

# 2005 Legislative Review

by Al O'Connor\*

[Ed. Note: The Legislative Review, summarizing New York legislative action relevant to criminal defense and related fields, appears annually in the REPORT. Copies of the feature dating from 1998 to the present can also be found on the NYSDA website, [www.nysda.org](http://www.nysda.org), under Hot Topics—Legislation NY. As noted below, a summary of the 2005 amendments to the Rockefeller Drug Laws was published in the last REPORT.]

## Penal Law

➤ **Chap. 643 (S.5880) (Authorizes resentencing of certain A-II felony drug offenders). Effective: October 29, 2005.**

For a detailed analysis, see “A Summary of the 2005 Rockefeller Drug Law Reform Legislation,” in the Aug.-Oct. Backup Center REPORT.

In the final days of the session, the Legislature agreed to expand last year’s Drug Law Reform Act (summarized in the Sept.-Dec. 2004 issue of the REPORT, Vol. XIX, No. 4) by authorizing discretionary resentencing of Class A-II drug offenders serving indeterminate sentences, who are more than 12 months from work release eligibility, and who “meet the eligibility requirements” for merit time [Correction Law § 803 (1)(d)]. The class reportedly includes approximately 500 inmates. The procedure is identical to the A-I resentencing process specified in the Drug Law Reform Act. Inmates have a right to counsel to prepare the application, a right to a hearing on contested issues, a right to appeal from the denial of resentencing, and from a determinate sentence offered or actually imposed by the resentencing court. The new determinate sentence ranges are as follows:

<u>Class A-II Drug Offense</u>	<u>Determinate Sentence Range</u>
First Felony Offense	Between 3 and 10 years
Second Felony (prior non-violent)	Between 6 and 14 years
Second Felony (prior violent)	Between 8 and 17 years
Plus 5 years post-release supervision (all cases)	

➤ **Chap. 39 (A.6285-B) (“Vasean’s Law”—Eliminates criminal negligence as element of vehicular assault and vehicular manslaughter). Effective: June 8, 2005 (by operation of L.2005, chap. 92).**

In response to the death of an 11 year-old, Vasean Alleyne, killed by a motorist who was intoxicated, but not otherwise at fault in the accident, the Legislature has eliminated criminal negligence as an element of vehicular

assault and vehicular manslaughter. Criminal liability for these offenses will now attach upon proof the defendant was intoxicated or impaired by drugs and “as a result of such intoxication or impairment” operated a vehicle in a manner that caused physical injury, serious physical injury or death to another person. The legislation establishes a rebuttable presumption concerning causation:

If it is established that the person operating such motor vehicle vessel, public vessel, snowmobile or all terrain vehicle caused such death while unlawfully intoxicated or impaired by the use of a drug, then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of a drug, such person operated the motor vehicle, vessel, public vessel, snowmobile or all terrain vehicle in a manner that caused such [physical injury, serious physical injury or death].

## NEW OFFENSES AND ENHANCED PENALTIES

➤ **Chap. 49 (S.4584) (Leaving the scene of an accident—increased penalties). Effective: June 17, 2005 (by operation of L.2005, chap. 108).**

Upgrades penalties for offenses relating to leaving the scene of an accident involving injury (VTL § 600) as follows:

**Physical injury**—failure to provide license, insurance card or identifying information—offense remains Class B misdemeanor. All other violations of the statute (*i.e.*, failure to stop)—Class A misdemeanor (from Class B) punishable by fine of \$500–\$1000 and imprisonment; subsequent offense, Class E felony (from Class A misdemeanor) punishable by fine of \$1000–\$2500.

**Serious physical injury**—Class E felony (except where violation involved mere failure to provide license, insurance card or identifying information), punishable by fine of \$1000–\$5000 and imprisonment.

**Death**—Class D felony (from E), punishable by fine of \$2000–\$5000 and imprisonment.

➤ **Chap. 294 (S.2440) (Riot in the first degree—prison incidents). Effective: November 1, 2005.**

Adds a new subdivision (2) to riot in the first degree (Penal Law § 240.06) pertaining to conduct in state correctional facilities.

A person is guilty of riot in the first degree when he:

(2) while in a correctional facility, as that term is defined in subdivision four of section two of the correction law, simultaneously with ten or more other persons, engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing alarm within such correc-

\* Al O'Connor is the Backup Center Senior Staff Attorney. He coordinates the Association’s amicus and legislative work.

tional facility and in the course of and as a result of such conduct, a person other than one of the participants suffers physical injury or substantial property damage occurs.

