

New York Criminal Procedure

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

THIRD EDITION

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Preface

The third edition of this book brings to bear one of a very few periods of major reform within New York's Criminal Procedure Law. These reforms are not mere updates of the CPL Article. Rather, they represent substantive changes in law reflecting changes in attitudes and values consistent with certain criminal justice reform movements. For instance, one of the more significant reforms flows from the "Raise the Age" campaign, with its mission to raise the age of criminal responsibility generally from 16 to 18. This is a departure from sentiments holding sway in the late 1990s, which led to changes holding offenders of more serious violent crimes responsible at lower ages. The age of criminal responsibility remains staggered, and dependent upon the nature of the crime. Campaigns like "Raise the Age," however, resulted in adjustments and new presumptions pertaining to the age of criminal responsibility for various crimes, and the creation of an entirely new "Youth Part," staffed with specially trained judges. Other major reforms include liberalized bail requirements, rules of discovery and speedy trial requirements. Bail reform was the most notorious of these reforms due to the confusion and controversy they caused in the courts and community upon implantation. Thus, initial bail reforms made effective January 1, 2020, needed to be reassessed and adjusted in the months that followed. More adjustments may yet arrive down the road; however, the dust has settled on these most recent reforms, and are contained within for study by students and criminal justice professional alike.

The literature review leading to the first edition of this book found that there were many books on constitutional criminal procedure but virtually no comprehensive works on statutory criminal procedure. Therefore, this book was 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 ensure 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.

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New Horizons for Children Orphan Hosting Program: NHFC.org

Project 143 Orphan Hosting Program: P143.org

Non scholae, sed vitae.