NEW YORK STATE DEFENDERS ASSOCIATION

Public Defense Backup Center

REPORT

Volume XLI Number 1 January - March 2026

Defender News

Gideon Day: Public Defense 63 Years After *Gideon*

Sixty-three years ago, the U.S. Supreme Court decided *Gideon v Wainwright* (372 US 335 [3/18/1963]). The decision recognized that existing "procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law" would not effectively operate for someone charged with a crime and unable to afford an attorney. Even intelligent and educated people untrained in the law require "the guiding hand of counsel at every step of the proceedings against" them, Justice Black wrote.

What was true then is even truer now. Law, along with most aspects of current life, has become more complicated. Yet, across the country, the public defense community and supporters face fiscal and political pressure. Compliance with *Gideon* is never guaranteed.

Expansion of *Gideon*, or creation of similar protections within states, to protect people threatened with loss of their children, with loss of housing, with loss of the ability to stay in this country, etc., remains too often aspirational. Here in New York, while counsel is provided in many situations—see the item on *Gideon* in News Picks for NYSDA Staff on March 25—family defenders face even more obstacles than defenders in criminal matters. Efforts to make free counsel available in housing and immigration courts have had only limited success. As the work continues, NYSDA is proud to be part of a great community. In a recent LinkedIn post, our Executive Director said:

> NYSDA joins our public defense colleagues from around the country in celebrating Gideon Day and the right to counsel! Thank you to all of the advocates who work hard to make the right to counsel a reality in our courthouses, not only criminal courts but also family, juvenile, and other courts. And thank you to all those fighting to establish a right to counsel in other types of cases that impact our communities every day, such as immigration, housing, and public benefits cases.

We at NYSDA hope that public defenders and all who work to ensure the right to counsel had a Happy Gideon Day on March 18. We hope their work, and *Gideon*'s importance, was recognized, as it was by a reported Los Angeles County Board of Supervisors proclamation recognizing Public Defense Day, honoring the work of public defenders and the importance of *Gideon*. We hope that many defender caseloads were manageable, unlike those in San Francisco, where the Public Defender has been held in contempt for refusing more case assignments—and has received applause from across the country for his stance, according to press accounts. We hope that a reported Wisconsin legislative move is not emulated elsewhere: "Wisconsin will mark the anniversary of the landmark *Gideon v. Wainwright* decision … with a failure to approve new resources for public defenders." And we hope that the day provided others with an opportunity to recommit to our values. As the title of a post by The Bail Project urged: **"This Gideon Day, Let's Make the Right to Legal Counsel a Reality."**

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Developments from the DMV and Other Issues Related to Driving

The last few months have seen a number of developments regarding legal issues relating to driving, including changes from the Department of Motor Vehicles (DMV). Amendments made in November 2024 to DMV regulations regarding assessment of points for various violations became fully effective as of Feb. 16, 2026; the DMV issued a memorandum dated January 30 about the changes. In December, the Court of Appeals affirmed a DMV Appeals Board's decision to uphold the revocation of a driver's license for refusal to submit to a chemical breath test. In February, the Court ruled on the standard for finding drivers to have driven while impaired. NYSDA has continued to keep defenders informed about such developments.

Matter of Monaghan v Schroeder (summary p. 16) was decided by the Court of Appeals on Dec. 16, 2025. The defendant had properly subpoenaed, for a refusal hearing, the officers who had written reports documenting his chemical test refusal. However, he did not seek enforcement of the subpoenas by means of the procedures of CPLR 2308(b) nor assert that he was obstructed or penalized for his subpoena efforts. In the absence of use of those procedures, the Court held that due process did not require exclusion of the written reports as hearsay or dismissal of the charges. This resolves the question left open in *Gray v Adduci* (73 NY2d 741 [1988]).

The high court also said the record was insufficient to support a determination as to whether the Administrative Law Judge's failure to dismiss the refusal charge when the subpoenaed troopers did not appear was "an unreasoned departure from settled agency precedent." The defendant's counsel had offered "unsworn assertions that, as a matter of practice, since Deyhle (In the Matter of the Administrative Appeal of Thomas A. Deyhle, Case No. D95-33398, Docket No. 18657 [DMV Appeals Board decision dated August 1, 1997]) the DMV has closed refusal hearings in favor of the motorist when subpoenaed officers fail to appear."

Regulations regarding the point system for traffic violations that can result in a loss of driving privileges were described in the Dec. 10, 2024, and Jan. 26, 2026, editions of News Picks, while implementation of many of the regulations was still pending. Information provided included NYSDA's summary of the changes and a helpful document from the New York State Association of Criminal Defense Lawyers. The DMV issued a memorandum to enforcement agencies and magistrates, dated January 30, on "Amended Regulations 131.3(b) and 131.4(a)-(c) Regarding Changes to Point Values Assigned for Certain Violations of the [VTL] and Administrative Action." It notes that violations committed on or after Feb. 16, 2026, are subject to the new point values. It also includes a chart containing the new points.

The February 16 effective date of the new point regulations coincided with DMV's launch of a new technology system. This was described in a January 16 press release.

For those wondering about future regulation changes, the DMV website offers a "Regulatory Agenda." It currently mentions plans to amend 15 NYCRR, including making changes relating to the schedule of fees for the Impaired Driver Program, driver education and driving school operation, the inspection program, and others. The plan includes amending Parts 91 and 122 "to modernize the delivery of traffic ticket and conviction information to the Department and to conform with Federal requirements."

NYSDA scheduled a CLE webinar on the new points on April 3 entitled: Can My Client Still Drive with 11 Points? Understanding the New DMV Regulations. Defenders not able to attend the program can contact the Backup Center for information.

The Court of Appeals addressed the standard for driving while impaired by drugs. In *People v Ambrosio* (summary p. 17), the Court declined to find that trial counsel had been ineffective for failing to request a jury instruction defining impairment by drugs consistent with *People v Caden N.* (189 AD3d 84 [2020]) instead of a charge consistent with the model jury instructions and the decision in *People v Cruz* (48 NY2d 419 [1979]). Even had counsel been ineffective at that time, the defendant would not be entitled to a *Caden N.* charge upon retrial in light of the Court's same-day decision in *People v Dondorfer* (summary p. 17; discussed in News Picks on March 25).

Public Defense Backup Center REPORT

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In *Dondorfer*, the Court rejected outright *Caden N.*'s differentiation of "impairment" in cases involving alcohol and "impairment" in cases involving drugs. Instead, the Court said "that 'impaired' should be interpreted consistently across Vehicle and Traffic Law § 1192 in accordance with the definition that this Court gave that term in *People v Cruz* (48 NY2d 419 [1979]) ...." Henceforth, a driver is subject to conviction under VTL 1192(4-a) based on evidence of voluntary consumption of drugs that has actually impaired, to any extent, the physical and mental abilities that a reasonable and prudent driver is expected to possess to operate a vehicle.

NYSDA filed an *amici curiae* brief, joined by the New York State Association of Criminal Defense Lawyers, the Ontario County Public Defender's Office, the Wayne County Public Defender's Office, and The Bronx Defenders, written by Eric Sills, of Gerstenzang Sills Cohn and Gerstenzang. *Amici* argued that *Caden N.* should prevail.

The Sad Case of *Case v Montana*

The Fourth Amendment decision from the U.S. Supreme Court in *Case v Montana* (summary p. 13) holds that the "probable cause" requirement developed in criminal cases does not apply to situations where police enter with an "objectively reasonable basis for believing" that someone inside needs emergency assistance.

Sad facts lie behind that legal determination. William Trevor Case was known to have attempted "suicide by cop" before. As Justice Sotomayor said in concurrence, "[m]ultiple facts suggested that Case did not need emergency aid but was instead waiting inside for the officers in order to provoke a confrontation that would result in" his death by police action, yet there were also facts giving "rise to an objectively reasonable basis for the officers to believe that Case was already injured and in need of emergency medical assistance, and was not necessarily waiting inside for the officers seeking to provoke an escalation ...." Sotomayor wrote to emphasize the "complexities that will often attend emergency-aid interventions involving reported mental-health crises." She said that "[b]ecause the 'objectively reasonable basis' test, as reaffirmed by the Court today, demands careful attention to the case-specific risks that attend mental-health crises, and requires officers to act reasonably in response, I join the Court's opinion in full."

If responding police fail to pay the required "careful attention" to risks presented by a specific mental health crisis, Case should not protect any fruits of a resulting unwarranted entry. That will be of little solace to the families of people who are wounded or killed following a 911 call.

Police Responses to Mental Health, and Resulting Problems, Continue

A post on The Petrie-Flom Center website discusses Case and police responses to situations that are psychiatric at the root. The post includes this information: a study by the Johns Hopkins Center for Gun Violence Solutions and Vanderbilt University found that "calls to police to check on the well-being of individuals were 74 percent more likely to be associated with fatal injury than police responses to an incident where shots had already been fired."

An article posted by *The City* on February 6 described "the recent shooting of 22-year-old Jabez Chakraborty," a shooting said by police to have been "justified because he lunged at the cops with a large kitchen knife within seconds of them approaching his home in response to a call from a relative asking for help during a mental health crisis[,] ... a familiar and tragic outcome in New York City...." The article describes data on responses to mental health calls and plans to reduce reliance on police. A March 9 follow-up article said that review of New York Police Department records showed that "[i]n eight incidents since 2019 where cops wound up either shooting or tasing the subject of a 911 mental health call, the officers involved were trained in crisis intervention ...." The article described attempts to change responses to crises, including a class action lawsuit by the Disability Rights Program at New York Lawyers for the Public Interest, over police interventions in mental health calls. It also noted that language barriers can exacerbate problems.

Mental illness may play a role in police-civilian encounters other than crisis calls. One situation is a traffic stop. Materials from the National Highway Transportation Safety Administration's Advanced Roadside Impaired Driving Enforcement (ARIDE) program note that some mental health conditions may affect vital signs. The materials also say that "[w]hen an officer encounters or suspects a potentially serious medical condition, - [the officer] should consider involving medical services," and assert that police deemed to be "Drug Recognition Experts" "are trained to recognize signs of medical impairment." NYSDA presented a CLE training last September that tracked the ARIDE curriculum to provide legal skills education to help lawyers defending prosecutions under the Vehicle and Traffic Law.

Case was an Army Veteran

The *Case* opinions do not mention that William Case was an Army veteran. The Petrie-Flom Center post above noted Case's veteran status in its subtitle. A *SCOTUSblog.com* item on Oct. 16, 2025, about the oral argument in *Case* also mentioned Case's veteran status. That Case had a history of demonstrating

suicidal tendencies is unsurprising. Suicide has been and remains one of the most urgent challenges facing the veteran community.

And that is getting worse, right here in New York. A March 9 press release from the New York Health Foundation says that "[n]ew data from the U.S. Department of Veterans Affairs show a sharp increase in suicide rates among New York State veterans, reaching the highest level in more than 20 years." A "data snapshot" of 2023 showed that the veteran suicide rate increased by 25.8% over 2022, to 24.9 per 100,000 people. At the same time, the general New York population's suicide rate decreased by 1.8%, to 10.7 per 100,000. Veterans aged 18-34 experienced the highest suicide rates in 2023; the rate had nearly doubled over the past five years.

Case's military past prompted a *Thin Line News* post after oral arguments at the Supreme Court: "A distressing call about a suicidal Army veteran in Montana has landed before the Supreme Court, raising critical questions about when police can enter a home without a warrant," adding that Case was "known for mental health struggles and alcohol abuse ...."

One in five veterans have symptoms of a mental health disorder or cognitive impairment and such health issues can lead to involvement in the criminal and family legal systems, as noted in materials from a September 2025 training. This is why NYSDA, through its Veterans Defense Program (VDP), helps lawyers help clients who have served in the military. VDP offers training, case consultations, assistance in obtaining and interpreting military and Veterans Administration records, mitigation report preparation, and more. Mitigations seek to contextualize a veteran's military background and life trajectory for all legal stakeholders. These evaluations do not seek to justify alleged behavior, but rather to inform the judicial process through a nuanced understanding of the individual's history.

