I do if the levels are too high?

A. If lead levels in your drinking water are above the maximum level, it is important to locate the source of the lead. If lead enters the water at a concentration above the maximum contaminant level of 15 parts per billion, the City of New York is required to replace the

water service lines. By calling the City of New York's 311 information line, you can learn how to determine the source of excessive lead concentrations.

Q. What restrictions are there on the use of fire hydrants?

A. It is illegal to use a New York City fire hydrant unless you have a permit from the DEP. Open hydrants waste about a thousand gallons of water per minute. In addition, open hydrants reduce water pressure in the system and decrease the flow of water to fire hoses, affecting the ability of the Fire Department to put out fires and causing problems at hospitals and other medical facilities. Open fire hydrants can be a serious risk because the powerful force of an open hydrant without a spray cap can push children into oncoming traffic. The fine for illegally opening a fire hydrant can be \$500 or more. To report illegally opened hydrants or other water or sewer complaints, you should call 311.

Q. How can I get a spray cap for a fire hydrant?

A. You can go to the local firehouse and request a spray cap free of charge to fit on a neighborhood hydrant. An adult over 18 must make the request and the Fire Department will provide installation instructions. Use of a hydrant with a spray cap is legal.

Q. Are there any other restrictions on the use of water?

A. Yes. It is illegal to sell or install showerheads that allow the flow of more than 2.5 gallons per minute. From November 1 to March 31, washing sidewalks, driveways and streets and using a sprinkler to water your lawn are prohibited. At other times of the year, washing sidewalks, driveways and streets is prohibited between 11 a.m. and 7 p.m. In order to wash a vehicle, a hose with a self-closing nozzle must be used. This means a hose must be used that only sprays water when you hold a handle down or use some other means of releasing the water, instead of a hose that runs water constantly.

Q. What is a drought and what limitations are placed on the use of the water supply during a drought?

A. If the water level in the reservoirs is low, New York City may declare a Drought Emergency. During a Drought Emergency, the City puts additional restrictions on the use of the public water supply and the fines for illegal use of the water supply are increased. During a drought, washing a car is illegal and washing sidewalks, driveways and streets is illegal. Decorative fountains must be turned off.

If a Drought Emergency is declared, the public will be notified through television, radio, newspapers, and signs.

Q. Other than water, what are other sources of lead?

A. Years ago, significant amounts of lead were used in paint. Buildings that were constructed prior to 1960 may still have lead paint on the walls and windowsills. When this paint crumbles and chips, small children can be exposed to lead if they put paint chips or toys

that have been in contact with the paint chips and dust in their mouth, or by crawling on the floor and getting paint dust and chips on their hands.

Q. How can I determine if my family or I have been exposed to lead?

A. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. You can call 311 to request that the New York City Department of Health and Mental Hygiene provide you with information about the health effects of lead and how to have a child's blood tested for lead.

Q. What are other sources of lead that people need to be aware of?

A. Other sources of lead exposure include imported herbal remedies, imported cosmetics, spices and foods, imported pottery and pots, soil in outdoor areas contaminated by auto exhaust or peeling paint, and contamination from a person exposed to lead who brings it into the house on his or her clothing or shoes. A New York City Department of Health and Mental Hygiene publication from November 2019, which can be found on the New York City Department of Health Website ([lead-in-imported-products-fact-sheet.pdf \(nyc.gov\)](#)), provides a list of imported products that contain lead. Jobs or hobbies that involve lead exposure include construction, bridge maintenance, home renovation and repair, furniture refinishing, automotive and electronics repair, making stained glass or pottery, and target practice at a firing range.

Q. What precautions can be taken to prevent lead poisoning?

A. If you live in a building with three or more apartments, your landlord is required by law to inspect your apartment for peeling paint and other lead paint hazards at least once a year if a child under seven years of age lives with you. The landlord must provide you with the results of these paint inspections. The landlord will know if there is a child under age seven living in the apartment because the he or she is required to send you a form asking for such information every year. If you do not return the form by February 15, the landlord must, by law, inspect your apartment to see if there are children under age seven living there. If a child under age seven comes to live in your apartment, you must notify your landlord in writing. Always report peeling paint to your landlord. If your landlord does not respond or is not using safe work practices to repair peeling paint and other paint hazards, call 311.

New York State requires that doctors assess the risk of exposure to lead for all children between the age of six months and six years. The best way to detect lead poisoning is by measuring the concentration of lead in the blood. All children ages one and two must have blood lead tests as a matter of law. If you cannot get the information you need regarding lead exposure risks from a doctor, call 311.

Q. What is illegal dumping and why is it hazardous?

A. Illegal dumping occurs when people dump garbage or hazardous materials on the street or in empty lots, instead of disposing of the material in the way required by the New York City Department of Sanitation. Illegal dumping contributes to urban decay, spoils neighborhood beauty, weakens neighborhood pride, and often poses serious health risks to

children who play in the neighborhood. The Department of Sanitation has rules about how garbage may be stored and when it will be picked up. For residences, the Department of Sanitation usually specifies a day or days during the week when the garbage and recycling must be put out on the curb for pick up. The Department of Sanitation has special rules for the disposal of large objects, including furniture and certain materials that are hazardous such as chemicals, to ensure the public is not exposed to these hazardous materials. If you must dispose of furniture, flammable materials, or chemicals, call 311 to find out how to dispose of such items legally. The penalty for illegal dumping can be up to \$20,000. If you see someone dumping garbage or discarding furniture, flammable materials, chemicals, or other unknown substances, make a note of the license plate if a vehicle is being used and call 311 to report the violation.

Q. What is a community garden and how can I organize a community garden in compliance with the law?

- A. When people make use of abandoned property by planting flowers, trees, bushes, vegetables or fruits, a community garden is formed. The trees and vegetation of a community garden improve air quality, create important green spaces, and beautify the neighborhood. For information about abandoned properties that have the potential to become community gardens, see the Green Thumb website. Green Thumb can provide you with information to develop a successful community garden that is in compliance with the law and avoids trespassing on another's property. The Green Thumb website also provides information on how to apply for funding for a community garden project and provides links to a variety of other community gardening resources.

Useful Websites:

Con Edison

<http://www.coned.com>

GreenThumb (Community Gardening Program)

<https://greenthumb.nycgovparks.org/>

The New York City Department of Health and Mental Hygiene-Childhood Lead Poisoning

<https://www.health.ny.gov/environmental/lead/>

The New York City Department of Health and Mental Hygiene-Make Your Home Safe and Healthy

<https://www1.nyc.gov/site/doh/health/health-topics/healthy-home.page>

New York City Department of Environmental Protection

<http://www.nyc.gov/html/dep/html/home/home.shtml>

New York City Environmental Justice Alliance

<http://www.nycejA.org>

CHAPTER 20

FAMILY LAW AND MARRIAGE

1. Unmarried Couples

Q. May unmarried couples live together?

A. Yes. From a legal standpoint, both heterosexual and homosexual unmarried couples may live together in New York State, regardless of whether they have plans to get married.

Q. What are the rights of unmarried couples?

A. Both heterosexual and homosexual unmarried couples have the right to jointly adopt a child even if neither individual is the child's biological parent. Also, unmarried couples who live together may enter into a "cohabitation agreement" that specifies what will happen with their property in the event that the couple separates. If the unmarried couple resides in New York City, the couple may enter into a "domestic partnership agreement" that recognizes their commitments to one another. This agreement allows many unmarried couples to have most of the obligations, rights and benefits enjoyed by married couples.

Q. If a couple is engaged but does not get married, what happens to the engagement ring and other gifts?

A. In New York, if a couple cancels their engagement, any gifts exchanged in anticipation of their marriage are treated as conditional gifts and must be returned to the donor or grantor. For example, if a man gives a woman an engagement ring and the couple decides not to get married, the woman must return the ring. This is true even if it is the man's "fault" that the engagement is cancelled.

This is because most courts view engagement rings as implied conditional gifts, which mean an engagement ring is gifted based on an expectation of marriage. If the condition of marriage is not satisfied then the donor may receive the ring back.

2. Marriage

Q. What is the legal significance of marriage?

A. Marriage is a legally binding agreement between two spouses that creates certain rights and obligations. For example, spouses are responsible for one another's financial obligations. Spouses may also be entitled to certain health care benefits or government benefits.

Q. How is a valid marriage created?

A. In New York, a valid marriage is created when an official, such as a member of the clergy, a judge or a justice of the peace, presides over a ceremony during which the two spouses commit to being married under the law. At least one witness must be present at the

ceremony. New York will also recognize marriages that are validly created in other states. However, New York will not recognize marriages that violate New York public policy. New York will not recognize polygamous or incestuous marriages or marriages involving an underage party, even if the marriage was legal where it was performed.

Q. Does a couple need a license to get married?

A. Yes. Couples getting married in New York State must obtain a marriage license to ensure that there are no legal barriers, such as age or family relationship, that could invalidate their marriage. Couples apply for a license through their town or city clerk. Once the license is issued, the couple must wait at least 24 hours before proceeding with their marriage ceremony. Licenses are valid for 60 days from issuance (active military personnel's licenses are valid for 180 days). However, if a couple goes through with a wedding ceremony without obtaining a valid marriage license, the couple may still be considered legally married.

Q. Is “common law” marriage recognized in New York?

A. A “common law” marriage, which is permitted in very few states, is created when a couple agrees to live together exclusively and presents themselves as legally married, without ever having a marriage ceremony. Common law marriages cannot be formed in New York; New York marriages require marriage ceremonies. However, if a couple has a valid “common law” marriage in another state, then that marriage may be recognized in New York and that couple will not need to have a marriage ceremony.

