

**NEW YORK CRIMINAL  
PROCEDURE**



# **NEW YORK CRIMINAL PROCEDURE**

**An Analytical Approach to Statutory,  
Constitutional and Case Law for  
Criminal Justice Professionals**

*Second Edition*

**Christopher J. Morse  
Brian J. Gorman**

CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2011  
Christopher J. Morse, Brian J. Gorman  
All Rights Reserved.

Library of Congress Cataloging-in-Publication Data

Morse, Christopher J., 1962-

New York criminal procedure : an analytical approach to statutory, constitutional and case law for criminal justice professionals / Christopher J. Morse, Brian J. Gorman. — 2nd ed.

p. cm.

Includes index.

ISBN 978-1-59460-343-3 (alk. paper)

1. Criminal procedure—New York (State) I. Gorman, Brian J., 1964-. Title.

KFN6155.M67 2010

345.747'05—dc22

2010027646

CAROLINA ACADEMIC PRESS  
700 Kent Street  
Durham, North Carolina 27701  
Telephone (919) 489-7486  
Fax (919)493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

# Contents

---

---

Preface	xi
Acknowledgments	xiii

## PART ONE GENERAL PROVISIONS

<b>Chapter 1 • Introduction, Definitions and Basic Constitutional Law Summary</b>	<b>3</b>
1.1 Historical Background and Sources of the Law	3
1.2 Overview of the Process	6
1.3 Basic Constitutional Law Summary	11
1.4 Key Definitions (Article 1)	28
1.5 Peace Officers (Article 2)	32
<b>Chapter 2 • The Criminal Courts</b>	<b>35</b>
2.1 Article 10; Organization and Subject Matter Jurisdiction	35
<b>Chapter 3 • Requirements for and Exemption from Criminal Prosecution</b>	<b>37</b>
3.1 Geographical Jurisdiction of Offenses (Article 20)	37
3.2 Timeliness of Prosecution and Speedy Trial (Article 30)	41
3.3 Exemption from Prosecution by Reason of Previous Prosecution (Article 40)	45
3.4 Compulsion of Evidence by Offer of Immunity (Article 50)	49
<b>Chapter 4 • Rules of Evidence, Standards of Proof and Related Matters</b>	<b>51</b>
4.1 Rules of Evidence (Article 60)	51
4.2 Use of Closed Circuit Television for Certain Child Witnesses (Article 65)	56
4.3 Standards of Proof (Article 70)	58

## PART TWO THE PRINCIPAL PROCEEDINGS

<b>Chapter 5 • Preliminary Proceedings in Local Criminal Court; Commencement of the Action, Arrest, Summons, Fingerprinting, Photographing and Criminal Identification</b>	<b>63</b>
5.1 Commencement of the Action in, and Local Criminal Court Accusatory Instruments (Article 100)	63
5.2 Requiring Defendant's Appearance for Arraignment (Article 110)	64

5.3 Warrant of Arrest (Article 120)	65
5.4 The Summons (Article 130)	68
5.5 Arrest without a Warrant (Article 140)	68
5.6 The Appearance Ticket (Article 150)	76
5.7 Fingerprinting and Photographing of Defendant after Arrest—Criminal Identification Records and Statistics (Article 160)	78
<b>Chapter 6 • Preliminary Proceedings in Local Criminal Court; upon Local Criminal Court Accusatory Instruments; Arraignment, Hearings and Dispositions</b>	<b>81</b>
6.1 Proceedings in Local Criminal Court upon Accusatory Instruments Other Than Indictments and Felony Complaints from Arraignment to Plea (Article 170)	81
6.2 Proceedings in Local Criminal Court upon Felony Complaint (Article 180)	86
<b>Chapter 7 • Preliminary Proceedings in Superior Court</b>	<b>93</b>
7.1 The Grand Jury and Its Proceedings (Article 190)	93
7.2 Waiver of the Grand Jury Indictment (Article 195)	108
7.3 The Indictment and Related Instruments (Article 200)	109
7.4 Proceedings from Filing of Indictment to Plea (Article 210)	116
7.5 Adjournment in Contemplation of Dismissal for the Purpose of Referral to Dispute Resolution (Article 215)	122
<b>Chapter 8 • Prosecution of Indictments in Superior Court; from Plea to Pre-trial Motions</b>	<b>125</b>
8.1 The Plea (Article 220)	125
8.2 Removal of the Action (Article 230)	130
8.3 Discovery (Article 240)	131
8.4 Pre-trial Notices of Defenses (Article 250)	139
8.5 Pre-trial Motions (Article 255)	142
<b>Chapter 9 • Prosecution of Indictments in Superior Court: From Trial to Sentence</b>	<b>145</b>
9.1 The Jury Trial—Generally (Article 260)	145
9.2 The Formation and Conduct of the Jury (Article 270)	148
9.3 The Jury Trial—Motion for a Mistrial (Article 280)	152
9.4 Trial Order of Dismissal (Article 290)	153
9.5 The Court’s Charge and Instructions to the Jury (Article 300)	153
9.6 Deliberation and Verdict of the Jury (Article 310)	154
9.7 Waiver of Jury Trial and Conduct of Non-jury Trial (Article 320)	156
9.8 Proceedings from Verdict to Sentence (Article 330)	157
<b>Chapter 10 • Prosecution of Informations in Local Criminal Court: From Plea to Sentence</b>	<b>161</b>
10.1 Pre-trial Proceedings (Article 340)	161
10.2 Non-jury Trials (Article 350)	162
10.3 The Jury Trial (Article 360)	162
10.4 Proceedings from Verdict to Sentence (Article 370)	163