The 2010 story of Brock Savelkoul, recounted in materials from VDP, provides an example in understanding veterans and their need for pretrial diversion for treatment. A veteran of the Iraq conflict, Savelkoul engaged, after a car chase, in an armed standoff with the North Dakota State Patrol that could have become another instance of suicide by cop. But the "calm prodding" of a trooper who understood the situation led Savelkoul to put down his guns and submit to arrest. A county Veterans Service Officer described what came next—agreement to treatment and ultimately an exceptionally lenient plea—as something he had never seen before: "'The judge, the state's attorney, the public defender, they're all doing the right thing.'"

Defenders can contact VDP through a website form, by phone at 585-219-4862, or by email at vdpinfo@nysda.org.

Impediments to Addressing Mental Illness Include Stigma, Racism, and Cost

Whatever amount of state funding is made available over the next year for mental health, it assuredly won't be enough. The dearth of available services across New York State, affecting public defense clients and their families and communities, is longstanding. The lack predated the COVID-19 pandemic, which deepened it (as noted in the April 21, 2020, edition of News Picks). Advocating for additional mental health and other services is inextricably entwined with efforts to divert people with mental illness from the criminal legal system, improve the ability of parents with mental illness to remain involved in their children's lives, and otherwise secure for public defense clients with mental illness the best possible outcomes to their cases.

As one example, NYSDA's support for the Treatment Court Expansion Act (TCEA) includes a call for expanding "the availability of health, mental health, and other resources, particularly in rural areas and poor communities" and, ultimately, state investment "in accessible healthcare, housing, education, and employment to improve public safety and the lives of all New Yorkers."

Justifying the cost of such services can be made more difficult by the stigma too often attached to mental illness. A post on HealthLibrary.GradyHealth.org says that research has revealed three types of stigma: self-stigma, public stigma, and structural stigma (which can lead to policies that limit opportunities for those with mental illness). It says that stigma may limit a person's ability to find treatment, which in turn may lead to the condition worsening, affecting the person's ability to work, care for themselves and others, and maintain relationships. The post also notes that people in some groups, including LGBTQ+, racial and ethnic minorities, and those with disabilities, may face even greater stigma.

A March 2 post, on ReachLink.com, heralded the upcoming observation of Bebe Moore Campbell Minority Mental Health Month in July and efforts to combat stigma, which may be worsened by racism. Among its suggestions: "For those outside minority communities, meaningful observance includes amplifying minority voices, supporting legislation that improves mental health infrastructure for underserved populations, and committing to ongoing education about the specific mental health needs of different communities." A February 28 opinion piece on *CityAndStateNY.com*, by Assembly Member Phara Souffrant Forrest, carried a subheading saying the TCEA "will help dismantle the racist systems that historically criminalized behavioral health diagnoses in Black communities." NAMI, the National Alliance on Mental Illness, shared "a curated collection of resources that explore the intersection of Black history and mental health" in recognition of Black History Month.

Mental health stigma is not limited to one group or to the U.S. A *New York Times* article on March 3 noted that "[i]n a European Union survey in 2023, three-quarters of respondents

said that people with mental illness are treated as less capable and as contributing less to society than others are." The article discussed a program called One of Us, run by Denmark's health ministry, which has people with mental health challenges —"ambassadors"—"share their stories in schools, hospitals and police stations, with a focus on their recovery." But, the Times article noted, public education campaigns have not changed "underlying attitudes, at least in the long run." Rather, research indicates that "social contact is the best way to reduce mental health stigma."

Closer to home, the October 2025 issue of the *American Journal of Criminal Justice* (AJCJ) focused on "Justice and Mental Health." An introductory article said that the "special issue builds on growing recognition that justice systems are often the front line in responding to mental health needs." It added that "[i]n the United States today, nearly half of incarcerated individuals report a diagnosed mental health condition (Bronson & Berzofsky, 2017), and over 2 million people with serious mental illness enter U.S. jails each year (SAMHSA GAINS Center, n.d.)."

Recognition of the problem has been "growing" for a long time. A *Reuters* item from July 12, 1999, held in NYSDA's files, said that the "first comprehensive report on mental illness in correctional facilities" from the federal Bureau of Justice Statistics reported that an "estimated 283,800 [incarcerated individuals] held in U.S. state and federal prisons and local jails last year suffered from mental illness, including nearly one in six of the [incarcerated individuals] held in state facilities ...." It continued, "[s]ixteen percent of [incarcerated individuals] held in state prisons or local jails or on probation at midyear 1998 either had a mental illness or had stayed at least overnight in a mental hospital, unit or treatment program...." While differences in focus, methodologies, and available data cannot be ignored in comparing the 1999 information with that in the 2025 *AJCJ* article, mental health issues in the criminal legal system have increased and grown more visible. Visibility is important but it must come with a fundamental shift in our approach to mental illness. NYSDA continues its efforts to help defenders and policymakers address those issues.

Assistant Prosecutor Publicly Censured by Court, Prosecutorial Conduct Commission Lags

In *Matter of Kurtzrock* (summary p. 38), the Second Department confirmed a Special Referee's report that sustained four charges filed with the 10th Judicial District Grievance Committee against a Suffolk County Assistant District Attorney, and found the conduct warranted public censure. The court agreed that the Referee properly declined to sustain two other charges.

Two of the sustained accusations were that the prosecutor, Glenn Kurtzrock, "failed to make timely disclosure to counsel for the defendant in a criminal prosecution of the existence of evidence or information known to him, in his capacity as the prosecutor, that tended to negate the guilt of the accused, mitigate the degree of the offense, or reduce the sentence" in two separate cases, which violated Rule 3.8 of the Rules of Professional Conduct. The other sustained charges were for the same conduct, which constituted "engaging in conduct that is prejudicial to the administration of justice ..., and engaging in conduct that adversely reflects on his fitness as a lawyer," which violated Rules 8.4(d) and 8.4(h).

The decision notes that the Special Referee had noted in mitigation "the lack of venality or malicious or fraudulent intent, that the respondent had a good-faith belief that he was properly following the CPL 240.20 requirements that existed at the time, and that the respondent has accepted full responsibility and expressed remorse, has fully cooperated with the investigation, and is unlikely to engage in similar conduct in the future." On the other hand, the Special Referee noted in aggravation "that the respondent is currently under suspension for engaging in conduct deemed to have violated *Brady*, as well as rule 3.8(b) of the Rules of Professional Conduct, although the allegations herein do not rise to the level or extent of the misconduct in the prior matter that resulted in the respondent's suspension."

Meanwhile, the Commission on Prosecutorial Conduct has issued its 2026 Annual Report. As noted in a *Gothamist.com* article, the report shows that in the past two years, "the commission has received 479 complaints, and staff completed preliminary reports for a third of them. Of those, 18 have resulted in investigations." Findings and recommendations have been issued in only one case; as was noted in News Picks for Aug. 15, 2025, a media release from the Commission on July 15, 2025, said that it had recommended public censure of Monroe County District Attorney Sandra Doorley, "who refused to immediately pull over for a police officer who had stopped her for speeding, and had continued home, where she called the officer's supervisor." Regarding the Commission's work, the Gothamist quoted CUNY Law Professor Steve Zeidman, who said: "'The longer they wait to take action on verifiable cases of misconduct, they begin to lose credibility ... no matter how well intentioned."

Probation Issues Addressed in Court of Appeals and Appellate Divisions

In *People v Curry* (summary p. 21), the Court of Appeals found a sentencing court lacked jurisdiction to revoke Mr. Curry's probation and sentence him to incarceration because his probationary period had expired. Curry had been placed on

probation in 2016; it was to expire on July 5, 2021. Probation filed an Information for Delinquency in 2018, and Curry appeared in court, but no declaration of delinquency as described in CPL 410.30 was filed. He remained on probation, despite further noncompliance, and in late 2018 was placed in a drug treatment court (DTC) with an admonition that if he were not successful there, he would be sentenced to incarceration and post-release supervision. Five months past July 5, the DTC revoked his probation and imposed a sentence of incarceration.

The language of 410.30, which says a defendant "may" be declared delinquent, is clear, the Court of Appeals said. A violation of probation does not necessarily result in a declaration of delinquency. Several lower courts had indicated that a declaration of delinquency is the exclusive mechanism for tolling probation; the issue had not been squarely addressed by the Court of Appeals until now: "when no declaration of delinquency is issued, the sentence of probation continues to run." In a footnote, the Court emphasized that "[n]othing prevents a court's proper use of DTC programs, either during the period while a defendant's probation is properly tolled by a declaration of delinquency, or while a defendant's probationary term continues to run."

Another probation issue—what conditions are permissible—has been getting attention in the Appellate Division, primarily in the First Department. As noted in News Picks on February 19, over the past year the First and Second Departments have stricken conditions of probation deemed "not reasonably related to the defendant's rehabilitation," or "not individually tailored," citing Penal Law 65.10. Among the conditions scrutinized were those requiring paying surcharges and fees; supporting dependents and meeting other family obligations; refraining from wearing or displaying gang signs or associating with gang members; completing drug and alcohol treatment programs as directed; and submitting to searches.

A Fourth Department case not noted in the News Picks item is *People v Kuhn* (242 AD3d 1610 [10/10/2025]), which held that special conditions barring the defendant from buying, possessing or using alcohol and requiring him to submit to any alcohol and drug testing must be stricken as "not related to the probationary goal of rehabilitation" and unenforceable.

Some of the probation condition cases noted in News Picks are summarized in this issue's Case Digest. First Department: *People v Pointdexter* (summary p. 24); *People v Rivera* (summary p. 27); *People v Holguin* (summary p. 24); *People v Sanders* (summary p. 26); *People v Seymore* (summary p. 29); *People v Meggett* (summary p. 30); and *People v Balogh* (summary p. 30). Second Department: *People v Bonfante* (summary p. 32).

Probation conditions matter. Not only can overly onerous or inappropriate ones make life difficult, but violations can also have unanticipated consequences. For example, clients who cannot comply with conditions may face not only the possibility of incarceration upon violation, but also the "punishment" of hunger. A Prison Policy Initiative report on how states restrict federally-funded food assistance for some people on probation includes a chart of SNAP eligibility for people with probation violations, which says that despite there being no explicit disqualification, there is a question in the application about probation violations. A guide on reentry.net/ny says that a person with an open warrant for violation of probation or parole will be denied SNAP and other assistance.

Defenders with a client who is on federal probation may find *Rico v United States* (summary p. 16) of interest.

Video Evidence Must be Authenticated, Including in Family Court

The Court of Appeals (COA) handed down a victory for the rule of law when it recently reversed an abuse and derivative abuse finding against a mother and her boyfriend because the sole piece of video evidence, purportedly showing the abuse, was not properly authenticated. The high court in *Matter of M.S.* (summary p. 18) stated that "the rules of evidence apply in Family Court just as much as they apply in any other court." It should be obvious that the family court must follow the same rules as any other court, but the COA took this opportunity to remind family defenders how to properly authenticate evidence by proving its reliability. "Reliability can be demonstrated 'by proof that the offered evidence is genuine and that there has been no tampering with it.'" [Citation omitted.] And "a video may be authenticated through (1) 'testimony of a witness to the recorded events or of an operator or installer or maintainer of the equipment that the videotape accurately represents the subject matter depicted' or (2) testimony (expert or lay) establishing that the video 'truly and accurately represents what was before the camera' .... The authentication requirement applies to civil as well as criminal proceedings...." [Citations omitted.] This is a lengthy decision, and defenders are encouraged to read it in its entirety to get the full practical value from it.

In family court, where the stakes are high and pressure is great, it can be difficult to remember to raise evidentiary challenges and preserve the record, but getting abuse and neglect findings overturned on appeal can be life-changing for clients and their children. NYSDA is here to support defenders by providing resources and training on various aspects of the rules of evidence. Defenders can review our on-demand training videos online and our 59th Annual Conference in Saratoga Springs will once again feature a family court track, with a presentation on evidence. If you have any questions related to

family court-mandated representation, please email info@nysda.org for support.

As Forensic Evidence Fields Expand, the Law Struggles to Keep Up

Judicial frustration rooted in rapid changes in video technology (and digital technology generally) is blatantly apparent from a reading of the *M.S.* opinions above. This case is just one example of how developments in different forensic and technical disciplines are challenging the legal world.