Q. May people of the same sex get married in New York State?

A. Yes. Same-sex couples can marry in New York State.

Q. May people of different races, nationalities or religions get married?

A. Yes. The, the Due Process clause and the Equal Protection clause of the U.S. Constitution protect the rights of persons of different races, national origins or religions to legally marry one another.

Q. May a U.S. citizen marry a foreign citizen?

A. Yes. A U.S. citizen may marry a foreign citizen or alien as long as the couple can satisfy the general requirements for marriage. However, if the marriage is solely for the purpose of helping the alien obtain a visa and the couple does not live together as a married couple, then the marriage will not be legal. Marriages created for this purpose are known as “green card marriages” and are crimes that could result in deportation and jail time. Immigration examiners perform interviews with both spouses to determine the validity of marriages involving foreign citizens or aliens.

Q. Are family members permitted to marry each other?

A. In New York, a marriage is incestuous and not permitted if it is between a parent and a child; a grandparent and a grandchild (or any ancestor and his or her direct descendant); siblings (either whole- or half-blood); an uncle and his niece or nephew and an aunt and her niece or nephew. More distant relatives such as first cousins are permitted to marry in New York State.

Q. How old must a person be to get married?

A. In New York, a person must be at least 14 years old to marry. If a person is 14 or 15, he or she must have parental permission and a court order in order to get married. If a person is 16 or 17, he or she may get married with parental permission. If both people are 18 or older, they do not need parental permission to get married.

Q. May a person be married to more than one other person at the same time?

A. No. No state allows a person to be legally married to more than one other person at the same time. If someone has ever been married, he or she must obtain a valid divorce or annulment before he or she is allowed to remarry. The practice of entering into a marriage with one person while still legally married to another is called bigamy.

Q. Can one spouse be convicted of crimes against the other?

A. Yes. A person may be held liable in Criminal or Civil Court for any wrong, such as assault, rape or embezzlement, committed against his or her spouse.

Q. Can married individuals still own separate property?

A. Yes. Although there is a presumption that property belongs to both spouses when acquired during the marriage, the couple can agree in writing to own specific property separately, and some property, such as inheritance received during a marriage, is considered separate under New York law (provided certain requirements are met).

3. Ending a Marriage

Q. How can a marriage be ended?

A. A marriage can generally be ended in one of four ways: divorce, legal separation that can be converted into a divorce, annulment, or death of a spouse.

Q. What is a divorce?

A. A divorce is a court decree stating that an otherwise valid marriage has ended. In New York, a divorce can be either fault based or no-fault based. In order to obtain a no-fault divorce in New York, the couple must show that their relationship has “irretrievably” broken down for at least six months. Further, the couple must show that all divorce-related

issues, such as property distribution, child and spousal support and child visitation and custody, have been resolved.

In New York, a divorce can also be fault based and be granted based on one of the following grounds:

- (1) Cruel and inhuman treatment (when one spouse physically or mentally abuses the other so that it is unsafe or improper for the other spouse to continue to live with him or her);
- (2) Adultery (when one spouse has sexual relations outside of the marriage);
- (3) Physical or emotional abandonment (when one spouse leaves the marital home for at least one consecutive year or when one spouse refuses to have sexual relations for at least one consecutive year);
- (4) Imprisonment of a spouse for at least three years; or
- (5) Legal separation (either court ordered or pursuant to a formal written agreement) for at least one year.

Q. What is a legal separation?

A. A legal separation occurs when a married couple agrees to live separately in accordance with terms they agree to in a notarized written separation agreement filed at the County Clerk's Office. The agreement should divide up the property and arrange for custody, visitation, and support. A court can also issue a judgment of separation.

Q. What is an annulment?

A. An annulment is a court decree stating that a marriage was never valid or has become invalid due to new or previously unknown circumstances. In New York, an annulment may be obtained on the following grounds:

- (1) The marriage was entered into under duress, coercion, or fraud;
- (2) The former husband or wife of one of the spouses is still living and the former marriage is still in effect;
- (3) One spouse is incurably incapable of having sexual intercourse;
- (4) One spouse is mentally incompetent or has had an incurable mental illness for at least five years or
- (5) One spouse was under 18, the age of legal consent, when the marriage was entered into and did not obtain the required parental consent and/or court order.

Q. What is fraud in the context of obtaining an annulment?

A. Fraud in this context occurs when one spouse makes a substantial misstatement that the other spouse relies on when deciding to enter into the marriage in the first place. Misstatements regarding a person's background (such as religion or national origin) or the conditions of the marriage (such as plans for having children or where to reside) can result in fraud that warrants an annulment. However, fraud does not occur when one spouse makes an honest statement before the marriage and then changes his or her mind later on.

Q. How is property divided when people get divorced?

A. In New York, a judge will divide a couple's "marital property" based on the "equitable distribution" doctrine. Alternatively, spouses can agree in writing how to divide their property.

Q. What is marital property?

A. Marital property is generally all of the property acquired by either spouse during the marriage. Unless the couple has previously agreed that they will own such property separately, it does not matter in whose name the property is held. Certain types of property, such as certain inheritances, are automatically excluded from marital property.

Q. What is the doctrine of equitable distribution?

A. Equitable distribution means that the court will divide marital property as fairly as possible between the spouses regardless of the reasons underlying the divorce. Equitable distribution does not always mean a 50-50 split. In determining equitable distribution, the court may look at each party's contributions to acquiring the assets, the length of the marriage, each person's earning potential and whether one spouse was abusive.

Q. Does the ex-husband have to pay alimony to his ex-wife?

A. The term "maintenance" is used in New York instead of the terms "alimony" or "spousal support." Gender plays no role in determining maintenance; either spouse may be required to make maintenance payments, depending on the circumstances.

Q. How is maintenance awarded?

A. Maintenance ensures that the supported spouse can continue to live the same or a similar lifestyle as he or she enjoyed when the couple was married. These payments generally are made until the supported spouse remarries or can be self-supporting. When calculating post-divorce maintenance awards, the court may consider any factors it thinks are relevant, including the age, health, job skills, child-custody arrangements and standard of living during the marriage for each spouse. The court may modify the award over time if circumstances change.

Q. What happens if a former spouse fails to pay maintenance?

A. If a former spouse fails to pay the required amount of maintenance, the court may garnish his or her wages (take money directly from a paycheck), take away his or her driver's license (and other professional or recreational licenses) or even put him or her in jail for contempt of court.

Q. If a couple with children get divorced or get an annulment, who will take care of the children?

A. After a divorce or annulment, both parents are still responsible for raising and caring for their children. The court may award sole custody to one parent or allow both parents to share custody. Custody arrangements and related issues are explained in the "Children of Unmarried or Divorced Parents" section below.

4. Children of Unmarried or Divorced Parents

Q. What is the definition of child?

A. In New York, a child, known as a minor, is considered to become an adult at 18. For purposes of determining visitation and custody, children become an adult at the age of 18. However, parents must generally provide child support for children under the age of 21.

Q. What are the rights and obligations of parents with respect to their children?

A. In general, parents have a right and obligation to raise and care for their children. These parental rights and obligations exist for both parents even if they are divorced or were never married to each other.

Q. What are the rights of children with respect to their parents?

A. Children have several basic rights with respect to their parents, including the right to inherit from both parents. Children are also entitled to financial support from both parents and to certain government benefits granted to each parent.

Q. Are these rights the same for children of unmarried or divorced parents?

A. Yes. Children who are born to unmarried parents are legally referred to as non-marital children and have the same legal rights and privileges as children born to married parents. Also, children of divorced parents have the same rights and privileges as children with parents that are still married.

Q. Who decides who will raise the children of divorced or unmarried parents?

A. If unmarried or divorced parents cannot agree on how to raise and care for their child, the Family Court or the Supreme Court will decide who will care for the child based on the "best interests of the child" standard. The court may award sole custody to one parent, or

joint custody to both parents. In sole custody arrangements, the custodial parent has the right to make all major decisions alone.

Q. How does the court decide what is in the best interests of the child?

- A. To determine what is in the best interests of a child, the court has broad discretion to consider all relevant circumstances. Often a court will consider the following factors: the wishes of the parents, the wishes of the child, the health and age of the parents, any history of domestic violence or drug abuse, relationships among extended family members and the child's emotional state. The court has discretion to weigh these factors and may view some factors as more important than others. When making their determinations, courts regularly use reports from psychologists or psychiatrists who have evaluated the family.

Courts may appoint a child their own legal representation separate from the parents. This representative is appointed to represent a child and their interests.

Q. How do joint custody arrangements typically work?

- A. For joint physical custody, the children divide their time between both of their parents' homes. Both parents make the major decisions about the child's life together, such as decisions about education, health and religion. The small day-to-day decisions are made by the parent who is physically taking care of the child at the time.

Q. If one parent is granted sole custody, what are the rights of the other parent?

- A. When one parent is granted sole custody of a child, the other parent will usually have visitation rights, which may be for a day of the week, weekends or other periods as determined by the parents or the court. If the court thinks a parent is unsafe in some way, that parent's visitation rights may be qualified, either requiring a court-selected supervisor to accompany the non-custodial parent during the visit or requiring a neutral place of exchange, which is a safe location where the child will be transferred from one parent to the other. Visitation rights will only be denied in extreme circumstances, such as where there is a danger to the child.