<b>Chapter 11 • The Sentence</b>	165
11.1 Sentencing in General (Article 380)	165
11.2 Pre-sentence Reports (Article 390)	166
11.3 Pre-sentence Proceedings (Article 400)	169
11.4 Sentences of Probation and Conditional Discharge (Article 410)	173
11.5 Fines, Restitution and Reparation (Article 420)	176
11.6 Sentences of Imprisonment (Article 430)	177
<b>Chapter 12 • Proceedings after Judgment</b>	179
12.1 Post-judgment Motions (Article 440)	179
12.2 Appeals—In What Cases Authorized and to What Courts Taken (Article 450)	182
12.3 Appeals—Taking and Perfecting, and Stays during Pendency (Article 460)	184
12.4 Appeals—Determination Thereof (Article 470)	186
<b>PART THREE</b>	
<b>SPECIAL PROCEEDINGS AND MISCELLANEOUS PROCEDURES</b>	
<b>Chapter 13 • Securing Attendance at Court of Defendants and Witnesses         under Control of the Court—Recognizance, Bail and Commitment</b>	193
13.1 Recognizance, Bail and Commitment—Definitions (Article 500)	193
13.2 Recognizance, Bail and Commitment—Application for; Securing Orders and Related Matters (Article 510)	194
13.3 Bail and Bail Bonds (Article 520)	196
13.4 Recognizance or Bail Re: Defendants; When and by What Courts Authorized; Orders of Protection (Article 530)	198
13.5 Forfeiture of Bail and Remission Thereof (Article 540)	205
<b>Chapter 14 • Securing Attendance at Court of Defendants Not Securable         by Conventional Means and Related Matters</b>	207
14.1 In General (Article 550)	207
14.2 Defendants Confined in Institutions within the State (Article 560)	208
14.3 Defendants Outside the State but within the U.S., Rendition to Other Jurisdictions of Defendants within the State; the Uniform Criminal Extradition Act (Article 570)	208
14.4 Securing Attendance of Prisoners from Other U.S. Jurisdictions and Rendition to Other Jurisdictions of Prisoners in N.Y.S. Prisons; Agreement on Detainers (Article 580)	212
14.5 Securing Attendance of Defendants Who Are outside the United States (Article 590)	214
14.6 Securing Attendance of Corporate Defendants (Article 600)	214
<b>Chapter 15 • Securing Attendance of Witnesses</b>	215
15.1 Securing Attendance of Witnesses by Subpoena (Article 610)	215
15.2 Securing Attendance of Witnesses by Material Witness Order (Article 620)	216
15.3 Securing Attendance of Witnesses Confined in Institutions within the State (Article 630)	217