► **Chap. 450 (A.6723) (Compelling prostitution). Effective: November 1, 2005.**

Establishes the new crime of compelling prostitution:

**Penal Law § 230.33**

A person is guilty of compelling prostitution when, being twenty-one years of age or older, he or she knowingly advances prostitution by compelling a person less than sixteen years old, by force or intimidation, to engage in prostitution.

(Class B felony)

► **Chap. 394 (S.5920) (New offenses related to methamphetamine). Effective: October 1, 2005.**

Enacts new provisions relating to methamphetamine manufacturing:

**Penal Law § 220.70 Criminal possession of methamphetamine manufacturing material in the second degree**

A person is guilty of criminal possession of methamphetamine manufacturing material in the second degree when he or she possesses a precursor, a chemical reagent or a solvent with the intent to use or knowing another intends to use such precursor, chemical reagent, or solvent to unlawfully produce, prepare or manufacture methamphetamine.

(Class A misdemeanor)

**Penal Law § 220.71 Criminal possession of methamphetamine manufacturing material in the first degree**

A person is guilty of criminal possession of methamphetamine manufacturing material in the first degree when he or she commits the offense of criminal possession of methamphetamine manufacturing material in the second degree, as defined in section 220.70 of this article, and has previously been convicted within the preceding five years of criminal possession of methamphetamine manufacturing material in the second degree, as defined in section 220.70 of this article, or a violation of this section.

(Class E felony)

**Penal Law § 220.72 Criminal possession of precursors of methamphetamine**

A person is guilty of criminal possession of precursors of methamphetamine when he or she possesses at the same time a precursor and a solvent or chemical reagent, with intent to use or know-

ing that another intends to use each such precursor, solvent or chemical reagent to unlawfully manufacture methamphetamine.

(Class E felony)

**Penal Law § 220.73 Unlawful manufacture of methamphetamine in the third degree**

A person is guilty of unlawful manufacture of methamphetamine in the third degree when he or she possesses at the same time and location, with intent to use, or knowing that another intends to use each such product to unlawfully manufacture, prepare or produce methamphetamine:

1. two or more items of laboratory equipment and two or more precursors, chemical reagents or solvents in any combination; or
2. one item of laboratory equipment and three or more precursors, chemical reagents or solvents in any combination; or
3. a precursor:
  - (a) mixed together with a chemical reagent or solvent; or
  - (b) with two or more chemical reagents and/or solvents mixed together.

(Class D felony)

**Penal Law § 220.74 Unlawful manufacture of methamphetamine in the second degree**

A person is guilty of unlawful manufacture of methamphetamine in the second degree when he or she:

1. commits the offense of unlawful manufacture of methamphetamine in the third degree as defined in section 220.73 of this article in the presence of another person under the age of sixteen, provided, however, that the actor is at least five years older than such other person under the age of sixteen; or
2. commits the crime of unlawful manufacture of methamphetamine in the third degree as defined in section 220.73 of this article and has previously been convicted within the preceding five years of the offense of criminal possession of precursors of methamphetamine as defined in section 220.72 of this article, criminal possession of methamphetamine manufacturing material in the first degree as defined in section 220.71 of this article, unlawful disposal of methamphetamine laboratory material as defined in section 220.76 of this article, unlawful manufacture of methamphetamine in the third degree as defined in section 220.73 of this article, unlawful manufacture of methamphetamine in the second degree as defined in this section, or unlawful manufacture of metham-

phetamine in the first degree as defined in section 220.75 of this article.

(Class C felony)

**Penal Law § 220.75 Unlawful manufacture of methamphetamine in the first degree**

A person is guilty of unlawful manufacture of methamphetamine in the first degree when such person commits the crime of unlawful manufacture of methamphetamine in the second degree, as defined in subdivision one of section 220.74 of this article, after having previously been convicted within the preceding five years of unlawful manufacture of methamphetamine in the third degree, as defined in section 220.73, unlawful manufacture of methamphetamine in the second degree, as defined in section 220.74 of this article, or unlawful manufacture of methamphetamine in the first degree, as defined in this section.

(Class B felony)

**Penal Law § 220.76 unlawful disposal of methamphetamine laboratory material**

A person is guilty of unlawful disposal of methamphetamine laboratory material when, knowing that such actions are in furtherance of a methamphetamine operation, he or she knowingly disposes of, or possesses with intent to dispose of, hazardous or dangerous material under circumstances that create a substantial risk to human health or safety or a substantial danger to the environment.