Q. What are the financial obligations of divorced or unmarried parents to their children?

- A. Generally, the courts will determine the amount of child support, unless the parents agree to it outside of court. Since a child is entitled to financial support from both parents, the custodial parent with whom the child lives usually has a right to collect child support from the non-custodial parent. Child support is required so that both parents share the obligation to provide for their children with food, clothing, shelter, medical and dental care, schooling, and recreational activities.

Q. What factors are considered in determining the amount of child support?

- A. Generally, courts determine the amount of child support based on the income of both parents and the number of children being raised. When determining child support, the court

may also take other factors into account, such as the cost of child-care, or, if applicable, the standard of living the child would have enjoyed if the parents were still married. The court can adjust child support payments as circumstances change.

Q. How long must child support be paid?

A. A parent who is paying child support will generally be required to do so until the child turns 21.

Q. What happens if a parent refuses to pay child support?

A. If a parent refuses to pay child support, the court may garnish his or her wages (take money directly from a paycheck), take away his or her driver's license (and other professional or recreational licenses), or even put him or her in jail for contempt of court. In addition, it is a federal crime for a parent to fall more than one year or \$5,000 behind in child support payments if his or her children live in another state.

Q. What happens if a non-marital child's father is unknown?

A. If the identity of the father is unknown or in dispute, the man who believes he is the father, the mother, or the state, when the mother is on public assistance, may bring a paternity case to determine the child's legal father. If a man is determined to be the child's legal father, he has the right to ask for legal custody or visitation rights to the child. The legal father also has child support obligations until the child turns 21.

Q. What happens if a non-marital child's mother refuses to acknowledge the father?

A. If the mother of a non-marital child refuses to acknowledge the father, the man who believes he is the father of a non-marital child may bring a filiation proceeding in Family Court to prove that he is the father. Once he establishes in court that he is the father, he will be able to enforce his legal rights even if the mother objects.

Q. Do grandparents have any rights with respect to their grandchildren?

A. In New York, a child's grandparents may have visitation rights or may be entitled to custody under certain circumstances determined by the judge.

Q. Can a child be forcibly taken away from his or her parents?

A. Although parents have a right to raise their children, that right is not absolute and may be lost in cases of abuse, neglect or other extreme circumstances. (See Chapter 21, Foster Care, Child Abuse, and Neglect.)

5. Adoption

Q. What is adoption?

A. In general, adoption is the process by which a person becomes the legal parent of someone else's biological child. Once a child's adoption is complete, the new legal parent will have all of the rights, privileges, and responsibilities traditionally associated with the parent-child relationship and the biological parents will not have any such rights, privileges or responsibilities.

Q. Who can adopt?

A. Children may be adopted by a married or unmarried couple or individual above the age of 18. Also, a married person may adopt his or her spouse's children. However, a married person cannot adopt separately from his or her spouse, unless the couple is separated. An individual or a couple can adopt regardless of sexual orientation.

Q. Who can be adopted?

A. Anyone of any age can be adopted as long as the goal of the adoption is to establish a genuine parent-child relationship.

Q. What is the process for adopting a child?

A. Most adoptions involve a long and complicated legal process designed to make sure the adoption is in the best interests of the child. Once the child's best interest has been determined, the Family Court or Surrogate's Court issues an order that makes the adoption permanent. To help this process, the adopting parent or parents usually work with a certified adoption agency and an attorney.

Q. Can the child's biological parents contest an adoption?

A. Yes. Since both biological parents have a right to raise their children, both of their consents are needed for an adoption to proceed. However, if a parent is mentally incapacitated or has surrendered, abandoned, or permanently neglected the child, then his or her parental consent is no longer necessary.

Q. Can a child refuse to be adopted?

A. Children over age 14 can refuse to be adopted. For younger children, the court may consider, but need not necessarily follow, the child's wishes in determining whether to allow the adoption.

Q. May the court consider religion before finalizing an adoption?

A. Yes. The court will try to place a child with adopting parents who follow the same religion as the child's biological parents.

Useful Websites:

Adopting.org: How Are You Touched by Adoption

<http://www.adopting.org>

Divorce Net: Family Law Information, Solutions, News and Community

<https://www.divorcenet.com/>

LIFT Legal Resource Guides

<https://www.liftonline.org/guide/english>

New York City Administration for Children's Services

<https://www1.nyc.gov/site/acs/index.page>

New York State Department of Health; Information on Getting Married in New York State

<https://www.health.ny.gov/publications/4210/>

New York State Division of Child Support Enforcement

<http://www.newyorkchildsupport.com/home.html>

New York State Office of Children and Family Services

<http://www.ocfs.state.ny.us/main>

New York State Unified Court System

<http://courts.state.ny.us/divorce/forms.shtml>

CHAPTER 21

FOSTER CARE, CHILD ABUSE, AND NEGLECT

Q. What kind of behavior is considered child abuse under New York law?

A. Parents are responsible for providing a minimum degree of care for their children. Child abuse is committed when a parent or other person legally responsible for the child's care, live-in friends, babysitters or nannies inflict physical, sexual, or emotional injury on a child. Allowing another person to commit such actions against a child may also constitute abuse of a child in New York.

Q. What is considered physical abuse of a child?

A. Physical abuse is a physical injury that is non-accidental, ranging from minor bruises to severe fractures or death. If a parent, caregiver, or other person who is legally responsible for the child punches, beats, kicks, bites, shakes, throws, stabs, chokes, hits, burns or otherwise harms a child, that injury is abuse regardless of whether injury was intended. Physical discipline such as spanking is not considered physical abuse as long as it is reasonable and does not cause bodily injury.

Q. What is considered sexual abuse of a child?

A. Sexual abuse is defined by the Child Abuse Prevention and Treatment Act (CAPTA) as any activity by a parent or caregiver that involves fondling a child's genitals, penetration, rape, sodomy, incest, indecent exposure, exploitation through prostitution of a child, or the production of pornographic materials featuring children.

Q. What is considered emotional abuse of a child?

A. Emotional abuse involves the impairment of a child's sense of self-worth and emotional development. This includes threats, constant criticism, and withholding support, love, or guidance. While emotional abuse is a form of child abuse, it is often difficult to prove. Therefore, child protective services may not be able to intervene in cases that do not have evidence of such emotional harm to a child.

Q. What kind of behavior is considered child neglect under New York law?

A. Child neglect is committed when a parent or caregiver neglects to provide for a child's basic needs, putting the child in imminent danger. Neglect may involve the failure to provide food or shelter, access to necessary medical treatment, education, or emotional love and support. Excessive use of punishment, as well as a caregiver permitting the child to use drugs or alcohol, is also considered a form of child neglect.

Q. Who can be a victim of child abuse or neglect?

A. A victim is any child under 18 years of age whose parent or other legally responsible caregiver inflicted child abuse or neglect as defined under New York State law. A child up

to 21 years of age may be considered abused or neglected if he or she has a disabling condition and is cared for by a special institution, such as New York State schools for the blind or deaf.

Q. Who is required to report child abuse or neglect?

A. Medical professionals (such as physicians, physician’s assistants, dentists, and dental hygienists), teachers, other school officials, law enforcement officials (police, District Attorneys, investigators working in the District Attorney’s Office), and childcare personnel must report any suspected form of child abuse or neglect.

Q. Where must suspected incidents of child abuse or neglect be reported?

A. People like those listed above who are required to report can orally report suspicions of child abuse by calling the New York State Central Register of Child Abuse and Maltreatment at 800-635-1522. After the oral report is made, the State Central Register sends an electronic report right away to the Child Protective Service in the county that will handle the case. People who are not required to report can make their reports by calling a different number 800-342-3720.

Q. What happens after the report is filed?

A. Within 24 hours of receiving a report of child abuse or neglect, the local Child Protective Service must begin an investigation and has up to 60 days to complete it. In New York City, the Child Protective Service is the Administration for Children’s Services (ACS) (<https://www1.nyc.gov/site/acs/index.page>).

- ACS borough office phone numbers are:
- Bronx: (718) 933-1212
- Brooklyn: (718) 623-4500
- Manhattan: (212) 676-7200)
- Queens: (718) 480-4392
- Staten Island: (718) 720-2765

ACS will recommend a plan for the family to protect the child and to help parents resolve problems in the home that led to abuse and neglect.

Q. Can the child be taken away from the home if someone reports?

A. If the child is in imminent danger, then the child will be taken into protective custody. Removing the child from his or her home is not a routine event. It takes place when the child is in immediate danger because the goal of Child Protective Service is to keep families together.

Q. Why should you make a report of suspected child abuse or neglect?

A. By making a report of a suspected child abuse or neglect, you are helping the child and the family. ACS could refer the family to day care or homemaker services to help relieve the pressures of parenthood. There are also programs for family counseling, drug or alcohol treatment, and parenting education.

Q. What can happen to someone who fails to report child abuse or neglect?

A. A person who is required to report and who willfully fails to report a case of suspected child abuse or neglect can be put in jail for one year and can also be liable for damages caused by the failure to report. For more information visit: <https://www.childwelfare.gov/pubPDFs/report.pdf>.

Q. Can you report child abuse or neglect anonymously?

A. Yes. Reports may be made anonymously. You are not required to provide your name. However, it is recommended that you do so in order for ACS to follow up on your report for clarification or questions. The caseworker who will be investigating the child's case will be a different person from the one who takes your report. By law, ACS is not authorized to release the name of the person who made the report to the family that was reported.

Q. What happens if someone files a report but no abuse or neglect is found?

A. If no abuse or neglect is found, then ACS will close its investigation. People who are required to report have no civil or criminal liability if the report was made in good faith.