Forensic evidence, which once may have been present in a limited number and type of cases, is now ubiquitous. It has grown far beyond the examples used in *Black's Law Dictionary*: "evidence arrived at by scientific means (as with nuclear or mitochondrial DNA, toxicological and chemical analysis), by interpretation of patterns (as with fingerprints, handwriting, etc.), or by a combination of experiential and scientific analysis (as with explosive and fire-debris analysis, blood-spatter analysis)." Today, forensic evidence includes more digital evidence than ever: from "the internet of things" (IoT) turning everyday items like watches into treasure troves of evidence, to metadata information about the creation and history of data (think: information on timing of internet searches), to tools and experts that may help assess the integrity, reliability, and history of text and imagery. The law, and defenders, struggle to stay current on the technology and what issues may arise.

Information about some developments can be found in the March 25 News Picks. In addition to the *M.S.* decision, the edition offered a look at a new book, Your Data Will Be Used Against You: Policing in the Age of Self-Surveillance, and a new discussion of the decision in *Carpenter v United States*, 585 US 296 (2018) [government seizure of a person's CSLI (cell-site location information) from a cell phone company constitutes a search requiring a warrant]. News Picks for February 19 included information about the Second Department's decision addressing the admissibility of enhanced video evidence in *People v Jones* (summary p. 43). It also discussed federal lawmakers' concern about the mobile facial recognition tool being used by Immigration and Customs Enforcement (ICE) citing an article in *Biometric Update*. That app was mentioned in the Sept.-Dec. 2025 issue of the *REPORT*.

Resource on Subpoenaing Cell Phone Record Offered by DFS Unit

NYSDA's Discovery and Forensic Support Unit (DFS Unit) has created a new resource, Subpoenaing Cell Phone Company Records. Links to it can be found on the resources webpages of NYSDA's website and in the March 25 News Picks.

Issues Continue as to More Traditional Forensic Evidence

While concerns about digital evidence seem to dominate headlines, more traditional forensics are not static.

Use of DNA, sometimes called the "gold standard" of forensic proof, has grown ever-more complicated and concerning. The underlying science of traditional forensic DNA analysis using short tandem repeats (STRs) may be valid, but forensic application of that science must be scrutinized for the same—often systemic—issues (bias, rushed or shoddy work, testimony that overemphasizes the significance of certain aspects of DNA findings, etc.) that can affect the interpretation of any proffered forensic evidence. New techniques require evaluation, testing, and validation (see the article in the last *REPORT* on whole-genome sequencing). And as noted in the February 19 News Picks, language used in describing DNA processes can matter. Using the phrase "transfer DNA" rather than "touch DNA" or "trace DNA" when describing DNA that may have been transferred from one person or surface to another avoids any implication that a particular action resulted in the transfer. DNA can transfer during a machine wash of laundry (a possibility discussed at NYSDA's Fall Forensics Conference last October). In a case of competing theories about how DNA wound up on clothing (bodily contact versus laundry transfer), references to potentially transferred material as "touch DNA" may subconsciously bias listeners like jurors or judges.

Importantly, the policies of many labs implementing forensic DNA analysis may, quite properly, prohibit analysts from testifying about how the DNA was deposited on the item of evidence and during what type of activities. This is called an "activity level proposition." In many U.S. jurisdiction, DNA analysts may not opine about activity level propositions because it is recognized that they simply cannot know the ground truth of whether the DNA was directly deposited or transferred by touching, laundering, or another mechanism. Defense counsel should inquire as to such policies before trial. Now, more than ever, it is imperative to speak with the forensic witnesses the prosecution proffers, in DNA analysis and other disciplines, prior to trial. If the neutral, scientific witness refuses, that's more ammunition for cross.

Challenges remain in the realm of autopsy evidence as well. The January 26 edition of News Picks stated that a test repeatedly called into question for over a decade has "resurfaced with all its 'known pitfalls.'"The non-standardized "lung float test" or hydrostatic test, performed on the lungs of a deceased infant, is based on a claim that if a baby had been born alive and then died, air from its first breaths would cause its lungs to float in a jar with water, while the lack of air in the lungs of a stillborn child would cause them to sink.

Seek the DFS Unit's Help on Forensic Issues

Whether facing the newest technology or an old, recurring issue, defenders with cases involving forensic evidence can contact the DFS Unit for information and assistance. Email forensics@nysda.org, or use NYSDA's web contact form or call 518-465-3524.

Remember to Renew the TOD

In *People v Rickett* (summary p. 49) a panel of the Third Department, before rejecting a weight of the evidence claim on its merits, noted that the defendant had not preserved his claim of legal sufficiency of the evidence. While the latter argument had been raised in a motion for a trial order of dismissal (TOD) at the close of the prosecution's case, the defendant did not renew the motion after presenting his own evidence.

Such motions must be renewed because, where a motion for a TOD at the close of the prosecution's case has not been granted and the defendant then introduces evidence, the defendant may "inadvertently supply a deficiency" that existed in the prosecution's case. Therefore, if the trial court is not given an opportunity to consider a TOD in light of all evidence, the sufficiency argument is not preserved for review. See *People v Kirkpatrick* (32 NY2d 17 [1973]).

While not raised in *Rickett*, another TOD preservation error to recognize is the failure to provide enough specificity in a TOD motion. See *People v Gray* (86 NY2d 10 [1995]). *Gray* adds that defendants who have failed to adequately preserve claims for appellate review may still request relief under an Appellate Division's "interest of justice" jurisdiction, CPL 470.15(3). For a more recent example, see *People v Romeiser (*185 AD3d 1431 [2020]).

Rights of Incarcerated Parents: Complex Issues Require Early Consultation Between Family and Criminal Defense Counsel

Incarcerated parents face significant barriers to protecting their parental rights. They may confront termination of parental rights proceedings based on alleged abandonment or permanent neglect, challenges enforcing their right to visit with their children, or findings that their consent to their children's adoption is not required.

In *Matter of Makayla* (summary p. 56), the Fourth Department upheld the family court's determination that the incarcerated respondent's consent to the adoption of his child by the child's mother's spouse was not required. Under Domestic Relations Law 111, the court found that the respondent had evinced the intent to forgo his parental rights by failing, for a period of six months, to visit the child and communicate with the child or person having legal custody of the child, despite being able to do so. The respondent testified that he was unable to contact the child more than once while incarcerated and was unable to contact the child after his release from prison due to his parole conditions, yet the court noted that the respondent had contacted other family members while incarcerated and faulted his failure to contact the child's mother and legal custodian while on parole.

This case serves as an important reminder to both criminal and family defenders to counsel incarcerated parents early and often about how to protect their parental rights. Depending on the circumstances of a case, incarcerated parents may be expected to engage in available services, maintain regular contact with the child and social services agency, and present alternative custodial resources so their child does not remain in foster care during their incarceration. Although family courts must consider the impact parents' incarceration has on their actions related to their children, courts often do so through an unforgiving lens. There is nuanced statutory and case law regarding visitation rights, termination of parental rights, and consent to a child's adoption for incarcerated parents—criminal defenders should work to ensure their clients with children have access to legal advice about their parental rights during periods of incarceration. When a criminal defense client also has a pending family court case, the criminal attorney should consult and collaborate with family court counsel on these issues. Criminal and family defenders with questions should contact the Public Defense Backup Center for support at info@nysda.org.

Respondents Must be Given Notice of Amended Allegations in Family Court

In family court hearings, petitioners may not proceed upon new allegations or theories that are not pled in the petition, and courts cannot amend the allegations to conform to the proof, without first providing notice and the opportunity for the respondent to prepare a defense. Although family courts may conduct hearings informally, defenders must remember to object and preserve the record when allegations are amended without notice.

In Article 10 cases, the Family Court Act specifically conditions the court's ability to amend the allegations to conform to the proof upon the respondent being given "reasonable time to prepare to answer the amended allegations." Family Court Act 1051(b). In *Matter of Mariah W.* (summary p. 56), the Fourth Department reversed a finding of neglect made on an alternate theory that had not been alleged in the petition, to which the respondent had not had the chance to prepare a defense.

Attorneys representing petitioners in family court proceedings must remember to move to amend the pleadings

or conform the pleadings to the proof when new evidence is uncovered after filing a petition, to provide respondents with sufficient opportunity to address new allegations and evidence. In non-Article 10 family court cases, this requirement is rooted in due process and CPLR 3025(c). The First Department affirmed the court's decision in a family offense case in *Matter of Darlene B. v Elsie R.* (summary p. 28), finding over the respondent's objection that the court had properly conformed the pleadings to the proof. The respondent objected to references in the family court's order to text messages the petitioner had testified to but did not allege in the family offense petition. The court found the family court had properly conformed the pleadings to the proof where the determination to do so was based on the respondent's own admissions at the hearing, so the "respondent was not hindered in preparation of her case and did not suffer any prejudice from surprise." [Citation omitted.]

Contempt: Holding CPS Agencies to Their Obligations

Family defenders representing parents in abuse and neglect proceedings may need to pursue a motion for civil contempt against child protective services (CPS). Although they can present challenges, these motions can serve as a valuable tool to hold agencies to their obligations. In *Matter of Emily M.* (summary p. 43), the Second Department upheld a finding of contempt issued against the petitioner, the Administration for Children's Services, after it failed to comply with a court order to place the child in a traditional foster home no later than a specific date.

Violations of court orders are subject to contempt sanctions under Judiciary Law 753 and 773. The provisions of the Judiciary Law relating to civil and criminal contempt apply to family court, and violation of a family court order is punishable under the law. See Family Court Act 156. To establish contempt, counsel must show that a lawful, clear, unequivocal court order was in effect; it is reasonably certain that the agency disobeyed the court order; the agency had knowledge of this court order; and a party was prejudiced by the agency's failure to follow the court order. See *McCormick v Axelrod*, 59 NY2d 574 (1983).

NYSDA's Motion Bank for family defenders contains sample motions to help defenders seeking to hold CPS to its obligations, including motions for contempt. Defenders laying the groundwork for a contempt motion must ensure they request that the court issue unequivocal, detailed orders—the specific deadline in the family court order at issue in *Emily M.* provided a clear foundation for a contempt finding. As the appeals court also reminded in *Emily M.*, defenders should introduce any available evidence of actual injury to their client to support the court's issuance of an appropriate sanction. The appeals court noted that where the aggrieved party's losses are "shown to be actual and reasonably ascertainable, a court should impose a reasonably certain compensatory fine that is properly related to the scope of the injury." The fine is designed to compensate the aggrieved party or coerce compliance with the court's mandate, rather than punish the petitioner. Attorneys with questions about this or any other topic can contact the Public Defense Backup Center at info@nysda.org.

Knowing the Law Benefits Both Sides of a Family Offense Case

In family offense cases, both the respondent and petitioner are entitled to assigned counsel if they cannot afford an attorney, yet the idea of representing someone seeking an order of protection can feel counterintuitive to some defenders. NYSDA urges family defenders to consider that both parties to a family offense case have vital interests to protect.

No matter which side you are representing, it is essential to be familiar with the entirety of FCA Article 8 to provide the most effective and client-centered representation.

In the case of petitioners, FCA 812(1) lays out the jurisdictional requirements for the family court to hear the case and issue an order of protection. Sometimes the court gets it wrong. That was the case in *Matter of McCarra v Chiaramonte* (summary p. 51). The Third Department reversed a dismissal of a family offense petition when the lower court erroneously failed to hold an evidentiary hearing on whether the parties had an "intimate relationship" as alleged in the petition. "Whether an intimate relatiohip exists is a fact-intensive inquiry to be resolved on a case-by-case basis. When the existence of an intimate relationship is in dispute, or the record is insufficient to permit determination as a matter of law, Family Court should conduct a hearing before dismissing the petition for lack of jurisdiction." [Citations omitted].

When representing the respondent, counsel should carefully review the petition to identify any defects that can be used to get the case dismissed and any temporary orders vacated. When should counsel move to dismiss a petition? That depends on the circumstances of a particular case, but, generally, the better practice is to make the motion as early as practicable to limit the harm to the client. The court will often entertain an oral motion to dismiss for failure to state a cause of action, which is seemingly what happened in *Halverson v Karwas* (243 AD3d 660 [11/2/2025]). The Second Department provided the wording that should be used when making an oral or written motion based on a defective petition: "liberally construing the petition, accepting the facts alleged therein as true, and giving

the petitioner the benefit of every favorable inference, thepetition failed to set forth allegations that, if proven, would establish that the respondent committed a qualifying family offense." If a pre-hearing motion to dismiss is denied, the motion can be renewed either at the close of the petitioner's case or at the close of evidence. In *Matter of Alison EE. v Stephen FF.* (summary p. 52), the Third Department affirmed the dismissal of a family offense petition where the petitioner failed to establish after trial that the respondent father's behavior rose to the level of harassment in the second degree. The court wrote, "'[t]he petitioner in a family offense proceeding bears the burden of establishing, by a fair preponderance of the evidence, that the respondent committed one or more of the family offenses specified in Family Ct Act § 821 (1) (a).'" [Citations omitted.] The Second Department also affirmed the dismissal of a family offense petition after trial based on a failure to prove that a family offense was committed in *Matter of James v Bailey* (246 AD3d 807 [2/11/2026]).