(Class E felony)

The bill also adds a new subdivision 11 to Penal Law § 155.30 (grand larceny in the fourth degree) and a new subdivision 7 to Penal Law § 165.45 (criminal possession of stolen property in the fourth degree) when the property “consists of anhydrous ammonia or liquified ammonia gas and the actor intends to use, or knows another person intends to use [it] to manufacture metamphetamine.”

**DEFINITIONS**

For the purposes of sections 220.70, 220.71, 220.72, 220.73, 220.74, 220.75 and 220.76 of this article:

(a) “precursor” means ephedrine, pseudoephedrine, or any salt, isomer or salt of an isomer of such substances.

(b) “chemical reagent” means a chemical reagent that can be used in the manufacture, production or preparation of methamphetamine.

(c) “solvent” means a solvent that can be used in the manufacture, production or preparation of methamphetamine.

(d) “laboratory equipment” means any items, components or materials that can be used in the manufacture, preparation or production of methamphetamine.

(e) “hazardous or dangerous material” means any substance, or combination of substances, that results from or is used in the manufacture, preparation or production of methamphetamine which, because of its quantity, concentration, or physical or chemical characteristics, poses a substantial risk to human health or safety, or a substantial danger to the environment.

## Sex Offenders

➤ **Chap. 544 (A.8894) (Prohibits certain sex offenders on probation or parole from entering “school grounds”). Effective: September 1, 2005.**

The 2000 Sexual Assault Reform Act prohibited under-supervision sex offenders whose victims were under the age of eighteen from knowingly entering school buildings, school playgrounds, athletic fields, and day care centers [*i.e.*, facilities “primarily used for the care and treatment of persons under the age of eighteen”] while minors are present [Penal Law § 65.10 (4-a), Executive Law § 259-c (14)]. The law allows offenders to do so if they are a registered student, employee, or have a family member enrolled in such a facility, provided they obtain the written authorization of the superintendent or chief administrator of the facility and the written permission of their parole or probation officer, or the sentencing court.

Chapter 544 bill extends the prohibition to all under-supervision Level 3 sex offenders, regardless of the age of their victim. The 2000 legislation defined “school grounds” by cross-referencing subparagraph (a) of Penal Law § 220.00 (14), effectively prohibiting entry within the real property boundary lines of schools. Chapter 544 strikes the reference to subparagraph (a) and now seemingly prohibits entry within 1000 feet of the real property boundary lines of a school, a restriction that (even if intended) will be nearly impossible to enforce in urban areas.

➤ **Chap. 680 (S.5753-A) (Sex Offender Registration Act—Lists of organizations with “vulnerable populations”). Effective: November 1, 2005.**

Amends Correction Law § 168 (l) to require law enforcement agencies to compile lists of organizations with “vulnerable populations” within their jurisdiction to facilitate the community notification provisions of Megan’s Law. The bill provides that “such listing shall include and not be limited to: superintendents of schools or chief school administrators, superintendents of parks, public and private libraries, public and private

school bus transportation companies, day care centers, nursery schools, pre-schools, neighborhood watch groups, community centers, civic associations, nursing homes, victim's advocacy groups and places of worship."

➤ **Chap. 684 (S.1168) (SORA hearings in absentia). Effective: October 4, 2005.**

Amends Correction Law § 168 to authorize courts to conduct sex offender risk classification hearings in absentia when an offender fails to appear "without sufficient excuse" at a scheduled proceeding.

➤ **Chap. 604 (S.2795-B) (Prohibits sex offenders from working on ice cream trucks). Effective: August 30, 2005.**

Adds a new section to the Sex Offender Registration Act:

**Correction Law § 168-v**

Prohibition of employment on motor vehicles engaged in retail sales of frozen deserts. No person required to maintain registration under this article (Sex Offender Registration Act) shall operate, be employed on or dispense goods for sale at retail on a motor vehicle engaged in retail sales of frozen deserts as defined in subdivision thirty-seven of section three hundred seventy-five of the vehicle and traffic law.

First offense—Class A misdemeanor; second and subsequent offenses—Class D felony

➤ **Chap. 252 (A.3156) (Sex Offenders barred from Prison Community Services Programs). Effective: July 19, 2005.**

Bars persons convicted of an Article 130 sex offense from participating in a prison community services program, which involves leaves up to 14 hours in a day to participate in religious services, volunteer work, or athletic events.