15.4	The Uniform Witness Act; Securing as Witnesses Persons at Liberty outside the State and Rendition to Other States of Witnesses at Liberty within New York State (Article 640)	218
15.5	Securing Attendance as Witnesses, and Rendition as Witnesses, of Prisoners (Article 650)	219
<b>Chapter 16</b>	<b>• Securing Testimony for Future Use and Using Testimony from a Prior Proceeding</b>	221
16.1	Securing Testimony for Future Use—Examination of Witnesses Conditionally (Article 660)	221
16.2	Use of Testimony Previously Given (Article 670)	222
16.3	Securing Testimony outside the State; Examination of Witnesses on Commission (Article 680)	223
<b>Chapter 17</b>	<b>• Securing Evidence by Court Order and Suppressing Evidence Unlawfully or Improperly Obtained</b>	225
17.1	Search Warrants (Article 690)	225
17.2	Eavesdropping and Video Surveillance Warrants (Article 700)	229
17.3	Pen Registers and Trap and Trace Devices (Article 705)	235
17.4	Motion to Suppress Evidence (Article 710)	236
17.5	Destruction of Dangerous Drugs (Article 715)	239
<b>Chapter 18</b>	<b>• Special Proceedings Which Replace, Suspend or Abate Criminal Actions</b>	241
18.1	Youthful Offender Procedure (Article 720)	241
18.2	Removal of Proceeding against a Juvenile Offender to Family Court (Article 725)	243
18.3	Mental Disease or Defect Excluding Fitness to Proceed (Article 730)	244
<b>PART FOUR</b>		
<b>ILLUSTRATIVE CASES FOR ANALYSIS</b>		
<b>Chapter 1; Introduction</b>		251
Sec. 1.3; Basic Constitutional Law Summary		251
<b>Chapter 3; Exemption from Prosecution</b>		257
Sec. 3.1; Article 20; Geographical Jurisdiction		257
Sec. 3.2; Article 30; Speedy Trial		264
Sec. 3.3; Article 40; Double Jeopardy		268
Sec. 3.4; Article 50; Immunity		272
<b>Chapter 4; Rules of Evidence, Standards of Proof and Related Matters</b>		276
Sec. 4.1; Article 60; Rules of Evidence		276
Sec. 4.3; Article 70; Standards of Proof		283
<b>Chapter 5; Preliminary Proceedings in Local Criminal Court</b>		288
Sec. 5.5; Article 140; Arrest without a Warrant		288



<b>Chapter 6; Preliminary Proceedings in Local Criminal Court</b>	300
Sec. 6.1; Article 170; Proceedings on Complaints Other Than Felony Complaints	300
Sec. 6.2; Article 180; Proceedings on Felony Complaints	305
<b>Chapter 7; Preliminary Proceedings in Superior Court</b>	307
Sec. 7.1; Article 190; The Grand Jury and Its Proceedings	307
<b>Chapter 8; Prosecution of Indictments in Superior Court; from Plea to Pre-trial Motions</b>	312
Sec. 8.1; Article 220; The Plea	312
Sec. 8.3; Article 240; Discovery	317
Sec. 8.5; Article 255; Pre-trial Motions	322
<b>Chapter 9; Prosecution of Indictments in Superior Court; from Trial to Sentence</b>	325
Sec. 9.1; Article 260; Jury Trial—Generally	325
Sec. 9.2; Article 270; Jury Trial—Formation and Conduct of Jury	328
Sec. 9.3; Article 280; Jury Trial—Motion for a Mistrial	333
Sec. 9.4; Article 290; Jury Trial—Trial Order of Dismissal	335
Sec. 9.6; Article 310; Jury Trial—Deliberation and Verdict of Jury	336
Sec. 9.8; Article 330; Proceedings from Verdict to Sentence	340
<b>Chapter 10; Prosecution of Informations in Local Criminal Courts; Plea to Sentence</b>	343
Sec. 10.1; Article 340; Pre-trial Proceedings	343
Sec. 10.2; Article 350; Non-jury Trial	344
Sec. 10.3; Article 360; Jury Trial	346
<b>Chapter 11; The Sentence</b>	347
Sec. 11.1; Article 380; Sentencing in General	347
Sec. 11.2; Article 390; Pre-sentence Reports	347
Sec. 11.3; Article 400; Pre-sentence Proceedings	351
<b>Chapter 12; Proceedings after Judgment</b>	354
Sec. 12.1; Article 440; Post-judgment Motions	354
Sec. 12.2; Article 450; Appeals—In What Cases Authorized and to What Courts Taken	360
Sec. 12.4; Article 470; Appeals—Determination Thereof	360
<b>Chapter 13; Securing Attendance at Court of Defendants; Recognizance, Bail and Commitment</b>	366
Sec. 13.2; Article 510; Rules of Law and Criteria Controlling Determinations	366
Sec. 13.4; Article 530; Recognizance or Bail; When and by What Courts Authorized	368