Q. What happens if child abuse or neglect is found?

A. If ACS concludes that there has been child abuse or neglect, it will provide services to prevent future abuse or neglect. If the situation is dangerous to the child and attempts to assist the family outside of the court system fail, the agency may file a child abuse or neglect lawsuit in Family Court. Also, the agency may remove a child from the home immediately if it appears that the child is in imminent danger and there is not enough time to get a court order.

Q. What happens after an abuse or neglect lawsuit is filed?

A. A hearing is held with all parties represented by their own attorney, including the child, who has his or her own attorney. Each party presents his or her position to the judge.

Q. Does a victim of child abuse or neglect have any say in the proceedings?

A. No. The lawyer for the child appears in court and might present the child's wishes or might present the lawyer's own opinion.

Q. What happens after the hearing?

- A. After hearing testimony from all sides, the judge will decide whether the child is neglected or abused. If the finding is that there is no abuse or neglect, the case is dismissed. If the judge does find abuse or neglect, a dispositional hearing will be scheduled. The judge will also order an investigation of the child's home and family, and the judge can order a mental health evaluation. All reports will be presented to the judge, who will also listen to testimony at the hearing.

At a hearing (the dispositional hearing), the judge may take one of the following actions:

- (1) Release the child to the parent or guardian, on the condition he or she not commit further abusive or neglectful acts;
- (2) Release the child to the parent or guardian, with supervision and services provided by ACS; or
- (3) Place the child in foster care for up to one year while services are provided to the parents to allow for a possible future return of the child. This placement can be extended if the court finds it is not in the best interests of the child to be returned to his or her parents or to the person or persons legally responsible for the child.

Q. Where can you find out more about child abuse or neglect?

- A. For more information about child abuse or neglect, such as referrals to local organizations, and to find out more about how to prevent child abuse or neglect, you can call the Prevention Information Resources Center (PIRC) and Parent Helpline at 1-800-342-7472.

Q. What is foster care?

- A. Foster care is the term used for a system in which a minor is placed in an institution, group home, or private home of a state-certified caregiver referred to as a foster parent. Voluntary placement may occur when a biological parent or lawful guardian is unable to care for a child. Involuntary placement occurs when a child is removed from his or her biological parent or lawful guardian due to the risk or actual occurrence of physical or psychological harm. In the U.S., most children enter foster care due to neglect. The placement of the child is usually arranged through the government or a social service agency. The institution, group home, or foster parent is compensated for expenses. The state through the Family Court and child protection agency stands *in loco parentis*, or in the place of a parent, to the minor, making all legal decisions, while the foster parent is responsible for the day-to-day care of the child.

Q. What services are available to children in foster care?

- A. There are many physical, mental and emotional health services available to children in foster care. The New York State Office of Children and Family Services maintains a manual on its website, <https://ocfs.ny.gov/main/sppd/health-services/policy-directives.php>, that describes in detail the services that are available to you.

Q. What if I am in foster care and am not getting the services that I need?

A. You can contact the New York City Administration for Children’s Services, or the Regional Office of the New York State Office of Children and Family Services, 163 West 125th Street, 18th Floor, New York, NY 10027, Telephone: 1-212-383-1788.

Q. What happens when I become too old for foster care?

A. At the age of 21, children in foster care must begin to transition to an independent life. Your foster care agency should help you prepare to leave foster care by helping you find housing, apply for benefits, identify an adult in the community whom you can rely on for assistance, and find employment or an appropriate educational program. This manual can provide you with more information about the steps you need to take as you start out on your own: <https://www.lawyersforchildren.org/aging-out>. Teens leaving or aging out of foster care in New York can also find more information, inspiration and resources to help. The YouthSuccessNYC.org web site—developed by Children’s Services, New Yorkers For Children, and Youth Communication—features teen-written stories, legal and educational information and links to programs and services.

Useful Websites:

New York State Child Abuse, Maltreatment, and Neglect
<https://pubmed.ncbi.nlm.nih.gov/33351402/>

Community Coordinated Child Care
<http://www.4-c.org>

National Coalition for Child Protection Reform
<http://www.nccpr.org>

NYC Administration for Children’s Services
<http://www.nyc.gov/html/acs/html/home/home.shtml>

Office of Children and Family Services, New York State, Foster Care FAQs
<http://www.ocfs.state.ny.us/main/fostercare/fosterfaq.asp>

Prevent Child Abuse New York
<http://preventchildabuseny.org>

CHAPTER 22

CHILD TRAFFICKING

Q. What is child trafficking?

A. Child trafficking is the recruitment, transport, or transfer of a child for the purposes of sexual exploitation or forced labor exploitation.

Q. Does trafficking only occur in other countries?

A. No. Trafficking of children occurs within the United States and between the United States and other countries.

Q. What are the effects on a child?

A. A trafficked child is often sexually assaulted, forced to use drugs, isolated and unable to attend school, without access to health care, and housed in dangerous conditions. In addition, victims may be exposed to health risks, such as HIV/AIDS, infections, and substance abuse. They can also experience serious mental health risks, that result in anxiety, insecurity, fear, and trauma. Several studies indicate high levels of Post-Traumatic Stress Disorder (PTSD) in survivors. Trafficking can also lead to cognitive impairment, memory loss, depression, and even suicide.

Q. What happens if a trafficked child is arrested?

A. New York State created specialized criminal courts to handle prostitution-related offenses and to provide services for trafficking victims.

Q. Who are the children most at risk for being trafficked?

A. Abused kids are most vulnerable to falling victim to commercial sexual exploitation. Also, foster care kids who might have moved from family to family and don't really have anyone to take care of them. Runaways and kids living on the street are also very easy to recruit. These are the biggest categories but, really, any child who feels lonely and disconnected is vulnerable.

Q. What can young people do about trafficking?

A. Young people can become educated consumers and check whether clothing, candy, and other products they buy are made by trafficked children and adults. (See websites at the end of the chapter.)

If you think someone has been trafficked or is in danger of being trafficked, you can call the United States Human Trafficking Hotline at 1-888-373-7888.

Useful Websites:

Anti-Slavery International
<http://www.antislavery.org>

Human Trafficking Search
<http://humantraffickingsearch.org/impact/>

Not for Sale
<http://www.notforsalecampaign.org>

Walk Free Foundation
<http://www.globalslaveryindex.org>

Stop the Traffik
<http://www.stopthetraffik.org>

Slavery Footprint
<http://www.slaveryfootprint.org>

Free 2 Work: The Story Behind the Barcode
<http://www.free2work.org>

Fair Trade USA
<http://www.fairtradeusa.org>

Global Exchange
<http://www.globalexchange.org>

CHAPTER 23

CHILDREN WHO BREAK THE LAW OR MISBEHAVE: THE COURT SYSTEM AND THE RIGHT TO COUNSEL

Q. May children under 18 years old who commit crimes be punished?

A. Yes. Children under 18 years old (called minors) may be punished for their crimes. However, as of October 1, 2019, New York passed the “Raise the Age” legislation, raising the age of criminal responsibility in New York to 18. The Raise the Age legislation created a new category of juvenile offender for 16- and 17-year-olds that commit felonies, they are now referred to as Adolescent Offenders.

Q. What courts deal with minors who commit crimes?

A. Depending on the age of the minor and the seriousness of the crime he or she is charged with, the case can be dealt with in Family Court, the criminal division of Supreme Court (if it is a felony in New York City), the County Court (if it is a felony in jurisdictions outside New York City), or a local Criminal Court (if it is a misdemeanor or a felony prior to indictment).

Q. How are children of different ages dealt with in the court system?

A. Generally, any child at least seven years old but not yet 16 is dealt with in Family Court. A case involving a minor over the age of 16 may begin in the Youth Part of Supreme or County Court (a new trial part created by the Raise the Age legislation) but will often be transferred back to Family Court.

This is not the same in every case though. For children not yet 16 years old, there are three designations: Juvenile Delinquent, Designated Felon, and Juvenile Offender.

Q. What are the exceptions for children not yet 16 years old?

A. A Juvenile Delinquent is a child at least seven years old but not yet 16 who commits an act, which, if committed by an adult, would be a crime.

A Designated Felon is a child who commits certain named serious crimes (such as murder, manslaughter, arson, kidnapping, assault, robbery, and rape). Almost all of these designations apply to children who are 13, 14 or 15, but there are exceptions for juveniles even younger.

A Juvenile Offender is a child of 13, 14 or 15 who commits intentional murder, or a child of 14 or 15 who commits murder, manslaughter, robbery, arson, kidnapping, burglary, rape, or other named felonies.

Q. Are those the only exceptions?

- A. No. There are other exceptions where a minor over the age of 16 could get his or her case transferred to Family Court. An Adolescent Offender is a 16- or 17-year-old that is accused of committing a felony. These cases are heard in the Youth Part of the Supreme or County Court, but their case may be transferred to Family Court. If the case is transferred to Family Court, the Adolescent Offender's status will change to Juvenile Delinquent. If a minor age 16 or 17 is arrested for the crime of prostitution, the minor can file a petition to have the case transferred to Family Court and be declared a PINS (Person In Need of Supervision).

Q. How are the exceptions handled?

- A. A Juvenile Delinquent is always handled in Family Court. The case is presented by an Assistant Corporation Counsel.

A Designated Felon is also handled in Family Court by an Assistant Corporation Counsel.

A Juvenile Offender is automatically charged in adult court and the initial court appearances must happen in adult court. A case can be removed to Family Court in limited circumstances.