For defenders who are new to family offense cases or looking to enhance their knowledge, NYSDA has conducted several training courses on litigating family offense cases. The materials are available in our on-demand CLE library. Additionally, sample motions to dismiss family offense petitions can be found in our sample motion bank. Defenders with questions related to any aspect of family court-mandated representation are encouraged to email info@nysda.org to connect with one of our experienced Backup Center attorneys.

Understanding the Role of the AFC in Custody Cases

What is the role of the Attorney for the Child (AFC), and what are the rights of the child? These are questions that are often raised by parents and their attorneys who find themselves in the middle of an FCA Article 6 custody case. Several cases in this issue of the *REPORT* provide clarity on these sometimes-opaque concerns. The first case, *Matter of Jeffrey SS. v Myah TT.* (summary p. 47), addresses the *Lincoln* (a/k/a in-camera) hearing. The Third Department reminds us that the child has an absolute right to speak to the judge outside the presence of the parents or their attorneys. Even though the court cannot divulge what the child said, those statements can still be used to corroborate allegations. In *Matter of Kalam EE. v Amber EE.* (summary p. 50), the Third Department found that the lower court abused its discretion by dismissing the father's custody modification petition prior to the Lincoln hearing where the reason for the dismissal was that the allegations against the mother were not corroborated; "'*information shared by [the children] during a Lincoln hearing may serve to corroborate other evidence adduced at a fact-finding hearing.*'" [Italics in original, citation omitted.] The court in *Matter of Kalam EE.* also raised concerns over what the court termed "the AFC's passive representation" such as failing to object to the cancellation of a Lincoln hearing prior to dismissing the father's petition; this highlights the fact that courts expect AFCs to be active participants in custody cases.

But to what extent is the AFC permitted to advocate for a position that is contrary to their client's wishes? An AFC is not a "law guardian," and an AFC may only substitute judgment in limited circumstances. The following two cases explain. In *Matter of Alex Y. v Mindy X.* (summary p. 53), the court rejected the mother's assertion that the child was not provided with meaningful representation because the AFC advocated a position that was contrary to their client's wishes. The appellate court reasoned that "the AFC articulated that this substitution was the result of what she believed to be coaching from both parents, which, in conjunction with the years of ongoing litigation, had impacted the child's ability to make a voluntary judgment despite her age and relative maturity." [Citations omitted.] In another Third Department case, *Matter of K.F. v T.E.* (summary p. 25), the court rejected an ineffective assistance argument by the father and the appellate AFC when the trial AFC did not advocate for the child's wishes for the father to have custody, citing domestic violence concerns. There, the court did note that 22 NYCRR 7.2(d)(3) provides that where an AFC advocates for a position contrary to their client's wishes, the AFC must inform the court of the client's wishes if the child wants the attorney to do so.

NYSDA conducted a training on the Role of the AFC in Family Court: Who's in Charge, at last year's Annual Conference, presented by Jessica Barry, Sarah Spain Holt, and James Hinman. The video and training materials are available to attorney members through the On-Demand CLE Training page. Additional defender resources include a motion to remove an AFC found on NYSDA's Family Defense Sample Motion webpage. Family defenders seeking additional clarification on the role of the AFC should email info@nysda.org.

Standing and Appealable Orders Explained

In the March 25 edition of News Picks, we encouraged family defenders to Err on the Side of Filing a Notice of Appeal, with a reminder "of the unforgiving nature of the rules regarding notices of appeal." We explained that it is best practice to file the notice of appeal, even when in doubt, to preserve a client's right to appeal, if and when they so choose.

There are other considerations which may interfere with your client's right to appeal, such as lack of standing. In *Matter of H.K v F.T.* (summary p. 25), the Appellate Division, First Department, dismissed the father's appeal because he was not

an aggrieved party with the right to challenge the order under the rules of CPLR 5511. In *Matter of H.K.*, the father sought to challenge the dismissal of the mother's custody modification petition.

The appellate court found that "the father lacks standing to challenge the … order because the order neither denied any relief sought by him nor made a determination concerning his legal rights or direct interests." [Citations omitted.] The court continued, "the fact that he is the children's father and a party to the proceedings does not, by itself, establish that he is aggrieved by the dismissal of the mother's petition."

Not all judgments and orders are appealable. In *Matter of R.M. v S.B.* (summary p. 29), the father's attempt to appeal a two-year order of protection was dismissed because the order was entered on default. "Respondent did not move to vacate his default; therefore, the appeal is dismissed as taken from a nonappealable paper." [Citation omitted.] As noted in *Matter of Dublin v Morris* (224 AD3d 901 [2024]), "'"[a] party seeking to vacate a default must establish a reasonable excuse for the default, as well as a potentially meritorious claim or defense."'" [Citation omitted.] Family defenders should review CPLR 5015 to determine all possible grounds to be relieved from a judgment or order. A sample Motion to Vacate is available on NYSDA's Family Defense Sample Motion webpage. Those with questions are encouraged to email info@nysda.org.

Preparation for BTSP 2026 Includes Changes

As NYSDA prepares for its 2026 week-long Basic Trial Skills Program (BTSP) in early June, several changes are in the works.

Senior Staff Attorney Stephanie J. Batcheller, who has been Director of BTSP since 2018, will now hold the honorary title of Director Emeritus and will participate in some of the key moments during the 2026 program. NYSDA is grateful to Stephanie for the years she has dedicated to the program, building on and enhancing it since the retirement of NYSDA's founding Executive Director, Jonathan Gradess; he, with some of the original faculty, created the well-recognized program in 1987. The commitment at the heart of BTSP—dedication to caring, collaborative, and high-quality representation that centers clients' voices, advancing equity and racial justice—continues.

This year, Deputy Director Natalie Brockelbank serves as BTSP Director. The program is being updated to more fully reflect current discovery and other defense practices and issues. Natalie and the training staff and faculty/coaches with whom she is working closely are ensuring that BTSP continues to reflect New York criminal practice and the evolving needs of public defenders providing client-centered representation.

Tools for Defenders When Race is an Issue

Not every case involves racial issues, but when one does, defenders need tools to address them. A CLE training by lawyers from the Legal Defense Fund (LDF), presented by NYSDA on January 22, described legal strategies for recognizing and raising the relevance of race in search and seizure litigation. The training generated positive feedback: "I was impressed with the format in that they identified the problem, showed examples of how it is used, gave constructive ideas of how to address it and investigate and then how to litigate in a suppression hearing," said one attendee. Another lauded the "thorough discussion of the issue including strategies, problems, and case law relevant to addressing the issue." The recorded webinar has been added to the On-Demand CLE Training available to NYSDA attorney members.

NYSDA Budget Testimony Highlighted Priorities and Needs

As the *REPORT* went to press, state budget negotiations were in progress. NYSDA's Executive Director, Susan C. Bryant, and the Director of NYSDA's Veterans Defense Program (VDP), Nancy J. Farrell, provided testimony to the relevant legislative committees.

Bryant's written testimony to the Senate Finance Committee and the Assembly Ways and Means Committee on the Public Protection Budget described the funding needed to maintain and expand NYSDA's support of public defenders across the state. The needs of a variety of other programs and defense work was also set out. Among those: defender efforts to address immigration issues affecting their clients (including NYSDA's request for funding to assist defenders with immigration issues); defense discovery costs and other delineated funding including the Indigent Parolee Representation Program, Aid to Defense, and the District Attorney and Indigent Legal Services Attorney Loan Forgiveness Program; and community-based programs and services for young people who have had police contact (including the proposed Youth Justice Innovation Fund [S.643/A.8491]).

NYSDA also supported state funding for county public defense services and the Indigent Legal Services Office (ILS) that oversees distribution of such funding. NYSDA called for more funds dedicated to family defense and emphasized the need to reject a gubernatorial proposal to sweep money from the Indigent Legal Services Fund.

The written testimony also contained comments on proposed legislation that may or may not be incorporated into the final state budget. Information on new laws will be included in the next issue.

VDP's Director submitted testimony to the Senate Finance Committee and the New York State Assembly Ways and Means Committee on the Human Services Budget. She requested that the Legislature restore VDP's funding at the last budget's level. Setting out the intersection of military service, mental illness, and the criminal and family court systems, Farrell described how VDP provides "crucial legal support to public defense attorneys representing veterans and peer-to-peer mentoring services." This testimony also offered support for other veteran programs' funding. (More about VDP is discussed at p. 4)

Backup Center Adds Staff Attorneys

NYSDA's Backup Center added two staff attorneys in early 2026.

Multidisciplinary Practice Staff Attorney Hannah Sotnick

Hannah Sotnick, NYSDA's new Staff Attorney, Multidisciplinary Practice, joined the Backup Center in January after working in public defense in various capacities since 2015. Most recently, she was a housing attorney at the Legal Aid Society of Northeastern New York. Before that, she was a family defense attorney with Brooklyn Defender Services' Family Defense Practice. Hannah received her JD/MSW degree from NYU Law School and Silver School of Social Work. While in school she completed a variety of internships. Prior to that she worked for three years as a paralegal at the Federal Defenders of New York. Hannah's experience, encompassing criminal and family law as well as social work, expands NYSDA's ability to provide support on the complex, multidisciplinary issues that often confront defenders and their clients.

Staff Attorney Rebecca Besdin

Rebecca Besdin began work as a Staff Attorney in the Backup Center on March 23. Her most recent position was with the Reinvestigation Project at the Office of the Appellate Defender, where she had been since 2021. Before that, she was a staff attorney with the Criminal Defense Practice at The Legal Aid Society. During law school Rebecca was the Managing Director of the Jailhouse Lawyers Manual, a publication that NYSDA often refers incarcerated people to when they seek assistance. Before law school, Rebecca worked for several years as an investigator with the New York City Civilian Complaint Review Board. The range and depth of experiences Rebecca brings will enhance NYSDA's work in supporting a client-centered approach to public defense.

Challenging False Confessions: Necessary, Not Easy

In *People v Grigoroff* (summary p. 12), the Second Department held that the trial court improperly barred as irrelevant defense expert testimony about certain research concerning false confessions. The defense had secured a pretrial ruling to allow expert testimony regarding "research on the issue of false confessions in order to educate jurors on the subject" and "the principles and methodologies that are generally accepted within the relevant scientific community in the area of false confessions," among other things. However, the case was transferred to another judge, who "limited the scope of the defendant's expert's testimony by precluding the mention of a study by the Innocence Project," deeming it irrelevant to Grigoroff's case.

The Innocence Project study involved people who had been exonerated by DNA evidence and found that "10% of the people had falsely confessed, and people with mental illness or intellectual disability were overrepresented in those who had done so." The study was relevant, the appellate court ruled, "to illustrate the risk of false confessions …." Further, contrary to the trial court's belief, the conclusions related to mental disability were relevant, as "the defendant was found to have an IQ lower th[a]n 93% of individuals in his age group." The appellate decision addressed other aspects of the ruling below as well and noted that it was error "to not charge the section of the jury instructions entitled 'Promise by the Police'" where the defendant had testified extensively about the circumstances of his 12-hour interrogation and alleged promises that the police made to him.

The now-reversed conviction followed an earlier one that was overturned on other issues, although the earlier appellate decision had "noted that 'the testimony of the law enforcement officials indicated that the police utilized deceptive techniques during the course of the defendant's interrogation' …."