### Criminal Procedure Law

➤ **Chap. 690 S.3566 (Grand Jury affidavit—credit/debit card account numbers). Effective: October 4, 2005.**

Adds a new subparagraph (g) to CPL § 190.30 (3) to allow the owner of a credit card or debit card to submit an affidavit to the grand jury concerning "that person's ownership of, or possessory right in, a credit card account number or debit card account number, and the defendant's lack of superior or equal right to use or possession thereof."

➤ **Chap. 457 (A.7561) (Credit card payments for monies payable to a court). Effective: August 9, 2005.**

In 2003 the Legislature expanded authority for credit card payment of fines, mandatory surcharges and crime victim's assistance fees (L.2003, chap. 537). This bill

authorizes credit card payment of "other monies payable to a court" (e.g., DNA databank fees, sex offender registration fees), and extends the sunset provision of the credit card program to August 9, 2010.

➤ **Chap. (S.877-a) (United States Probation Officers). Effective: May 24, 2005.**

Amends CPL § 2.15 (10) to replace the antiquated term "Federal parole officers" with "United States probation officers."

➤ **Chap.685 (S.1628-b) (Powers of Uniformed Court Officers). Effective: October 4, 2005.**

Adds CPL § 2.20 (1)(j) to provide that "uniformed court officers shall have the power to issue traffic summonses and complaints for parking, standing or stopping violations pursuant to the vehicle and traffic law whenever acting pursuant to their special duties."

### Miscellaneous

➤ **Chap. 22 (A.6714) (FOIL—Reasonable time limits for disclosure of agency records). Effective: May 5, 2005.**

Amends the Freedom of Information Law (Public Officers Law § 89) to require agencies to provide access to records within a reasonable period of time of the request. The amendment specifies that "if an agency determines to grant a request in whole or in part, and if circumstances prevent disclosure . . . within twenty business days from the date of acknowledgement of receipt of the request, the agency shall state, in writing, both the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part." The failure of an agency to comply with this new provision, or with the time requirements for processing an administrative appeal from the denial of a request, "shall constitute a denial."

➤ **Chap. 106—(S.5110-a) (Ticket scalping—maximum price restriction lifted for large venues). Effective: June 14, 2005.**

The Arts and Cultural Affairs Law restricts the resale price of tickets to no more than the established price plus five dollars or twenty percent of the established price, whichever is greater. This law, among other changes, eliminates the "maximum price" restriction in venues of more than 6,000 seats, in an effort designed to "allow for free-market economics to take hold and ultimately increase the supply and reduce the cost of tickets."

➤ **Chap. 607 (S.2986) (Justice Courts—Jefferson County). Effective: August 30, 2005.**

Adds a new subdivision 10 to Uniform Justice Court Act § 106 to provide that a “justice of a local criminal court situated in the county of Jefferson may preside . . . anywhere in the county of Jefferson for the limited purposes of arraignments and/or appearance proceedings pursuant to a bench warrant provided such arraignments and/or proceedings are held in a courtroom whenever possible or other suitable facility open to the public and provided further, that any municipality providing such facilities shall have consented to such usage.”

➤ **Chap. 377 (S.5196) (Crime Victims’ Compensation—Relocation expenses). Effective: August 2, 2005.**

Amends Executive Law § 621 to authorize payments to crime victims for relocation expenses.

➤ **Chap. 258 (A.4953-a) (Genesee County Jail). Effective: July 19, 2005.**

Amends Correction Law §500-a to permit the Genesee County Jail to be used for the detention of persons under arrest who are awaiting arraignment.

➤ **Chap. 408 (A.6717) (Crime Victim’s Compensation – Pre-existing conditions). Effective: August 8, 2005.**

Amends Executive Law § 626 (1) to make expenses related to the exacerbation of a pre-existing condition or disability resulting from a crime or causally related to a crime compensable under the Crime Victim’s Compensation Act.

➤ **Chap. 84 (S.23) (Niagara County Jail). Effective: June 7, 2005.**

Amends Correction Law §500-a to permit the Niagara County Jail to be used for the detention of persons under arrest who are awaiting arraignment.

➤ **Chap. 457 (A.1011-a) (Cruelty to animals a printable offense). Effective: November 1, 2005.**

Makes cruelty to animals (Agriculture and Markets Law § 353) a fingerprintable offense under CPL § 160.10 (1)(b).