An Adolescent Offender charged with a nonviolent felony will automatically have their case transferred to Family Court unless the prosecutor files a motion to keep the case in the Youth Part of the Supreme or County Court within 30 days of arraignment. An Adolescent Offender charged with a violent felony involving a deadly weapon, unlawful sexual conduct, or significant physical injury must get consent from the prosecutor to transfer the case to Family Court. An Adolescent Offender charged with any other violent felony will have their case transferred to Family Court unless the prosecutor can show that extraordinary circumstances warrant keeping the case in the Youth Part of either the Supreme or County Court.

A 16- or 17-year-old charged with prostitution must file for a transfer.

Q. What cases are handled in Supreme or County Court?

- A. All arrests of minors 16 years old and older and all Juvenile Offenders have their first appearance before a judge in the Youth Part of either the Supreme or County court.

Q. What is the difference between a misdemeanor and a felony?

- A. Generally, misdemeanors are crimes for which the offender can receive a jail sentence of no more than one year. A felony is a crime for which the offender can receive a jail sentence of more than one year.

Q. Can a Juvenile Delinquent be charged in Criminal Court with a misdemeanor?

- A. No. All juveniles under 16 years old charged with misdemeanors must have their cases heard in Family Court.

Q. What is Family Court?

A. Each borough has a Family Court with a wide range of powers, including determining how to deal with children who break the law. Unlike in Supreme Court, a Family Court judge may exclude the public from the courtroom, depending upon the nature of the case.

Q. What happens when a child is arrested?

A. A child who has been arrested and held may be brought directly to Family Court by the police or, when the court is not in session, the child may be held overnight in a detention center until the next court day. A child may also be arrested and released after receiving an “appearance ticket” directing him or her to appear in court on a particular date. In court, the child and the parent or guardian are given copies of the petition, which is the document that begins the case.

Q. How does a Family Court case begin?

A. In cases involving Juvenile Delinquents, a prosecuting attorney from the New York City Law Department, called an Assistant Corporation Counsel, presents a petition charging that the minor committed a crime. In cases involving Juvenile Offenders and in some Juvenile Delinquent cases involving certain serious crimes called designated felonies, an Assistant District Attorney can present the petition. Designated felonies include, among other offenses, murder, arson, kidnapping, assault, robbery, manslaughter, and rape.

Q. What happens in Family Court?

A. First, the judge decides whether the minor will be detained or stay at home or some other place until the trial is held. The case is then adjourned for the trial, which is called a fact-finding hearing. A fact-finding hearing is the same as a criminal trial except that there is no jury. At the fact-finding hearing, an Assistant Corporation Counsel or an Assistant District Attorney bringing the petition against the child must prove beyond a reasonable doubt, through witnesses and other evidence, that the minor committed the crimes stated in the petition. The child’s attorney may cross-examine witnesses and may present witnesses and any other evidence for the minor. If the crimes alleged in the petition are not proven, the judge will dismiss it. If the judge does find that a minor committed a crime, a dispositional hearing will be scheduled, and the New York City Probation Department will be ordered to investigate the child’s home and school behavior.

Q. What happens at a dispositional hearing?

A. At a dispositional hearing, the judge decides whether the child is a Juvenile Delinquent in need of supervision, treatment, or confinement (placement). The judge decides based on which disposition meets the needs of the child and then signs a dispositional order. Even if there is a finding that the child committed a crime, the judge may find that the minor is not in need of supervision, treatment or confinement, and the petition is dismissed, although this result rarely happens.

Q. What is youth detention?

A. Youth detention is the temporary custody and care of a minor alleged to be or found to be a Juvenile Delinquent or Juvenile Offender. A judge will order that the minor be detained if there is a substantial probability that the minor will not appear in court for his or her next court date or if there is a serious risk that the minor will commit a crime before the next court date. Juvenile Offenders remain in detention if they are unable to make bail or are ordered held without bail.

Q. What is a secure juvenile detention facility?

A. A secure juvenile detention facility is essentially a jail for minors.

Q. What can happen to minors who do not attend school or are “out of control”?

A. Minors who do not attend school or who are “out of control” (incorrigible, disobedient, truant or habitually ungovernable) may be declared to be a Person in Need of Supervision (PINS).

Q. How is a minor determined to be a PINS?

A. A parent or guardian, peace officer, police officer, someone injured by a minor, or a school official can seek to have a Family Court judge declare a minor to be a PINS. The PINS proceeding can be handled out of court through the Family Assessment Program (FAP), which is run by the Administration for Children’s Services (ACS) and the New York City Department of Probation. The FAP was created to offer information and assistance to help families make well-informed decisions about how to resolve problems and concerns without placing the child in foster care through a PINS petition. The court will assign an attorney for the minor if the problem cannot be resolved by FAP.

Outside of New York City, PINS services are offered by either the county Department of Social Services or Probation Department.

Q. What happens if a judge concludes that a minor is a PINS?

A. If a judge decides that a minor is a PINS, the judge has four choices:

- (1) The judge can place the minor in a foster group home or a social service facility for up to one year.
- (2) The judge can send the minor home under the supervision of a probation officer.
- (3) If the minor is at least 10 years old, the judge can order the minor to pay for any damage done to someone’s property or require the minor to perform community service.
- (4) The judge can also put the case “on hold” for up to six months to decide whether the case should be dismissed.

Q. What is a record?

A. Different parts of the juvenile justice system, such as the courts, the police, and the Department of Criminal Justice Services, keep their own records. The moment you enter the juvenile justice system, a record is created by the police. This happens when charges are filed against you in court. When you are arrested, there is also a record of your arrest, regardless of whether you are charged or not for that arrest. If your case is dismissed, either before or after charges are filed, then the police and the government must destroy all your fingerprints and photos.

Q. What may be in your record?

A. Depending on which government or judicial agency has your record, it may contain information about the charges filed against you, whether you were adjudicated as a delinquent, what your disposition was, any records of probation, which includes evaluations by your probation officer, drug tests results and school records.

Q. Who can see your record?

A. If you are in a court proceeding for another matter, the court and lawyers may see your record. Police officers may also see your record when filing charges against you.

Q. Is your record made publicly available?

A. Records of your juvenile justice involvement are not publicly available. However, if you are 13-, 14- or 15-years-old and you were charged in adult court with a juvenile offense, then your record may be available to the public. Records are publicly available for all 16- and 17-year-olds charged with a crime.

Q. Will your school have access to your record?

A. If you are adjudicated a Juvenile Delinquent, information about what acts you were found to have committed and what your disposition was will be released to your school principal. If you were adjudicated for a felony, then your school may also receive more information about your supervision plan.

Q. How long is your record kept?

A. If you are adjudicated a Juvenile Delinquent of a misdemeanor, any fingerprints taken must be destroyed. If you are adjudicated a Juvenile Delinquent of a felony, then if you reach age 21 and have not been convicted of a crime or have any cases pending, the police and government must destroy your fingerprints and photos.

Q. What is an expungement?

A. An expungement is when your record is completely destroyed. You can file a petition with the Family Court asking for expungement. There is no way to file for expungement in adult court. When the Family Court grants your expungement, it will send its order to expunge

to all the different agencies that kept your record. However, government agencies, such as the Central Intelligence Agency, National Security Administration, and the military, will have access to your expunged record.

Q. If someone is convicted of a crime, are there consequences to be concerned about other than punishment?

A. Yes. All convictions carry a number of “collateral consequences.” Collateral consequences are the possible loss of civil rights that result from a criminal conviction. Among the many possible consequences are loss of housing, inability to qualify for certain jobs, disqualification from voting, liability for certain costs and fees and, in the case of a non-citizen, deportation. It is absolutely essential that a person consult his or her attorney about the possible consequences of a criminal conviction.

Q. What are the consequences for getting a job if you have a juvenile record?

A. If you have been adjudicated as a Juvenile Delinquent in Family Court, then you do not have a criminal record or conviction. You can answer “no” if you are asked if you have ever been convicted of a crime. If you are convicted of a crime in adult court, then an employer can ask if you have been convicted of a crime. Employers cannot ask if you have ever been arrested and they cannot ask about cases that have been dismissed, sealed, or resulted in juvenile or youthful offender adjudications. An employer can only deny you a job if there is a direct relationship between the job you are seeking and your conviction or if you would pose an unreasonable risk to the safety of people or property. An employer must make an individual determination and consider eight factors in deciding whether to hire a person with a criminal conviction, including the policy of New York State to encourage hiring of people with conviction histories.

Q. What are the consequences for applying for college?

A. Colleges and universities may ask any question about involvement with the criminal justice system, including whether you have been arrested. If you are convicted of any drug offense, including marijuana possession, while you are receiving federal financial aid, then you may be ineligible to receive further federal financial aid.

Q. Do I ever have to disclose a juvenile record?

A. In rare instances, you must disclose if you have juvenile record, even if you were told it was expunged or sealed. If you are enlisting in the military, for example, you will have to list all sealed, juvenile or expunged records.

Q. What are the consequences for your driver’s license if you have a record?

A. If you are an adjudicated Juvenile Delinquent, you will have to wait an extra six months to get a driver’s license or permit. If you have a license and you are charged with certain types of offenses, then your driver’s license may be revoked or suspended.

Q. Does a minor charged with a crime have a right to counsel (representation by a lawyer)?

A. Everyone who cannot afford a lawyer has an absolute right to counsel any time he or she is charged with a crime. It is essential that a minor assert that right by requesting an attorney as soon as he or she is arrested. A right to counsel is a basic right. Even if a police officer advises someone that he or she would be better off without an attorney, he or she should politely say that he or she needs to talk to an attorney before answering any questions.

If the minor's parent or guardian cannot afford to hire an attorney, the court will assign a lawyer to represent the minor for free.