Grigoroff was represented on this appeal by Barket Epstein Kearon Aldea & Loturco, LLP. Lawyers at the firm include (though not acting in this case), exoneree Martin Tankleff. In 2008, he was the keynote speaker at NYSDA's annual conference. He outlined steps he believed should be taken to prevent wrongful convictions like his, which rested on a coerced, false confession. Coincidentally, the day after his NYSDA speech, all charges against him were finally dropped, two decades after the highly publicized deaths for which he served over seventeen years. Defenders continue the battle to prevent convictions based on false confession, and to overturn those convictions that continue to occur. NYSDA supports such efforts through training, consultation, and policy advocacy.

Case Digest

The following are short summaries of recent appellate decisions relevant to the public defense community. These summaries do not necessarily reflect all the issues decided in a case. A careful reading of the full opinion is required to determine a decision's potential value to a particular case or issue. Some summaries were produced at the Backup Center, others are reprinted with permission, with source noted. For those reading the REPORT online, the name of each case summarized is hyperlinked to the slip opinion. For those reading the REPORT in print form, the website for accessing slip opinions is provided at the beginning of each section (Court of Appeals, First Department, etc.), and the exact date of each case is provided so the case may be easily located at that site or elsewhere.

United States Supreme Court

In the online version of the *REPORT*, the name of each case summarized is hyperlinked to the opinion on the US Supreme Court's website, www.supremecourt.gov/opinions/opinions.aspx. Supreme Court decisions are also available on a variety of websites, including Cornell University Law School's Legal Information Institute's website, www.law.cornell.edu.

Bowe v United States, No. 24–5438 (1/9/2026)
PRISONERS RIGHTS - Post-Conviction Relief/ Habeas Corpus

LASJRP[1]: A sharply divided Supreme Court holds that 28 U.S.C. § 2244(b)(3)(E), which prohibits the "denial of an authorization by a court of appeals to file a second or successive application" from being the "subject of a petition for … a writ of certiorari," does not bar the Court's review of authorization decisions concerning the motions of federal prisoners; and that § 2244(b)(1), which directs courts to dismiss a claim "presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application," does not apply to motions filed by federal prisoners. A "clear indication" of Congress's intent is required to strip this Court of jurisdiction.

Although the Government suggests that it would make little sense to bar certiorari review of authorization decisions concerning state prisoners but not federal ones, Congress has treated state and federal prisoners differently, with state prisoners often facing far higher hurdles to relief. Comity and federalism fall away when a federal court reviews a federal judgment.

Barrett v United States, No. 24–5774 (1/14/2026)
DOUBLE JEOPARDY/SENTENCE

LASJRP: One federal statute, 18 U.S.C. § 924(c)(1)(A)(i), criminalizes using, carrying, or possessing a firearm in connection with a federal crime of violence or drug trafficking crime. At the same time, 18 U.S.C. § 924(j) prescribes different penalties - including, in certain circumstances, capital punishment - when "a violation of subsection (c)" causes death.

The Supreme Court, addressing the question of whether a defendant who commits a single act that violates both statutes may be convicted only under one provision or the other, or instead may suffer two convictions, first notes that the statutes define the same offense under the test set forth in Blockburger v. United States (284 U.S. 299). The Court then invokes the presumption Congress intends to authorize only one conviction per offense, and concludes that Congress intended subsection (j) as an alternative, not a supplement, to subsection (c)(1)(A)(i), and, at the very least, did not clearly manifest a contrary intention, as it would have to do if it wished to authorize two convictions in these circumstances. The Second Circuit, which acknowledged that the subsections delineate the same offense under the Blockburger test, erred in concluding that the two provisions are separate offenses for which Congress has clearly authorized cumulative punishments

In a concurring opinion, Justice Gorsuch notes that if the government had prosecuted defendant in successive proceedings, the analysis would begin and end with Blockburger, but the litigants have proceeded on the unexamined premise that Blockburger works differently in concurrent prosecutions than it does in successive ones. Sooner or later the Court will have to clear up this confusion in its case law; here, defendant "really was charged twice for one offense. He really was convicted twice. Before our intervention, he really was set to be criminally punished twice. And whatever Congress might or might not intend, that is double jeopardy."

Case v Montana, No. 24–624 (1/14/2026)
SUPPRESSION | EMERGENCY EXCEPTION TO THE WARRANT REQUIREMENT | REASONABLENESS STANDARD | PROBABLE CAUSE STANDARD INAPPLICABEL | AFFIRMED | CONCURRENCES

ILSAPP[2]: Appellant appealed from an order of the Montana Supreme Court affirming his conviction, upon a jury verdict, for assaulting a police officer. The Supreme Court (SCOTUS) affirmed. The standard delineated in *Brigham City v Stuart* (547 US 398 [2006]) that "police officers may enter a home without a warrant if they have an 'objectively reasonable basis for believing' that someone inside needs emergency assistance" does not require police to have "probable cause" for the intrusion. Police responded to a welfare check after appellant told his ex-girlfriend over the phone that he was going to kill himself and leave a suicide note. The ex-girlfriend also report-

[1] Summaries marked with these initials, LASJRP, are courtesy of The Legal Aid Society's Juvenile Rights Practice, from their weekly newsletter.

[2] Summaries marked with these initials, ILSAPP, are courtesy of the New York State Office of Indigent Legal Services, from the ILS appellate listserv.

US Supreme Court *continued*

ed that she heard a "'clicking' sound, like the 'cock[ing of] a gun,'" and then "a pop," followed by nothing. Police knew appellant had a history of mental health issues, prior suicide threats, and a prior apparent attempt at suicide-by-cop. When appellant did not answer the door, officers circled the home and observed, through a window, empty beer cans, an empty handgun holster, and a notepad with writing on it. Officers then entered the home. While checking an upstairs bedroom, appellant emerged from a closet holding what appeared to be a gun, and an officer shot and injured him. SCOTUS found that *Brigham City*'s reasonableness standard was satisfied here because police had an "'objectively reasonable basis for believing' that their intervention was needed to prevent serious harm." SCOTUS distinguished its standard in *Brigham* from the emergency-aid test incorporated in Montana's caretaker doctrine, noting that the language used in Montana's test ("specific and articulable facts," "suspect") evoked the standard applied to brief, investigative street stops. But the *Brigham* court did not adopt *Terry*'s reasonable-suspicion standard for home entries and instead formulated a new standard for dealing with household emergencies. Similarly, SCOTUS declined to add a probable cause standard to the *Brigham City* approach, because probable cause "is peculiarly related to criminal investigations." Justice Sotomayor concurred to highlight the "unique considerations" that law enforcement must take when responding to a person experiencing a mental health crisis. She advised that individuals with serious mental health conditions are seven times more likely to be killed during police interactions compared to the general population and offered alternate strategies for police responding to these situations. Justice Gorsuch concurred to note that the emergency-aid exception comes from judge-made law, and that, in these situations, police "generally enjoy the same legal privileges as private citizens."

Ellingburg v United States, No. 24–482 (1/20/2026)
SENTENCE - Restitution/Ex Post Facto Clause

LASJRP: Under the Mandatory Victims Restitution Act of 1996, defendants convicted of certain federal crimes must pay monetary restitution to the victims. Defendant raised an Ex Post Facto Clause challenge to his restitution obligation because he committed his crime before the enactment of the MVRA.

The Supreme Court holds that the Ex Post Facto Clause applies, since restitution under the MVRA is criminal punishment. The MVRA labels restitution as a "penalty" for a criminal "offense." Restitution is imposed during "sentencing" for the offense. At the sentencing proceeding where restitution is ordered, the Government, not the victim, is the party adverse to the defendant. At sentencing, restitution is imposed together with other criminal punishments such as imprisonment and fines. In addition, when a defendant does not make the required restitution payments, the court may modify the terms of his supervised release or probation and impose imprisonment if the court determines that "alternatives to imprisonment are not adequate to serve the purposes of punishment and deterrence."

Indiana, Ex Rel. Howell v Circuit Court of Indiana, Wells County, No. 25–5557 (1/20/2026)
PRISONERS RIGHTS - Access To Court

LASJRP: The Supreme Court denies petitioner's motion for leave to proceed in forma pauperis and dismisses the petition for a writ of certiorari, noting that "[a]s the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1."

Justice Jackson dissents, asserting that "[a] categorical, forward-looking filing bar is a questionable restriction as to any litigant who cannot afford to pay a filing fee. For me, it is an intolerable one as to incarcerated individuals." Because ["]time moves on after a person is imprisoned and things happen, we simply do not and cannot know whether indigent prisoners who have filed multiple [']frivolous[']petitions in the past might have a meritorious claim in the future." Meanwhile, the administrative burden involved in reviewing repeated (even frivolous) petitions filed by prisoners is minimal.

Klein v Martin, No. 25–51 (1/26/2026)
FEDERAL HABEAS | AEDPA DEFERENCE NOT FOLLOWED BY FOURTH CIRCUIT | REVERSED

ILSAPP: Petitioner, the State of Maryland, filed a petition for a writ of certiorari to the Supreme Court (SCOTUS) after the Fourth Circuit affirmed the district court's grant of habeas relief. The state courts had denied respondent Martin's post-conviction claim based on an alleged *Brady* violation due to the prosecution's failure to turn over a forensics report on a laptop. In a per curiam decision, SCOTUS granted certiorari, reversed the order below, and remanded. The Antiterrorism and Effective Death Penalty Act (AEDPA) requires federal courts to give great deference to the determinations of state courts in federal habeas cases, reversing only when the state court's "'decision' was 'contrary to, or involved an unreasonable application of, clearly established Federal law,' or 'was based on an unreasonable determination of the facts in light of the evidence presented' in state court." The Fourth Circuit misapplied AEDPA when it faulted the state court's materiality analysis under *Brady* based on that court's failure to discuss certain evidence that tended to undermine the State's case.

US Supreme Court *continued*

AEDPA "bars federal courts from imposing opinion-writing standards on state courts" and "requires deference even if the state court does not discuss the evidence at all." The Fourth Circuit also erred in holding that every fair-minded jurist would find that the undisclosed forensic report about respondent's laptop was material. The record strongly supported the state court's conclusion that respondent would have been convicted even if the forensic report "severely impeached" one of the State's witnesses: DNA evidence tied respondent to a modified Gatorade bottle allegedly used as a silencer in the shooting, witness testimony suggested that respondent was present when the bottle was modified, and respondent had a strong motive for aiding the attempted murder. Justice Jackson would have denied the writ for certiorari.

Villarreal v Texas, No. 24-557 (2/25/2026)
RIGHT TO COUNSEL - Consultation During Defendant's Testimony/Overnight Recess

LASJRP: The Supreme Court held in Geders v. United States (425 U.S. 80) that a court may not prevent a testifying defendant from conferring with defense counsel during an overnight recess. The Court held in Perry v. Leeke (488 U.S. 272) that a court may prevent a testifying defendant from conferring with counsel during a brief daytime recess. In each case, the trial court had imposed an unqualified ban that separated client from counsel entirely.

In this case, during an overnight recess that interrupted defendant's testimony, the trial court allowed counsel to speak with defendant while prohibiting the lawyer only from "managing" defendant's testimony and permitting all other discussion.

The Supreme Court concludes that the trial court's order permissibly balanced the right to counsel against the burden of offering unaltered trial testimony. A defendant has the right to discuss with counsel things like trial strategy and factual information crucial to tactical decisions. A court also cannot prohibit a defendant from obtaining counsel's advice on whether and why he should consider a guilty plea, even if the "why" includes the impact of ongoing testimony on the trial's prospects. While Perry recognizes that a testifying defendant has a constitutional right during a mid-testimony recess to consult with counsel about a wide range of topics - "the availability of other witnesses, trial tactics, or even the possibility of negotiating a plea bargain" - Perry posits that a short break in a defendant's appearance on the witness stand is unlikely to feature such topics. Instead, such a pause will likely contain discussion of nothing but testimony.

Where no non-testimony topics are involved, the Sixth Amendment provides no constitutional right to consultation during breaks in the defendant's testimony. For the duration of the defendant's time on the stand, consultation about the testimony itself - rather than incidental discussion of testimony in service of protected topics - sheds its constitutional protection. The rules that generally apply to other witnesses - rules that serve the truth-seeking function of the trial - are generally applicable to the defendant as well. Defendant's hardline position - that the Sixth Amendment permits no restriction of a defendant's consultation right during an overnight recess - fails to account for the content-related premises underlying Geders and Perry.