<b>Chapter 14; Securing Attendance at Court of Defendants Not Securable by Conventional Means and Related Matters</b>	371
Sec. 14.3; Article 570; Securing Attendance of Defendants from outside the State but within the U.S.; Rendition to Other States; Uniform Criminal Extradition Act	371
Sec. 14.4; Article 580; Securing Attendance of Prisoners from Other United States Jurisdictions; Agreement on Detainers	375
<b>Chapter 15; Securing Attendance of Witnesses</b>	379
Sec. 15.1; Article 610; by Subpoena	379
Sec. 15.4; Article 640: Persons at Liberty outside N.Y.S. and Rendition to Other Jurisdictions of Persons at Liberty within the State; the Uniform Witness Act	383
<b>Chapter 16; Securing Testimony for Future Use and Use of Testimony Previously Given</b>	386
Sec. 16.1; Article 660; Securing Testimony for Future Use—Examination of Witness Conditionally	386
Sec. 16.2; Article 670; Use of Testimony Previously Given	387
<b>Chapter 17; Securing Evidence by Court Order and Suppressing Evidence Unlawfully or Improperly Obtained</b>	390
Sec. 17.1; Article 690; Search Warrants	390
Sec. 17.2; Article 700; Eavesdropping and Video Surveillance Warrants	398
Sec. 17.4; Article 710; Motion to Suppress Evidence	400
<b>Chapter 18; Special Proceedings That Replace, Suspend or Abate Criminal Actions</b>	406
Sec. 18.1; Article 720; Youthful Offender Procedure	406
<b>Index</b>	411

# Preface

---

A review of the literature indicates many books on constitutional criminal procedure but virtually no comprehensive work on statutory criminal procedure. This book is designed to stimulate and enable students and criminal justice professionals to critically analyze and understand statutory criminal procedure law. This body of law contains precise procedural rules that must be followed in order to insure the constitutional rights of defendants and other players in the criminal process are not violated.

The provisions of the United States Constitution relating to criminal procedure are embodied in its fourth, fifth, sixth and eighth amendments. These amendments contain such well known rights as those against unreasonable search and seizure, the right not to be compelled to be a witness against oneself, the right to the assistance of counsel, the right to a speedy, public, jury trial and the due process clause; however, these are rights not procedure. These provisions, as written, at one and the same time, are ambiguous and the supreme law of the land. Their meaning is set forth in the decisions of the United States Supreme Court and lower courts of the federal and state governments. The due process clause requires criminal procedure to be fair, in order to enable a defendant to be able to defend against criminal charges. However, these court decisions do not translate directly to a comprehensive set of criminal procedure rules designed to insure fairness in the criminal procedure process as required by the due process clause.

The legislative bodies of the United States and each individual state have enacted statutes that constitute the criminal procedure law of that jurisdiction. These statutory schemes are similar since they are based upon the same constitutional principles as set forth above. Statutes are by their very nature ambiguous or if precisely drawn, create difficulties in application to the varying factual situations to which they must be applied. When the meaning or intent of a criminal procedure statutory provision is brought into question, the courts must decide its meaning or how it should be appropriately applied. There is a myriad of such decisions.

In order to stimulate students and criminal justice professionals into thinking critically about the criminal procedure process, we must look first to the criminal procedure statute, then to the court decisions interpreting them and then to the applicable constitutional provisions. It is difficult, if not impossible, for students and criminal justice professionals, who have little or no formal education in constitutional law or methods of constitutional interpretation, to acquire a reasonable understanding of the criminal procedure process. This book is designed to enable these constituencies to overcome these problems. The analysis is of the Criminal Procedure Law of New York State; however, since the criminal procedure law is similar in each jurisdiction due to its constitutional underpinnings, this book may be used in any jurisdiction in order to provoke readers into thinking critically and understanding criminal procedure law.