Useful Websites:

Department of Juvenile Justice
<http://www.nyc.gov/html/djj>

EricDigests.org—educational articles
<http://www.ericdigests.org>

The Legal Aid Society
<http://www.legal-aid.org>.

New York City Courts System
<http://www.nycourts.gov/courts>

New York State Department of Correctional Services
<https://doccs.ny.gov/>

New York State Division of Criminal Justice Services
<https://www.criminaljustice.ny.gov/>

Vera Institute of Justice
<http://www.vera.org>

CHAPTER 24

DETENTIONS, SEARCHES AND CRIMINAL ARRESTS

Q. When may a police officer stop or detain someone?

A. A police officer may stop someone for a variety of reasons. The New York State Constitution generally provides greater protections with regards to government searches and seizures than the federal U.S. Constitution. Unless otherwise explicitly noted, the law below concerning police stops reflects the protections afforded by the New York State Constitution.

- (1) A police officer may stop someone and request general information, such as identity, residence, destination, or reason for being in the area⁸ without any belief that a crime is occurring as long as the police officer has an “objective, credible reason”⁹ to ask for information. Under such circumstances, a person may refuse to answer and may leave.¹⁰
- (2) A police officer may also stop someone to obtain an explanation if the officer has a “founded suspicion” that a crime is occurring.¹¹ Under such circumstances, police may interfere with a person enough to gain explanatory information but may not forcibly detain the person.¹²
- (3) A police officer may forcibly stop, detain and frisk someone if the officer has a “reasonable suspicion” that someone has committed or is going to commit a crime.¹³ Under such circumstances, a person is not free to leave. The detention may last as long as is reasonably necessary under the circumstances. If a person runs away when he or she sees the police, it may give the police “reasonable suspicion” and allow the police to stop and detain the person.¹⁴

8. *People v. Hollman*, 590 N.E.2d 204, 206 (1992) (“We conclude, as a general matter, that a request for information involves basic, nonthreatening questions regarding, for instance, identity, address or destination.”); *Id.* at 209.

9. *People v. De Bour*, 352 N.E.2d 562, 571 (1976) (“The minimal intrusion of approaching to request information is permissible when there is some objective credible reason for that interference not necessarily indicative of criminality”).

10. *People v. Howard*, 408 N.E.2d 908, 910 (1980) (“An individual to whom a police officer addresses a question has a constitutional right not to respond. He may remain silent or walk or run away. His refusal to answer is not a crime.”).

11. *Hollman*, 590 N.E.2d at 207.

12. *De Bour*, 352 N.E.2d at 572.

13. N.Y. Crim. Proc. Law § 140.50 (McKinney); *De Bour*, 352 N.E.2d at 57.

14. *People v. Holmes*, 585 N.Y.S.2d 718 (1992) *aff’d*, 81 N.Y.2d 1056, 619 N.E.2d 396 (1993).

- (4) If a police officer has “probable cause” (explained below) to believe that someone has committed or is going to commit a crime, the officer may arrest that person.¹⁵

However, police officers have more latitude to question people when performing a public service¹⁶ like helping at the scene of an accident or when detaining juvenile truants and transporting them back to school.¹⁷

Q. Should I cooperate with a police officer who stops me?

- A. It is very hard to tell whether the police have grounds to detain you when you are stopped. The best thing to do is to be polite and cooperate with a police officer, even if you do not want to be stopped or interrupted. If asked, you must provide your name, address and why you are in the neighborhood, but you do not have to answer any other questions the officer asks you. You can politely tell the police officer that you do not want to answer any questions without a lawyer. If you are under 16, you also have the right to ask for a parent to be with you while you are questioned. However, if you voluntarily speak to the police or voluntarily agree to a search of your person, your belongings or home, under most circumstances, you will be considered to have given up any constitutional objection to the questioning or the search. In other words, anything you say or anything the officer finds can be used against you in court.

Q. What happens if I am stopped but not arrested?

- A. If you are stopped, questioned, or frisked by a police officer and no further legal action is taken, the police may not record any personally identifying information about you in any electronic database.¹⁸

Q. What does it mean to be in police custody?

- A. A person is in police custody when the person reasonably believes that he or she is being deprived of freedom in a significant way (for example, when the person is not free to leave).¹⁹ A person in custody has certain rights that the police must tell him or her. Being arrested is one form of being in custody.

15. N.Y. Crim. Proc. Law § 140.10 (McKinney).

16. *People v. Engle*, 74 A.D.2d 583 (1980).

17. *In re Shannon, B.*, 70 N.Y.2d 458 (1987).

18. N.Y. Crim. Proc. Law § 140.50(4) (McKinney).

19. *Miranda v. Arizona*, 384 U.S. 436, 477, 478 (1966); see *People v. Yuki*, 25 N.Y.2d 585, 588 (1969).

Q. What are someone’s basic rights when he or she is in the custody of law enforcement?

A. Many of the basic rights of a person who is in custody or arrested are stated in the Bill of Rights (the first ten Amendments to the U.S. Constitution). The police must inform a person who is in their custody of some of these rights if they intend to question him or her, but brief investigatory questioning on the scene is permitted prior to *Miranda* warnings. These rights are called *Miranda* rights and include:

- (1) the right to remain silent;
- (2) the instruction that anything the person states can and will be used against him or her in a court of law;
- (3) the right to an attorney both before and during questioning; and
- (4) the right to the appointment, free of charge, of an attorney if the person cannot afford an attorney.

If you are detained by law enforcement, *Miranda* rights guarantee that you do not have to answer any questions or speak to the authorities without having a lawyer present.

A person under 16 years old has additional rights. If the police are questioning a person under the age of 16, questioning must be done in a designated room and must be done after notifying the parent or legal guardian.²¹ The N.Y. Fam. Ct. Act § 305.2 states that, “A child shall not be questioned pursuant to this section unless he and a person required to be notified pursuant to subdivision three if present, have been advised.” Both the minor and the parent/legal guardian must be informed of his or her *Miranda* rights, both must understand them, and both must agree to waive those rights. Once someone asks to speak with his or her lawyer, police questioning is supposed to stop.

In order to exercise the right to remain silent, a person who is arrested must tell the police that he or she wants to remain silent.²² If a person who is arrested “volunteers” statements to the police without being asked questions or answers questions without asking to talk to a lawyer, these statements can be used against the person in court.

Q. What is an arrest?

A. An arrest is the act of a police officer taking a person into custody for a crime or offense. It is usually the first formal police procedure in the criminal process. Under the Fourth Amendment to the U.S. Constitution and under the New York Constitution, the government must have “probable cause” to arrest someone.

Q. What is “probable cause”?

A. “Probable cause” to arrest someone means that a government official, such as a police officer, has observed someone committing a crime or has other good reason to believe that someone has committed or is going to commit a crime.

Q. Can someone be arrested in his or her home?

A. To arrest someone in his or her home, a police officer must have an arrest warrant unless the person consents to the arrest or special circumstances exist such as the police chasing someone into his or her home. However, as long as probable cause exists, police officers may arrest a person at the doorway of his or her home even if they do not have a warrant.²³

Q. What is an arrest warrant?

A. An arrest warrant is a court order to arrest someone and it requires that person to appear before the court to answer a criminal charge. A judge must find that probable cause exists before he or she will issue an arrest warrant.

Q. What is a search?

A. A search is the act of a police officer looking for evidence of criminal activity, usually done when someone is arrested. The Fourth Amendment to the U.S. Constitution and the New York State Constitution protect a person's privacy from "unreasonable searches" by the government.

Q. What is a search warrant?

A. A search warrant is a document issued by a judge allowing the search of someone or some place. A judge must find that probable cause exists before issuing a search warrant.

Q. When can a police officer search someone without a search warrant?

A. A police officer can search someone without a search warrant in several circumstances. Commonly, objects falling in the "plain view" of an officer who has a right to be in the position to have that view are subject to seizure without a warrant. The plain view doctrine is limited, however, by the probable cause requirement: officers must have probable cause to believe that items in plain view are contraband before they may search or seize them. Other instances include:

- (1) when the police officer has arrested the person in order to protect the police officer or to avoid the destruction of evidence;
- (2) if a person consents to be searched by the police officer;
- (3) if the police officer believes there is an immediate need to do so in order to protect life or property; or
- (4) if the person is a student, the student and his or her locker may be searched if reasonably necessary to maintain order and discipline in the school.²⁰

20. *New Jersey v. T.L.O.*, 469 U.S. 325, 342, 105 S. Ct. 733, 743, 83 L. Ed. 2d 720 (1985); *Matter of Gregory M.*, 82 N.Y.2d 588, 592, 627 N.E.2d 500 (1993) ("less cause is required to justify such a search than is required of law enforcement authorities searching persons or their effects outside school premises").

Q. When may a police officer search someone’s automobile?

A. If a police officer has probable cause to arrest an occupant of a car, the officer may search the car if he or she believes that the search will produce evidence of a crime. In addition, a police officer may frisk the driver in order to ensure that the police are not in danger. The police officer may also search a car when impounding the car.

Q. What should I do if the police want to arrest me, or search my home, car, or person without presenting a warrant?

A. You should politely say that you do not consent, but you should not physically resist or act in a threatening, belligerent, or hostile manner.

Q. What should someone do if arrested?

A. If arrested, do not argue with the officer. Tell the police that you want to remain silent, and ask for an attorney. It is important to talk to an attorney, preferably one experienced in defending people accused of crimes, called a criminal defense attorney. If a person cannot afford an attorney, the court will appoint one free of charge. A person accused of a crime should be truthful to his or her attorney at all times. Almost everything said between a client and his or her attorney is confidential. (See Chapter 4, The Attorney-Client Relationship.)