A court cannot prohibit a lawyer from asking the defendant about a new potential witness or a piece of evidence mentioned for the first time during the defendant's testimony, or a defendant from asking counsel about compliance with the court's evidentiary rulings. But the discussion of testimony for its own sake threatens to shape the defendant's testimony and undermine the trial's search for the truth.

Urias-Orellana v Bondi, No. 24-777 (3/04/2026)

The First Circuit applied the appropriate, substantial-evidence standard under 8 USC 1252(b)(4)(B) when it reviewed the persecution determination here; the judgment below is affirmed. The facts presented by the petitioners were insufficient to establish either past persecution or a well-founded fear of future persecution; the Immigration Judge's denial of asylum, upheld by the Board of Immigration Appeals and then the Court of Appeals, is affirmed.

Zorn v Linton, No. 25-297 (3/23/2026)

The Second Circuit erred in reversing a District Court's grant of summary judgment on the basis of qualified immunity to a police officer who was sued under 42 USC 1983 for violation of a protester's Fourth Amendment right against excessive use of force. The officer here, after warning the protester that he would have to use more force if she did not stand up, used a wristlock to bring her to her feet. The decision relied on by the Second Circuit, *Amnesty America v West Hartford* (361 F3d 113 [2004]), did not clearly establish that the officer's conduct violated the Fourth Amendment. There, the court faced a wide range of allegations of excessive force and no indication that the protesters had been warned that such force would be used. *Amnesty America* did not make clear that "'gratuitous use of pain compliance techniques—such as a rear-wristlock—on a protestor who is passively resisting arrest constitutes excessive force.'" Even if it did, that "lacks the 'high degree of specificity' needed to make it 'clear' to officers which actions violate the law" because there is no specification as to what circumstances make the use of force "gratuitous."

Dissent: [Sotomayor, J] The Second Circuit decision "was not erroneous, and certainly not so clearly erroneous as to warrant the 'extraordinary remedy of a summary reversal.'"

US Supreme Court *continued*

Rico v United States, No. 24-1056 (3/25/2026)

There is a split among circuits as to whether the failure of a federal defendant on supervised release to report to probation not only amounts to a punishable violation of the release but also automatically extends the supervised release term. The Ninth Circuit's holding that absconding "tolls" the term of supervised release until federal authorities locate the person absconding is incorrect terminology because the term is not tolled but extended. In any event, the law does not authorize it. The Sentencing Reform Act provides many tools to ensure a defendant does not profit from absconding, but an automatic extension of supervised release is not among them. The District Court did not consider whether a state offense committed while the defendant was a fugitive could be a basis for the amount of time to which the absconding defendant was sentenced.

Dissent: [Alito, J] There is no need to consider whether the supervised release period was tolled. Under the Sentencing Guidelines, the state offense committed by the defendant while a fugitive could be considered in imposing sentence when supervised release was revoked.

New York State Court of Appeals

In the online version of the *REPORT*, the name of each case summarized is hyperlinked to the opinion provided on the website of the New York Official Reports, www.nycourts.gov/reporter/Decisions.htm.

People v Pamperien, 2025 NY Slip Op 06964 (12/16/2025)
SORA | POSSESSION OF CHILD PORNOGRAPHY | SVO DESIGNATON | DOWNWARD DEPARTURE | MOOT |AFFIRMED

ILSAPP: Appellant appealed from a Second Department order affirming an order of Suffolk County Court designating him as a level two sexually violent offender (SVO) under SORA, stemming from his conviction for possessing child pornography. The Court of Appeals affirmed. Appellant's challenge to the SVO designation was moot where County Court removed it after the leave grant. Further, the "record support[ted] the points assessed, and [appellant]'s argument that he should have been granted a downward departure [did] not warrant reversal."

Matter of Monaghan v Schroeder, 2025 NY Slip Op 06959 (12/16/2025)
ARTICLE 78 | DWI CHEMICAL TEST REFUSAL | DUE PROCESS | SUBPOENA ENFORCEMENT | AFFIRMED

ILSAPP: Appellant appealed from a Third Department order dismissing his Article 78 petition and affirming the DMV Appeals Board's decision to uphold the revocation of his driver's license for refusing to submit to a chemical breath test. The Court of Appeals affirmed. Resolving an unanswered question in *Gray v Adduci* (73 NY2d 741 [1988]), the Court held that where the DMV suspended a motorist's license based only on written reports of his refusal, even though he subpoenaed the reporting officers, who failed to appear as directed, "CPLR 2308(b)'s procedures for subpoena enforcement provide sufficient process." Moreover, "absent a motorist's use of those procedures, due process does not require the exclusion of hearsay evidence or dismissal of the charge." Unlike in *Gray*, appellant duly served nonjudicial subpoenas on the officers who arrested him for DWI after he failed a field sobriety test and refused to submit to a chemical test; however, as occurred in *Gray*, the officers repeatedly failed to appear at appellant's license revocation hearing. Appellant's due process right to confront and cross-examine the officers was not violated where appellant "did not ask the ALJ to adjourn the hearing so he could enforce the subpoenas" and did "not allege that the ALJ prevented him from doing so."

People v Smith, 2025 NY Slip Op 07082 (12/18/2025)
ROBBERY - Display Of What Appears To Be Firearm/ BB Gun - Affirmative Defense

LASJRP: Under Penal Law § 160.15(4), criminal liability is imposed for first-degree robbery when a person forcibly steals property and, in the course of the crime or immediate flight therefrom, "[d]isplays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm." It is an affirmative defense where the object displayed "was not a loaded weapon from which a shot, readily capable of producing death or other serious physical injury, could be discharged" (Penal Law § 160.15[4]), in which case liability may be imposed for second-degree robbery under Penal Law § 160.10(2)(b).

In this case, defendant, charged under § 160.15(4), requested that the jury be charged with the affirmative defense, arguing that the BB gun was not a "loaded weapon from which a shot readily capable of producing death or serious injury, could be discharged." The court denied defendant's request. The Appellate Division affirmed, concluding as a matter of law that "a BB gun is readily capable of causing serious physical injury," and thus the affirmative defense applies "only when it is demonstrated by a preponderance of the evidence that the [BB] gun was unloaded or inoperable."

In a 4-3 decision, the Court of Appeals affirms, albeit for different reasons. Whether a particular BB gun is "readily capable" of causing serious physical injury is not a question the Court can decide as a matter of law. Here, although defendant made a prima facie showing that the object he displayed during the robbery was a BB gun recovered from his home, he presented no evidence concerning the capabilities of the gun.

The dissenting judges assert that if it is known that the defendant used a BB gun, which is not a firearm, the People can proceed under robbery in the first or second degree, but if they

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elect first degree, it is the People who bear the burden to prove the BB gun used is readily capable of causing death or serious injury.

People v Collier, 2026 NY Slip Op 00074 (1/8/2026)
SORA | SUBSTANTIVE DUE PROCESS | DELAYED SORA HEARING | AFFIRMED | CONCURRENCE

ILSAPP: Appellant appealed from a First Department order affirming his level one sex offender adjudication following a delayed SORA hearing. The Court of Appeals affirmed, with two judges concurring. Appellant, who pleaded guilty to one count of sexual misconduct in 2009, was not notified of his SORA registration requirements or given a SORA hearing to determine his risk-level until six years after his guilty plea. The Court first found that the constitutional "speedy trial" test used in *People v Taranovich* (37 NY2d 442 [1975]) is inapplicable in these civil proceedings. Given that the SORA civil statute is remedial in nature rather than punitive, for appellant to prevail on his substantive due process violation claim, he must show "that the delay prejudiced his ability to present his or her case to the SORA court." "Furthermore, in the context of a delayed SORA proceeding, the remedy for prejudice to that interest must be applied within the SORA framework." Thus, appellant did not establish a violation of his substantive due process rights because the delay materially benefitted him by granting him the "least restrictive designation available" (level one instead of level two due to his post-release law-abiding life) and a *nunc pro tunc* order from the date of his release that required a twenty-year registration rather than lifetime registration. "Accordingly, the delay here does not shock the conscience." Chief Judge Wilson concurred, joined by Judge Halligan, agreeing with the majority's conclusion but emphasizing the "cascade of successive failures by government actors" in this case. The concurrence acknowledged appellant's "substantive due process interest in maintaining the law-abiding, post-release life he built during the five years he lived after serving his prison sentence," and expressed concern that "in a different case, a more extended delay or more restrictive SORA designation could result in a due process violation."

People v Alba, 2026 NY Slip Op 00638 (2/11/2026)
APPELLATE DISENTITLEMENT | DISMISSED WITHOUT PREJUDICE

ILSAPP: Appellant appealed from a First Department order affirming his conviction, after a jury trial, of attempted second-degree burglary. The Court of Appeals dismissed without prejudice. Appellant was removed from the United States because of convictions unrelated to this appeal. The Court exercised its discretionary authority to dismiss the appeal without prejudice to reinstatement should appellant return to this Court's jurisdiction.

People v Ambrosio, 2026 NY Slip Op 00824 (2/17/2026)
IAC | JURY INSTRUCTION | STANDARD FOR IMPAIRMENT | AFFIRMED | CONCURRENCE

ILSAPP: Appellant appealed from a Third Department order affirming an order of Clinton County Court convicting him, after trial, of driving while ability impaired (DWAI) (two counts). The Court of Appeals affirmed. Defense counsel was not ineffective for failing to request a jury instruction in accordance with the heightened standard of intoxication delineated in *People v Caden N.* (189 AD3d 84 [3d Dept 2020], *lv denied* 36 NY3d 1050 [2021]). The "mistake, if it was one, was not the sort of egregious and prejudicial error that amounts to a deprivation of the constitutional right to counsel." *Caden N.*'s holding was limited to vehicular manslaughter, and at the time of appellant's trial, no court in the State had extended its reasoning to charges under VTL § 1192 (4) or (4-a). Further, the model jury instructions were not revised to account for *Caden N.* until three months after appellant's trial. Moreover, in light of the Court of Appeals' decision in *People v Dondorfer* (2026 NY Slip Op 00823), released the same day as *Ambrosio*, appellant would not be entitled to a *Caden N.* charge if a new trial were ordered. Judge Rivera concurred in the result on different grounds. *Caden N.* was binding precedent at the time of appellant's trial, and "no reasonable attorney would have failed to request a charge based on *Caden N.*'s heightened standard for impairment, given that its reasoning squarely applied." However, "counsel cannot be ineffective for failing to make a claim when within the same prosecution and appeal, an appellate court determines the claim was meritless," as occurred here when the Third Department held on direct appeal that appellant was not entitled to the charge that counsel failed to request.

People v Dondorfer, 2026 NY Slip Op 00823 (2/17/2026)
DWI OFFENSES - Impairment/Intoxication

LASJRP: In People v. Cruz (48 N.Y.2d 419), the Court of Appeals held that under the Vehicle and Traffic Law, an individual is impaired when, "by voluntarily consuming alcohol, th[e] [] defendant has actually impaired, to any extent, the physical and mental abilities which he is expected to possess in order to operate a vehicle as a reasonable and prudent driver," and that an individual becomes intoxicated when "the driver has voluntarily consumed alcohol to the extent that he is incapable of employing the physical and mental abilities which he is expected to possess in order to operate a vehicle as a reasonable and prudent driver."

The Court of Appeals rejects defendant's contention, based on People v. Caden (189 A.D.3d 84), that for offenses involving drug use, or drug and alcohol use combined, courts should define impairment using Cruz's intoxication standard, and holds that the term "impaired" should be interpreted consistently across Vehicle and Traffic Law § 1192 in accordance with the

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definition this Court gave that term in People v. Cruz.

Accepting defendant's contention would require the Court to interpret "impaired" as having two definitions within the same statute: one applicable to consumption of alcohol alone, and one that applies the standard for "intoxication" by alcohol consumption to the use of drugs or drugs and alcohol combined.

People v Guerrero, 2026 NY Slip Op 00826 (2/17/2026)
ADOLESCENT OFFENDERS - Removal

LASJRP: Defendant, four months shy of his 18th birthday, participated in a premeditated, armed home invasion. The grand jury indicted defendant and his accomplices on two counts of burglary in the first degree and one count of robbery in the first degree.