Absent this book, teachers in an academic environment or training facility for criminal justice professionals would be required to use the statute as a primary text which, from a pedagogical view is wholly inadequate. The statute itself is not comprehensive and is at times misleading when viewed alone. This book takes one through the criminal procedure statute in its entirety, from arrest, arraignment, hearings, motions, discovery, evidence, trial and appeal to special procedures such as immunity, jurisdiction, wiretapping, death penalty and extradition. This work analyzes and integrates the statute with court decisions and constitutional considerations, presenting the reader with a comprehensible, thought provoking, understandable knowledge of the criminal procedure process. In addition, it contains over eighty edited, illustrative cases for analysis on various aspects of the criminal procedure process such as stop and frisk, search warrants, no knock entry, grand jury proceedings, plea bargaining, bail, admission at trial of previous statements of witnesses, bodily intrusions, DNA testing, suppression of evidence, jury trial, sentencing and sex offender registration.

The exposure of students, criminal justice professionals and the public at large to the criminal procedure process has increased significantly due to the plethora of criminal procedure news, television dramas, and the live televising of criminal actions and trials. This book will assist members of these constituencies to more fully analyze and understand the criminal procedure process they are experiencing.

The overarching goal of this book is to encourage students and criminal justice professionals to think critically about criminal procedure law. Those armed with the tools and insights learned, will then be equipped for further study and best uses of criminal procedure law.

# Acknowledgments

---

---

The authors would like to thank their families, colleagues, and students for support and encouragement in furtherance of this work.

This book is dedicated to Marilyn and Henry R. Morse, J.D., for their unending support and encouragement.

Every author knows that his or her completed project is actually the result of a larger team effort, and this work was no exception. The authors would like to take this opportunity to thank the many players on the different teams who helped develop this project from concept to completion. To our families and close friends who endured endless hours away from them: Antonietta Morse, Michael Morse, J.D., Danny and Chris Stiller, Steven and Bobby Morse, John Williams, Susan Koscis, Mark Copeland, Jenifer Chin, J.D., Cynthia Beamish, J.D. and O. Kim Byrd, J.D.

To all of our friends and colleagues at Towson University and those in the Department of Law, Police Science and Criminal Justice Administration at John Jay College of Criminal Justice who provided critical analysis and commentary: Robert McCrie, T. Kenneth Moran (Chair Emeritus), Todd Clear, (Distinguished Professor), Thomas Flanagan, Heath Grant, Robert Hair, Maria Haberfeld, William Heffernan, Zelma Henriques, Stanley Ingber, Delores Jones-Brown, Irving Klein, John Kleinig, Evan Mandery, John O'Connor, Norman Olch, Robert Panzarella, Dorothy Schulz, Lydia Segal, Eli Silverman, Karen Terry, and Daniel Vona.

We must also acknowledge friends and colleagues at John Jay College of Criminal Justice outside of the department, who supported this work in numerous ways: Jeremy Travis (President), Gerald Lynch (Former President), Basil Wilson (Provost), Selman Berger, Michael Blitz, Jannette Domingo, Karen Kaplowitz, Lawrence Kobilinsky, Susan Larkin, James Levine, James Malone, Rubie Malone, Jose Luis Morin, John Pittman, Catherine Rovira, Sydney Samuel, Edward Shaughnessy, Harold Sullivan, Roger Witherspoon, Kathryn Wylie-Marques, and Jack Zlotnick.

To those in the larger sphere of academia who contributed as well: Daniel Baker, Paul Bompas (Bramshill, U.K.), Michael Buerger, Gary Cordner, James Fyfe, Marta Arias-Klein, Michael Loughrey, M.L. Moran, Rob Rinker, Jeffrey Roth, Peter Sylver, and Wayne Wooden.

Of course, to the team at Carolina Academic Press, for their editorial and technical expertise: Beth Hall, Zoë Oakes, Suzanne Morgen, Kasia Krzysztoforska, Karen Clayton, and Kelly Miller.

Finally, and perhaps most importantly, to our students at Towson and John Jay College of Criminal Justice, for their advice, encouragement, and friendship along the way, and for teaching us about facing incredible challenges with maturity and aplomb beyond their years, especially, Robert Bolstadt, Anthony Cangelosi, James Carroll, Onelly

Ceballos, William Comerro, Joseph Darr, Eben-Ezer Figuereo, Maryann Lattner, David Marvelli, Delbi Ortiz, Marius Sniarowski, Alexandra Tavaréz, Seny Tavaréz, Timyaka Thomas, and Jennifer Kallal.

*Non scholae, sed vitae.*