Q. How does someone ask for a lawyer?

A. A person must clearly and plainly state that he or she wants to speak to a lawyer. It is not enough for a person to ask whether he or she should speak to a lawyer or to say he or she might want a lawyer. A person must clearly state that he or she does not wish to speak to the police until he or she has a lawyer.

Q. What happens after someone is arrested?

A. (1) The person arrested is brought to a police station where the police list the possible charges. This is called “booking” because the information was historically written down in a book. Also, the person arrested will be fingerprinted and possibly photographed. Occasionally, the person arrested may be required to participate in a lineup. A lineup is a method used to determine the identity of someone who may have committed a crime and the results may be used later in the criminal process. A pre-arraignment lineup is still investigatory. Unlike when interrogating the suspect, the police are under no obligation to ask the suspect if he or she wants a lawyer present for a lineup before arraignment. If a lineup occurs after the arraignment (as explained below), a person has a right to have a lawyer present. Also, if a suspect for a lineup has an open case pending, the police must notify the person’s lawyer that the police wish to place the person in a lineup.

(2) After the booking, the person arrested will be taken to court. This is called “arraignment.” During arraignment, the suspect will be represented by an attorney, be advised of the charges, and given the written accusation, called a complaint or

information. Bail may then be set by the judge. The police are required to bring the person before the court as quickly as possible, usually within 24 hours of the arrest. The police will keep the suspect in a cell until the court is ready to hear the arraignment. During this time the booked person may receive medical treatment if needed.²⁵ Under certain circumstances, the person arrested may be released from the police station after the booking and be required to return to court at a later time for his or her arraignment. If the arrested person later fails to appear in court, a warrant may be issued for his or her arrest.

- (3) If a person is charged with a felony (a crime punishable by more than a year in jail), then the District Attorney must present evidence to a Grand Jury. A Grand Jury is a group of citizens who decide if there is sufficient evidence to issue an “indictment.” An indictment is a formal accusation or charge that a person has committed a crime. The person accused has a right to testify on his or her own behalf before the Grand Jury. It is important to remember that the Grand Jury does not decide whether the person charged is guilty or innocent. Instead, it only decides whether there is enough evidence to charge the defendant with a felony and to issue an indictment to have a trial.

Q. What is bail?

- A. Bail is money paid to the court by or on behalf of a person who has been arrested to try to ensure that he or she will return to court if released from jail. Reasonable bail is a right guaranteed by the Eighth Amendment to the U.S. Constitution. Bail consists of either money or a bond and once bail is paid, a person is released. Bail is usually paid by either the person arrested or someone close to him or her. If the accused does not appear, the person or persons who paid the bail will lose the money and the judge will issue an arrest warrant. In New York City, a 3% fee is deducted from any bail amount posted if the defendant is convicted of a crime. If you are found innocent, the full amount is refunded.

In 2019 and 2020, the New York State legislature passed a series of laws aimed at reforming cash bail. The reforms eliminated cash bail for most misdemeanor and non-violent felony charges and requires judges to consider a person’s ability to pay in cases where cash bail is set. Under the new reforms, judges are also much more likely to look at alternatives to pretrial incarceration as conditions of release, such as drug treatment programming and other community-based services.

Q. How do you post bail?

- A. Bail is accepted in any of the following forms:
- U.S. cash for the full amount;
 - Cashier’s/Teller’s check, in any amount not exceeding the bail figure;
 - Bank, Federal Express, U. S. Postal, Travelers Express Company or Western Union money order, up to \$1,000; or

- GOV-PAY via debit/credit card up to \$2,500.

If paying bail at the Brooklyn Detention Complex, the Manhattan Detention Complex or the Vernon C. Bain Center, make checks or money orders payable to the facility, regardless of where the inmate is housed. If at Rikers Island, checks or money orders must be made out to the Rikers Island Central Cashier (RICC is acceptable; there is no need to spell it out), again, regardless of where the inmate is housed. Checks or money orders made out to the Department of Correction are not accepted. The person posting bail must present personal identification and must provide the New York State Identification (NYSID) number of the person to be bailed.

Q. Is a person required to carry identification?

- A. Carrying identification is not required but is advisable as someone without some proof of identity may be more likely to be held in custody after an arrest. Often, a person who has identification and is arrested for a minor offense will be given a “Desk Appearance Ticket” and released with a date to come to court. A person without identification may be booked, fingerprinted and held for arraignment.

Q. What if someone thinks his or her rights have been violated by an unlawful search or arrest?

- A. A person should obtain the names and badge numbers of the police officers involved in the arrest. If a person believes that his or her rights were violated by the police, he or she may wish to call an attorney before doing anything else, including before submitting a report to the Civilian Complaint Review Board for further investigation.

Useful Websites:

American Civil Liberties Union

<http://www.aclu.org/criminal-law-reform/search-and-seizure>

Annotated Version of the Fourth Amendment

<http://constitution.findlaw.com/amendment4/amendment.html>

Bill of Rights Defense Committee

<http://www.bordc.org>

Cornell Law School—Bill of Rights

<http://www.law.cornell.edu/constitution/billofrights>

Current Information on the Fourth Amendment (Search and Seizure)

<http://www.fourthamendment.com>

The Legal Aid Society

<http://www.legal-aid.org>

New York City Civilian Complaint Review Board
<http://www.nyc.gov/html/ccrb>

New York City Criminal Court
<http://www.courts.state.ny.us/courts/nyc/criminal>

New York City Department of Corrections
<http://www1.nyc.gov/site/doc/index.page>

New York City Police Department
<http://www.nyc.gov/nypd>

New York Civil Liberties Union
<http://www.nyclu.org>

New York State Assembly
<http://assembly.state.ny.us>

New York State Government
<http://www.ny.gov>

The Bill of Rights Institute
<http://www.billofrightsinsitute.org>

The Library of Congress—Primary Documents in American History
<https://www.loc.gov/rr/program/bib/ourdocs/>

The National Archives—The Charters of Freedom
<http://www.archives.gov/exhibits/charters>

CHAPTER 25

FIREARMS REGULATION AND THE SECOND AMENDMENT

As this Manual was being prepared for use in the coming school year, several developments occurred that will affect the way firearms are regulated in New York and the rest of the country.

- On June 23, 2022, the Supreme Court issued a major decision titled *New York State Rifle and Pistol Association v. Bruen*, No. 20-843 (June 23, 2022), which invalidated New York’s system for limiting the right of licensed gun owners to carry them in public. The opinion also signaled a change in the way in which gun regulation will be evaluated under the Second Amendment.
- On June 25, 2022, President Biden signed new gun safety and public health laws that were passed by both houses of Congress. These new laws were a response to school and other mass shootings that has occurred earlier in 2022.
- On July 1, 2022, the Governor of New York signed new gun laws restricting the carrying of concealed guns as well as storage and other requirements. These new laws were specifically intended to limit the effect of the *Bruen* decision in New York State.

These recent developments make it unlikely that any summary of firearm regulation in New York City based on existing law would be accurate or meaningful, and therefore this chapter will only discuss generally how gun laws may be approached by the courts in the future. This discussion cannot be more specific because it remains to be seen how the Supreme Court’s revised approach will be applied.

Q. What is the Second Amendment?

- A.** The Second Amendment to the U.S. Constitution states as follows, “A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

Q. How was the Second Amendment interpreted and applied before the *Bruen* decision?

- A.** For many years the Second Amendment was not interpreted to confer a personal right to own or use a gun like other rights listed in the Bill of Rights. Instead, the right was considered limited to the need for states to raise militia. But a little more than a decade ago in *Heller v. District of Columbia*, 554 U.S.580 (2008) and *McDonald v. Chicago*, 561 U.S.742 (2010) the Supreme Court recognized a personal constitutional right to possess firearms in common use for self-defense. In setting out this right the Court stated that a higher level of scrutiny under the U.S. Constitution would be applied to the gun laws of both federal and state governments, requiring a showing of need and reasonable justification for many restrictions. These cases involved the right to have an ordinary weapon for self-defense in the home. They seemed to suggest that the right to own some

common types of guns would be respected, but governments would still have the power to regulate many aspects of gun ownership or use.

After the *Heller* and *McDonald* decisions, lower U.S. courts developed a two-step approach to dealing with whether a firearms regulation was permissible.

- First, is the type of weapon or conduct at issue within the original scope of the Second Amendment as demonstrated by reference to historical sources? If not, the conduct is unprotected by the Second Amendment and may be freely regulated.
- Second, if historical evidence suggests a type of weapon or conduct might have been within the original scope of the Amendment (even with some ambiguity), the court would apply a balancing test, weighing the extent of limits on the use of an ordinary gun for self-defense against the government’s need for laws to protect public safety. Most courts applied an “intermediate” scrutiny analysis, which required reasonable justification but not the “strict” scrutiny applied to regulation of speech under the First Amendment.

Q. What was the *Bruen* case about?

A. The *Bruen* case involved a 100-year-old New York law that requires New Yorkers to get a gun license for home use and an additional permit to carry the gun outside the home. The gun license application required a statement that the applicant is of good moral character, has no history of crime or mental illness and that “no good cause exists for the denial of the license.” But to carry the gun outside the home, the applicant had to show that “proper cause” existed. The term “proper cause” was not defined in the law, but was interpreted by the courts and state authorities as a special, individualized need to carry a gun for self-protection - one different from that of others in general or in the same community. The *Bruen* case itself was brought by two licensed gun owners who had been denied carry permits. The lower U.S. district and appeals courts used the balancing test described above to weigh the discretionary “proper cause” standard against New York’s need to protect public safety and dismissed the case.