The Court of Appeals, in a 4-3 decision, finds no error in the youth part's determination granting the People's motion to prevent removal. The majority notes, inter alia, that since age 13, defendant had been arrested repeatedly, was frequently in Family Court, and had received many services over a period of five years; that despite those services, his criminal behavior escalated to the point that only a month after receiving a Family Court appearance ticket for unauthorized use of a motor vehicle, he participated in this offense in which he displayed a knife; that his accomplices' display of firearms would have mandated retention of the case by the youth part if defendant had done the same; and that defendant's mental health is a substantial mitigating factor, and removal would not have been unreasonable, but this Court cannot say that the youth part abused its discretion as a matter of law in determining that extraordinary circumstances exist that should prevent removal to Family Court.

Contrary to the dissent's concern, this decision does not treat re-offense "in and of itself" as extraordinary. And, a robbery home invasion is not a "typical" youth crime, and the salient facts here do not readily describe any burglary, robbery, or other violent felony.

The dissenting judges assert that the statute treats violent felonies as presumptively removable; that the goal of Raise the Age is to treat "kids' lives [as] worth saving" by giving them services, rather than locking them in adult prisons, so they have a shot at "better outcomes for their lives"; and that to fulfill that promise, "extraordinary circumstances" must be a high standard meant for only the rarest of cases. The dissenting judges also note that a number of lower courts have interpreted FCA § 381.2(1) as barring the People from using a youth's juvenile delinquency history in any way in an application for removal, but have nonetheless considered evidence of a defendant's re-offense and services in deciding extraordinary circumstances motions. Although defendant's argument here is unpreserved, "it reveals a puzzling inconsistency that the Legislature may wish to address, or that this Court may wish to clarify in a proper case."

People v Morel, 2026 NY Slip Op 00822 (2/17/2026)
FACIAL SUFFICIENCY | DWAI | IMPAIRMENT | REASONABLE CAUSE | AFFIRMED | DISSENT

ILSAPP: Appellant appealed from an Appellate Term order affirming an order of New York County Criminal Court denying a facial sufficiency motion challenging a misdemeanor complaint charging VTL 1192(4). The Court of Appeals affirmed. Factual allegations of appellant's "recent marijuana use, his physical manifestations of impairment, and his refusal to take a drug test provide reasonable cause to believe he committed the charged offense." Under the impairment standard adopted in *People v Cruz* (48 NY2d 419 [1979]), alleged observations of appellant's "watery, bloodshot eyes," along with his reported refusal to take a urine test, alleged admission, and evidence of recent cannabis use were sufficient, based on the totality of the circumstances, to establish reasonable cause to believe that his ability to drive was impaired by marijuana. The Court agreed with the defense that it could not consider the Report of Refusal to determine whether the complaint was facially sufficient, as the complaint did not "append, incorporate, or reference" the Report of Refusal, nor could the report qualify as a supporting deposition. In dissent, Chief Judge Wilson, joined by Judge Troutman, found that the majority "misapprehends and misapplies" the *Cruz* impairment standard and "blesses" an accusatory instrument that "gives no indication" that appellant's ability to drive was actually impaired, "undercut[ting] the due process protections embedded into our requirements for jurisdictionally sufficient accusatory instruments." Driving with a "low level of alcohol or drugs" in your system is not unlawful in New York, and the legislature chose not to adopt a "zero-tolerance regime" adopted in other states. The accusatory instrument did not state that appellant "was driving erratically or broke any traffic law." The allegations "tell us nothing about impairment of Mr. Morel's ability to drive." The refusal of the urine test did not "rescue" the accusatory instrument, because the test would only determine the presence of drugs (not the amount), and appellant already admitted to consuming marijuana. The dissent also faulted the majority for exposing "countless unimpaired drivers to prosecution" as red eyes may also be indicative, for example, of consumption of other prescription medications.

Matter of M.S. (M.H.), 2026 NY Slip Op 00825 (2/17/2026)
EVIDENCE/ABUSE/NEGLECT - Video Recordings

LASJRP: The Family Court's findings of abuse and derivative abuse were based solely on videos that appeared to show D.K. - the mother's former live-in boyfriend - sexually abusing one of the children. The Family Court determined that the mother had abused both her children by failing to protect them from her boyfriend.

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In a 4-3 decision, the Court of Appeals reverses, holding that the Family Court erred in admitting the videos into evidence. The Court held in People v Patterson (93 N.Y.2d 80) that a video may be authenticated through (1) "testimony of a witness to the recorded events or of an operator or installer or maintainer of the equipment that the videotape accurately represents the subject matter depicted" or (2) expert or lay testimony establishing that the video "truly and accurately represents what was before the camera."

Here, D.K., who allegedly created the videos, provided no evidence or testimony, and B.W., the child pornographer who claimed to have hacked into D.K.'s cameras, never testified. Instead, an FBI agent offered hearsay testimony as to what B.W. had told him. There was no continuous video, only snippets excerpted by B.W. from a longer, unrecovered feed. B.W. told the agent he had watched many days of video but did not explain what he omitted or deleted. The agent did not testify that B.W. told him the videos were unaltered. The agent did not testify about training or experience in identifying signs of tampering or video alteration that could establish his ability to authenticate as a lay witness. He was not asked whether he examined the videos to look for tampering; whether he used any forensic tool to detect tampering; or whether he was able to offer a learned opinion that the video was not tampered with. There was a roughly two-and-a-half-year period between when the videos were stolen and snipped by B.W. and when they were recovered by the FBI.

An investigator's testimony that the videos matched his personal observations of the layout of the living room and items he observed there are insufficient. What matters most is whether the events depicted are as real as the proponent claims them to be, not whether there are some identifying features of the video that can be corroborated in real life. The increasing prevalence of "deepfake" videos has rendered the method of matching circumstantial details in a video to personal observations a more suspect form of authentication since most fabricated videos "leverage" real details from real photos and videos of real places and people, then alter the pieces the person wishes to alter to create a realistic, but manipulated, video.

Judge Singas hinges most of her dissent on the claim that video manipulation using deepfake technology was "impossible" around the time the videos were recovered, but that point is not germane to whether the video here was properly authenticated. In any event, open-source tools capable of making "deepfakes" were widely available as of 2017.

Judge Troutman's dissenting opinion notes that no one uttered the word "deepfake" during the proceedings below, nor was there any evidence presented that the portions of the videos depicting sexual abuse were fabricated. "In addressing a concern that was never raised below, the majority creates new and perhaps insurmountable hurdles for future authentication of video evidence. As a result, children will be harmed and abusers will escape accountability."

People v Anderson, 2026 NY Slip Op 00967 (2/19/2026)
APPEAL - Weight Of Evidence Review

LASJRP: The People's evidence at the murder trial was wholly circumstantial. The People's proof included, among other things, evidence that defendant's son frequently had unexplained bruises and that defendant harshly physically disciplined him in the presence of others. The jury convicted defendant of second-degree murder. The Appellate Division affirmed, holding that the verdict was not against the weight of the evidence.

The Court of Appeals affirms. Although the Appellate Division failed to note the circumstantial nature of the evidence, that does not demonstrate that the Appellate Division applied an incorrect legal standard. The Appellate Division need not "charge itself" with the jury instruction regarding circumstantial evidence. In stating that the conflicting testimony presented a credibility issue for the jury to resolve, the Appellate Division properly deferred to the jury's credibility determinations and declined to view this as an appropriate case in which to substitute its own credibility determinations for that of the jury. In sum, nothing in the Appellate Division's decision demonstrates that it applied an incorrect legal standard when conducting its weight of the evidence review, and therefore this Court has no further power to review defendant's weight of the evidence challenge.

People v Galindo, 2026 NY Slip Op 00965 (2/19/2026)
JURY NOTES | O'RAMA ERROR | MODE OF PROCEEDINGS | MODIFIED

ILSAPP: Appellant appealed from a Second Department, Appellate Term, order affirming his conviction, after trial, of consumption of alcoholic beverages in motor vehicles and unlicensed operation of a motor vehicle. The Court of Appeals modified by dismissing the charge of unlicensed operation of a motor vehicle and, as modified, affirmed. The trial court's "failure to read [a] jury note verbatim, or otherwise create a record demonstrating that the parties had received a copy of the note, deprived appellant of meaningful notice of the precise contents of the substantive jury note." This error affected the unlicensed operation charge, not referenced in the jury note, because it shared the same element as the charges mentioned in the note, but it did not warrant dismissal of the entire accusatory instrument. Because there was no independent infirmity in the consumption conviction, it was affirmed. Given that appellant had served his sentence and there was no penological purpose supporting retrying him on the unlicensed operation charge, that count was dismissed. The Legal Aid Society of NYC (Hannah Gladstein of counsel) represented Galindo.

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People v Rios, 2026 NY Slip Op 00963 (2/19/2026)
POST-PLEA STATEMENTS NEGATING GUILT | *LOPEZ* EXCEPTION DOES NOT APPLY TO STATEMENTS AT SENTENCING | AFFIRMED | CONCURRENCE

ILSAPP: Appellant appealed from a Fourth Department order affirming a Monroe County Court judgment convicting him, after a plea, of second-degree robbery. The Court of Appeals affirmed, with two judges concurring. During his pre-sentence interview with the probation department, appellant stated that he had only robbed the store as part of his work as a confidential informant. When the court questioned him about those statements at sentencing, he "first stood by his statements to the probation department but also, with his counsel's input, admitted guilt." He never moved to withdraw the plea or vacate his judgment of conviction. The Court of Appeals held that the *Lopez* exception to the rule requiring preservation to challenge the voluntariness of a guilty plea on appeal does not apply to statements made at sentencing that may negate guilt, resolving a split in the Appellate Divisions. The *Lopez* exception is rooted in the trial court's duty to ensure that a plea is knowing, voluntary, and intelligent prior to accepting it. After the plea is entered, there is a statutorily-provided remedy in the form of a motion to withdraw the plea, rendering the exception unnecessary. The concurrence (Rivera, J., joined by Wilson, C.J.) would have applied the *Lopez* exception to statements made at sentencing but would have found the trial court's inquiry here adequate to ensure that appellant understood the plea and its consequences.

People v Shaw, 2026 NY Slip Op 00961 (2/19/2026)
***PAYTON* VIOLATION | CONSTRUCTIVE ENTRY | THIRD-PARTY CONSENT | ATTENUATION ANALYSIS | EXCLUSIONARY RULE | REMITTED ON CPW COUNT | DISSENT**

ILSAPP: Appellant appealed from a Fourth Department order affirming a Monroe County Court judgment convicting him of first-degree murder (two counts), second-degree murder (two counts), second-degree attempted murder, first-degree assault, and second-degree CPW (three counts). The Court of Appeals modified the judgment by remitting to the Fourth Department for further proceedings on one CPW count, and, as so modified, affirmed. During the investigation of the shooting, a gun was seized from an apartment where appellant had stayed overnight. The Court upheld the Fourth Department's "conclusion that [appellant] was coerced to leave the apartment in violation of *Payton*," holding that "*Payton* encompasses constructive entry" and that the violation was unlawful under both the federal and New York State constitutions. When Rochester police officers ordered appellant to come out, "the building was surrounded by more than a dozen SWAT team officers dressed in tactical gear and carrying assault rifles" and an armored SWAT vehicle. While *Payton* did not address "constructive entry," the Court of Appeals held that "[w]hen officers subject someone to a display of authority that induces them to exit the home under coercion, the sanctity of the home has been invaded to the same extent as if the officers had physically entered" in violation of *Payton*, and the arrest is "unlawful under both the Fourth Amendment and the New York Constitution, just as it would be if the arrest occurred within the confines of the home itself." The Court next reviewed the Fourth Department's determination that entry to the apartment was nevertheless legal based on a tenant's consent, which was sufficiently attenuated from the *Payton* violation. Initially, the Court found that attenuation analysis should apply under the circumstances of this case, even though "a third party, rather than a defendant, provide[d] consent to search." However, the majority agreed with appellant that the Fourth Department "applied the wrong legal standard to determine whether the tenant's consent was voluntary," by "failing to distinguish between voluntariness and attenuation and by applying the wrong factors in assessing the voluntariness of the tenant's consent." Nonetheless, the Court found that this error was harmless except as it related to one count of second-degree CPW, the only count that did not "stem from the shooting incident," and remitted to the Fourth Department on that count alone. In an opinion dissenting in part and voting to affirm, Judge Singas, joined by Judges Garcia and Cannataro, took issue with the majority's view that "the State Constitution encompasses a theory of constructive entry," which attempts "to insulate this Court's decisions from U.S. Supreme Court review without an independent substantive analysis identifying the source of the right." The dissent further emphasized that "any illegality in defendant's arrest bears no connection to the tenant's consent." Therefore, the dissent opined that "[a]pplying the exclusionary rule in this manner [was] directly contrary to binding Supreme Court precedent, and any such argument under the New York State Constitution [was] both unpreserved and meritless." Monroe County Public Defender (Clea Weiss, of counsel) represented Shaw.