## Sunset Clause Expired/Extended

➤ **Sunset of L.1989, chap. 79—Local Conditional Release Commissions**

In 1989, the Legislature established local conditional release commissions to rule on applications for early release by inmates serving definite sentences in local jails, who could be discretionarily released to probation supervision after serving at least 60 days (*see* Correction Law Article 12 and Penal Law § 70.40). These local com-

missions replaced the Board of Parole, which had previously ruled on conditional release applications and overseen the released inmate’s supervision in the community. The legislation had an original sunset date of May 1, 1990. It has been repeatedly extended, most recently until September 1, 2005.

In the summer of 2004, former State Senator Guy Vellella was granted conditional release from Riker’s Island after serving 60 days of a one-year sentence for conspiracy in the fourth degree. Vellella’s early release fueled charges of political favoritism, and a subsequent investigation revealed numerous irregularities in the processing of conditional release applications by the New York City local conditional release commission. Mayor Bloomberg replaced the commissioners, and a newly appointed commission rescinded Vellella’s release and ordered him back to jail, an act that was later upheld by the Appellate Division. *See Vellella v. NYC Local Conditional Release Com.*, 13 AD2d 201 (1st Dept 2004).

Despite efforts by the Assembly Corrections Committee to salvage the local conditional release process, the Vellella scandal sealed its fate as the Senate refused to extend the sunset provision. Conditional release from a definite sentence will continue to be available (at least theoretically) because the statute now reverts to its pre-1989 status. After September 1st, the Board of Parole will resume its statutory responsibility to determine conditional release applications, and the Division of Parole will regain its supervisory authority over those local inmates (if any) who are released to supervision by the Board from local correctional facilities.

➤ **Chap. 60, part E (S.1820) (Sunset Extended—VTL—suspension of driver’s license for failure to pay child support). Sunset extended to June 30, 2007.**

Legislation was enacted in 1995 to mandate suspension of a parent’s driver’s license for failure to pay four or more months of child support (L.1995, chap. 81). The sunset clause of this law has been extended from June 30, 2005 to June 30, 2007.

➤ **Chap. 56, part C (Family Protection and Domestic Violence Intervention Act of 1994). Sunset Clause Extended to September 1, 2007.**

Extends the sunset clause of the Family Protection and Domestic Violence Intervention Act of 1994 (*e.g.*, mandatory arrest) from September 1, 2005 to September 1, 2007.

➤ **Chap. 60, part E (Sunset Extended—Driver’s License Suspension after Drug Conviction). Sunset Extended to October 1, 2007.**

In 1993 the Legislature passed a law requiring a 6-month suspension of the driver's license, or a 6-month delay in eligibility for a driver's license, of any person convicted of a misdemeanor or felony drug offense, including juvenile and youthful offender adjudications (L. 1993, chap. 533). The sunset clause of this legislation has been extended from October 1, 2005 to October 1, 2007.

➤ **Chap. 577 (S.5280) (Sunset Extended—Closed-Circuit testimony of child witnesses). Sunset extended to September 1, 2007.**

Extends the sunset clause of CPL Article 65 relating to the closed-circuit testimony of certain child witnesses from September 1, 2005 to September 1, 2007.

➤ **Chapter 56 (A.6840) (Omnibus Sunset Extender). Extends the sunset clauses of the following programs and laws:**

Jenna's Law (1998) and Sentencing Reform Act (1995):  
(Sept. 1, 2009)

Correction Law Article 26-A—SHOCK Incarceration Program (Sept. 1, 2007)

Correction Law § 805—Earned Eligibility Program (Sept. 1, 2007)

Correction Law Article 26 (§ 851 et seq)—Temporary Release Programs (Sept. 1, 2007)

CPLR § 1101 (f) – Fees for inmate filings (Sept. 1, 2007)

Penal Law §§ 205.16, 205.17, 205.18, 205.19—Absconding offenses (Sept. 1, 2007)

Penal Law § 60.35 – No waiver of mandatory surcharge (Sept. 1, 2007)

Executive Law § 259-r—Medical Parole (Sept. 1, 2007)

Correction Law § 189—\$1 weekly incarceration fee (Sept. 1, 2007)

Correction Law § 2 (18)—ASAT (Sept. 1, 2007)

Executive Law § 259-a (9)—Parole supervision fee (Sept. 1, 2007)

VTL §1809—Mandatory Surcharges (Sept. 1, 2007)

VTL §1809—Ignition Interlock Program (Sept. 1, 2007) ↻