Q. What happened in the *Bruen* case?

A. The gun owners and the State of New York agreed that the balancing approach was appropriate, but argued over how it should be applied to the restrictive, discretionary nature of the New York approval process. Nevertheless, the 6-3 majority opinion, written by Justice Clarence Thomas, abandoned the two-step balancing approach for this and future cases. Instead, it substituted a new test that requires the government to “affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bound of the right to keep and bear arms.” (*See Bruen* slip opinion at 10.) After a lengthy survey of selected historical sources, the majority concluded that requiring a special reason for carrying a weapon subject to the discretion of a state official did not correspond with the historical tradition. The Court reversed the dismissal of the complaint and sent the case back to the lower federal courts in New York for

further proceedings consistent with its opinion. The case is now pending, and new cases challenging the New York law have also been filed.

Q. What is the effect of the *Bruen* case?

- A. The result and new approach of the *Bruen* Court leave many questions about what laws and regulations New York and other states or the federal government itself can enact or enforce to regulate guns and promote public safety within the new test announced in the *Bruen* decision. Justice Thomas’s opinion, like *Heller*, acknowledges that the right to carry guns in public had always been subject to certain reasonable restrictions, and some of the other Justices that joined in the opinion filed concurring opinions noting that governments still had some scope to regulate that which they could not prohibit. The three minority Justices criticized both the new “historical tradition” test and the historical sources and conclusions relied on in the majority decision.

Courts are not historians, and there is likely to be disagreement among many judges around the country, as to what history to look to and how to apply it to specific gun laws and regulations. So at present, it is difficult to predict how many specific existing or possible future gun laws may be treated under the “historical tradition” test announced in *Bruen*.

Useful Websites:

Everytown for Gun Safety
www.everytown.org

The Giffords Law Center to Prevent Gun Violence
<https://giffords.org/lawcenter/gun-laws> (describing existing gun laws state by state, including New York and surrounding states)

The Regional Gun Violence Research Consortium at the Rockefeller Institute of Government
<https://rock.inst.org/gun-violence>

Report of the New York State Bar Association Task Force on Mass Shooting and Assault Weapons (November 2020)
<https://nysba.org/app/uploads2020/11.12-Final>

CHAPTER 26

PERSONAL INJURY AND REMEDIES

Q. What legal rights do children have when they are physically injured as a result of someone else's careless activities?

A. Children have legal rights to bring a claim against the person (or business) that caused them to be harmed and can ask for money payments to make up for any loss they suffer. The claim for a loss can include medical bills, school absences, lost wages, and money for the pain and suffering the injured child experienced.

Q. What is the area of law called that sets the rules for what legal rights are available after someone causes someone else to be hurt?

A. The area of law is called Tort Law.

Q. What area of Tort Law applies to cases where children are physically injured due to carelessness?

A. Negligence is a type of Tort Law that requires everyone to act in a way that does not cause harm to others. Negligence law also helps to identify to whom other people are responsible. It also defines minimum safety requirements. Negligence requires four components: duty, breach, causation, and damage. Notably, under the law, we all have a basic duty of care owed to others. Some professionals such as doctors may have a greater duty of care. In sum, someone is said to be "negligent" when:

- (1) they were required to behave safely toward someone else;
- (2) they did not behave safely;
- (3) the other person was injured because of their behavior; and
- (4) as a result of that, the injured party suffered damages.

For example, if a driver were texting and hit a pedestrian and broke the pedestrian's leg, the driver would be negligent and would be legally responsible for paying the injured pedestrian for his or her damages. Damages could include medical bills, school absences, lost wages, and pain and suffering.

Q. If I am injured, can I start a lawsuit against the person who injured me?

A. A child under the age of 18 (a minor) does not have the legal ability to initiate and resolve a lawsuit on his or her own behalf. In order for a minor to file a claim in court, it must be filed by his or her natural and legal guardian. The legal guardian is usually a parent. If neither of the minor's parents are available, another adult may apply to the court to become the minor's Guardian *Ad Litem*. That designation will permit him or her to file the lawsuit on the minor's behalf.

Q. When does a minor need to bring the lawsuit?

A. In general, the statute of limitations – or deadline – for bringing a personal injury lawsuit based on negligence, is three years from the date of the injury. Medical malpractice cases have a two-and-one-half year statute of limitations. For a minor, that deadline does not begin to run until the minor’s 18th birthday. The measurement of the time deadline starts on the minor’s 18th birthday and the lawsuit must be filed within the statute of limitations from that date.

Q. How will the lawsuit be resolved?

A. Although some personal injury lawsuits go to trial and are heard by a judge and jury, in most cases, the lawsuit ends in a settlement before a trial. A settlement is an agreement between the person who has been injured and started the lawsuit and the person against whom the claim was made. It ends the claims in exchange for a payment of money.

Q. Will there be court proceedings regarding the settlement?

A. Yes. All settlements of a minor’s personal injury claim must be approved by a judge in order for the settlement to be valid. The judge’s approval is called an “Infant’s Compromise Order.” Without judicial approval, a lawsuit brought by a minor cannot be settled, since a minor does not have the independent legal right to resolve it. The court will have a hearing on the issue of whether to approve the minor’s settlement. At the hearing, the court may hear and consider medical evidence, if the case involves a physical injury to the minor. The judge usually questions the minor about the injuries and his or her recovery. The court will also consider the extent and permanence of the injuries. Based on all of the evidence, the court will consider whether the proposed settlement payment is fair to the minor child.

Q. Will the court approve the settlement?

A. In most cases in which a child, through his or her parent or Guardian *Ad Litem*, is represented by an attorney, the court will approve the settlement. The court does, however, have the power and authority to reject a settlement, even when the child is represented by an attorney.

Q. What happens if the court does not approve the settlement?

A. If the court does not approve the settlement, the settlement amount must be increased to an amount the judge considers to be fair to the minor or the case will proceed to trial.

Q. How is the settlement paid?

A. The remaining balance of the settlement, after subtracting the minor’s lawyer’s out-of-pocket expenses and legal fees, is paid into a bank account designated by the court that is opened by the parent or guardian and a bank official for the benefit of the minor.

These funds will be invested and will earn interest, although usually not at a very high interest rate. When the minor turns 18, the funds will be available to him or her, with all the interest that was earned.

Q. Are parents or guardians able to use the settlement funds before the minor turns 18?

A. The answer is almost always no. An application can be made to the judge who issued the Infant Compromise Order for permission to release some of the proceeds to be used for the benefit of the minor. In actual practice, however, it is very rare that a court will authorize the release of these funds to the parent or guardian. The purpose of the law is to protect the interest of the child. There is a very strong public policy to preserve these funds for the benefit of the minor.

Q. Does a minor have to pay taxes on the settlement funds that he or she receives?

A. The proceeds from a recovery on a personal injury claim for pain and suffering are usually tax free. Money recovered for lost wages may be taxable.

Q. Is it possible to negotiate a settlement for a personal injury without bringing a lawsuit?

A. Sometimes, the representatives of the injured minor and the potential parties against whom the claim is brought (the “defendants”) may negotiate a settlement before any lawsuit is filed. If a settlement is reached in a minor’s personal injury case before suit is filed, judicial approval of the settlement is still required. As a result, even after the parties have agreed to the terms of the settlement, papers must still be filed with the court in order to apply for the Infant Compromise Order.

Q. Are there grounds for liability other than negligence?

A. Yes. Another category of torts is called Intentional Torts. This category of torts describes harm that results from an intentional act by a person. Another category of torts is called “Strict Liability.” This term refers to situations where a party is liable for injuries no matter what precautions were taken. Intentional torts have a one-year statute of limitations.

Q. What are examples of intentional torts?

A. Examples of intentional torts are assault, battery, false imprisonment, trespass, fraud, invasion of privacy, slander, libel, and intentional infliction of emotional distress.

Q. How are intentional torts different from other torts?

A. To preserve individual well-being and social welfare, our society generally tries to deter its members from intentionally harming each other. It is harder to prove intentional torts because the victim must prove subjective elements involving the wrongdoer’s state of mind, that is, what he or she was thinking at the time of the incident and that he or she

intended to cause the harm that resulted. The damages available for intentional torts tend to be broader and more generous than for negligent torts.

Q. What is the standard for an intentional tort?

A. The key difference between intentional torts and negligent torts is that the victim must prove the additional element that the defendant acted with the specific intent to perform the act that was the cause of the victim's injuries.

Q. What is strict liability?

A. Strict liability arises where a statute or rule provides that a person is liable for the injury to another regardless of his or her culpability, that is, without regard to whether the acts were negligent, reckless, or intentional. For strict liability, the wrongdoer's state of mind is irrelevant.

Q. What is the standard for strict liability?

A. Where a statute or rule provides for strict liability, the victim need only prove that the injury occurred and that the defendant was the wrongdoer responsible.

Q. What are examples of strict liability?

A. Strict liability can arise in the context of a defective product or animal attack or especially dangerous activities like using explosives for demolition.

Useful Websites:

Black's Law Dictionary
www.thelawdictionary.org

NY State Attorney General
<https://ag.ny.gov/>

New York State Bar Association
<https://nysba.org/>

NY Bar Legal Referral Service
<https://www.nycbar.org/get-legal-help/>

New York Public Research Interest Group
www.nypirg.org

New York Negligence Laws
<https://www.findlaw.com/state/new-york-law/new-york-negligence-laws.html>