People v Zubidi, 2026 NY Slip Op 00964 2/19/2026)
SEARCH AND SEIZURE - Auto Stop/Reasonable Suspicion

LASJRP: The Court of Appeals concludes that the record supports the Appellate Division's finding that the officers had reasonable suspicion to conduct a vehicle stop where the officers had information from a license plate search indicating that a white Dodge Caravan with a license plate number matching defendant's vehicle was involved in a road rage shooting in Washington Heights; although that information was nearly three weeks old, the officers also knew from their conversation with a traffic agent that less than 24 hours before the stop and in the same neighborhood, someone driving the

NY Court of Appeals *continued*

same car had evaded a parking ticket, and because that driver sped away, almost hitting the traffic agent, the officers could have reasonably inferred that the driver was also the driver during the shooting and fled to avoid repercussions from the shooting; and the officers knew from the vehicle's registration that it was privately owned, which significantly narrowed the universe of potential drivers.

People v Bender, 2026 NY Slip Op 01444 (3/17/2026)
RECKLESS ENDANGERMENT - Depraved Indifference
DISCOVERY - Notice Of Intent To Offer Psychiatric Evidence

LASJRP: The Court of Appeals concludes that the evidence at trial was legally sufficient to establish depraved indifference reckless endangerment, noting, inter alia, that defendant was driving erratically, "weaving" between lanes in heavy traffic, with eyes open and a "look of rage on his face"; that over approximately three-tenths of a mile, defendant struck three vehicles, drove through a parking lot, and crashed into a house; that defendant began by making a "sharp right" directly into a tow truck, and, after defendant's vehicle "shook loose" from the tow truck, defendant "sped up" and "proceeded to take off" and soon crashed into the rear of a van with such force that the driver hit his head on the roof and felt defendant's vehicle "pushing" him down the road; that defendant next crashed into the back of a third vehicle and side-swiped the driver's side, causing the vehicle to "hit the curb" and to "flip[] over on its roof," and then "took off [] fast" from that crash, drove over a sidewalk and through a motel parking lot, and crashed directly into a house, causing it to shake upon impact; and that the brakes were not applied in the eight seconds prior to impact with the house.

The trial court did not err where it permitted defendant to introduce medical evidence in support of his sleep disorder defense but, due to a CPL § 250.10 notice failure, precluded him from offering the unnoticed psychiatric evidence of his bipolar disorder in support of that defense. On May 13, 2021, the People moved to preclude the new psychiatric evidence, asserting that they were prejudiced by the shifting trial strategy because they were deprived of the opportunity to have an independent expert examine defendant and to review defendant's complete mental health records. On May 18, 2021 - six days prior to the start of trial - defendant asked for permission to file a late notice for good cause due to, among other things, the COVID-19 pandemic and because defendant only learned of the new psychiatric evidence in April 2021. The court below properly concluded that the pandemic did not explain why defendant did not email or otherwise submit the required notice, and that there "was absolutely no good cause shown as to why notice was not immediately given after" defendant learned of the psychiatric evidence on April 18, 2021.

People v Curry, 2026 NY Slip Op 01448 (3/17/2026)
SENTENCE - Probation/Violations

LASJRP: The Court of Appeals concludes that the sentencing court did not have jurisdiction to revoke defendant's probation because his probationary period was never tolled and had expired at the time he was sentenced. The declaration of delinquency (CPL § 410.30) is the exclusive procedural mechanism by which the court can toll a probationary period, and no such declaration was filed.

People v Gaffney, 2026 NY Slip Op 01445 (3/17/2026)
IAC | REPUGNANT VERDICT | AFFIRMED

ILSAPP: Appellant appealed from a Fourth Department order affirming his Cayuga County conviction, after trial, of aggravated assault on a police officer. In a memorandum opinion, the Court of Appeals affirmed. Appellant failed to show "a lack of strategic or other legitimate explanation for his attorney's failure to object to the jury verdict as repugnant," which explanation could have included avoiding the possibility of "reexposing [appellant] to an attempted second-degree murder conviction," even if "this additional conviction would not have increased [the] maximum sentencing exposure." In a footnote, the Court noted that counsel had not argued, and the Court did not address, whether the trial court could have "lawfully resubmitted the attempted murder charge to the jury had counsel objected."

People v Jones, 2026 NY Slip Op 01447 (3/17/2026)
SUPPRESSION | MISTAKEN IDENTITY |
PURSUIT NOT JUSTIFIED | REVERSED | DISSENT

ILSAPP: Appellant appealed from a Fourth Department order affirming his Monroe County conviction, upon his guilty plea, of attempted second-degree CPW. The Court of Appeals reversed, granted suppression, and dismissed the indictment. The police pursuit was not justified under either *De Bour*'s reasonable suspicion standard or the reasonable belief test in *Hill v California* (401 US 797 [1971]), because parole investigators did not sufficiently corroborate that appellant was the person named in their warrant. The physical similarities were too generic—only a general match in height and weight, and the investigators could not identify appellant's race, facial features, or whether he resembled the photo they had been given. Further, appellant's flight did not support pursuit because the record did not show that he knew he was fleeing from law enforcement. The officers were in plain clothes and unmarked vehicles, and the record did not indicate that any of the investigators identified themselves as law enforcement. The dissent (Cannataro, J., joined by Garcia and Singas, JJ.) would have applied Hill's reasonable belief test and affirmed, finding support in the record that the officers had a reasonable mistaken belief that appellant was the subject of the warrant. James A. Hobbs represented Jones.

NY Court of Appeals *continued*

People v Tyson, 2026 NY Slip Op 01446 (3/17/2026)
SPEEDY TRIAL - Constitutional Due Process/Pre-Indictment Delay

LASJRP: Defendant was indicted 14 months after he allegedly assaulted a corrections officer. The trial court and Appellate Division concluded that the delay violated defendant's due process rights.

The Court of Appeals, with two judges dissenting, reverses. There is a large body of precedent denying speedy trial claims based on similar periods of pre-indictment delay. The delay attributable to the time it took to obtain lab results was justifiable, but there is little to no explanation for the ensuing nine-month delay after the lab results were returned, so this factor favors defendant. The prosecution's case does not appear to have been complicated, and although aggravated harassment of a DOCCS employee by an incarcerated individual is not a minor offense, it was not exceedingly serious, especially since the officer was not injured, so this factor favors neither side. Neither defendant's time in prison nor his time in solitary confinement would have been reduced by a quicker prosecution, and although defendant's status as an incarcerated individual cannot excuse the People's pre-indictment delay, this factor favors neither side. There was no prejudice to defendant's ability to mount a defense.

People v Billups, 2026 NY Slip Op 01589 (3/19/2026)
CONSECUTIVE SENTENCES | SIMPLE WEAPON POSSESSION | AFFIRMED

ILSAPP: Appellant appealed from a First Department order affirming his New York County conviction of felony murder, first- and second-degree robbery, and simple CPW, running his sentence on the weapon possession charge consecutively to the sentences on the remaining counts. The Court of Appeals affirmed. Appellant's consecutive sentences were lawfully imposed because the prosecution demonstrated that appellant's possession of the gun was an act distinct from the commission of the robbery. The Court distinguished CPW offenses requiring proof of unlawful intent from simple possession offenses which require only knowing possession. In simple possession cases, like this one, the prosecution establishes that the possessory act was separate and distinct from the later offense by showing that appellant exercised dominion and control over the weapon before committing the substantive crime. Here, the prosecution met that burden because the evidence showed that appellant obtained the gun more than an hour before the robbery, carried it roughly fifteen city blocks, hid it under a bed while the group continued planning, and later retrieved it before going to the complainant's building.

People v Henderson, 2026 NY Slip Op 01627 (3/19/2026)
***MOLINEUX* | NO NON-PROPENSITY PURPOSE | REVERSED | DISSENT**

ILSAPP: Appellant appealed from a Fourth Department order affirming his Monroe County conviction of third-degree CPCS. The Court of Appeals reversed, holding that the trial court erred in permitting the prosecution to introduce evidence relating to the recovery of drugs from appellant's car at an earlier trial for constructively possessing drugs in an apartment. The trial court had erroneously admitted the evidence of the uncharged drug crime as relevant to appellant's knowing possession and intent to sell. But the prior crime was years earlier, at a different location, under different circumstances and was not relevant to appellant's knowing constructive possession of the drugs recovered from the apartment. Nor was the uncharged crime evidence admissible to prove appellant's intent to sell the drugs. The element of intent was not disputed, and "evidence of prior acts offered to prove intent may fail at step one of the *Molineux* analysis when intent is easily inferable." In most drug cases intent can be inferred from the sale itself, and appellant never asserted that the drugs recovered from the apartment were for his personal use. The error was not harmless where the prosecutor's case was circumstantial, evidence of appellant's connection to the apartment was limited, and proof of guilt without reference to the *Molineux* evidence was not overwhelming. The dissent (Cannataro, J., joined by Garcia and Singas, JJ.) found that the trial court properly admitted the uncharged crimes evidence, finding that both knowing possession and intent to sell were contested. The entire defense "was that, as an overnight guest, [appellant] did not possess or control the drugs in his father's apartment." The dissent found the majority's ruling part of "a concerning trend" by the Court of Appeals of "'circumventing' *Molineux*'s two-step analysis." In any event, the dissent would have found any error harmless, particularly in light of the limiting instructions issued, because the prosecution "presented ample evidence" of appellant's "dominion and control" over the bedroom where certain drugs were recovered. Monroe County Public Defender (Clea Weiss, of counsel) represented Miller-Henderson.

People v Lewis, 2026 NY Slip Op 01588 (3/19/2026)
IAC | RIGHT TO BE PRESENT | WAIVER DUE TO CONDUCT | CONSECUTIVE SENTENCING | POSSESSORY OFFENSES UNDER DIFFERENT THEORIES | MODIFIED | CONCURRENCE | DISSENT

ILSAPP: Appellant appealed from a Fourth Department order affirming a Monroe County conviction, after trial, of second-degree CPW (4 counts), second-degree assault, and resisting arrest, with sentences on the weapons possession charges running consecutively to each other and the other sentences running concurrently with all counts. The Court of Appeals affirmed the judgment and modified the sentence. The Court

NY Court of Appeals *continued*

held that appellant waived his right to the effective assistance of counsel based on "the trial court's many warnings," including that appellant would not be given "substitute counsel" and that "he could choose to represent himself or authorize his attorney to participate in the proceedings at any time," as well as appellant's "obstructive behavior in response." including "his persistent refusal to change into civilian clothing and insistence on absenting himself from the proceedings." During the trial, defense counsel did not participate other than to move for a trial order of dismissal after the prosecution's case and to rest. The Court emphasized that the right to effective assistance and the right to be present are separate rights but determined that, "as in this case, the same conduct may amount to a waiver of both rights," noting that appellant "never contested that he waived the right to be present." The Court also held, as a matter of first impression, that consecutive sentencing for the second-degree CPW counts charged under different theories (simple possession and possession with intent to use) was erroneously imposed where the prosecution failed to show that the crimes "arose from separate and distinct acts." In dissent, Chief Judge Wilson lamented that "[f]or the first time in the history of our Court…the majority has blessed a trial conducted with no defendant and no counsel," which violates both New York and federal due process. Appellant's "refusal to represent himself and refusal to attend his trial left two constitutionally sound choices: either appoint new counsel, or hold that Mr. Lewis had waived his right to be present at his trial and direct counsel to defend his client." Here, where the court failed to relieve counsel or to instruct counsel to fully represent his client, instead appointing him standby counsel, appellant did not waive his right to counsel, "the most pervasive of all constitutional rights." Further, the court mischaracterized appellant's request "to fire" defense counsel as instructing counsel "not to do anything," while both defense counsel and the prosecutor "confirmed to the court that Mr. Lewis had not directed [counsel] to represent him through silence." Judge Halligan concurred separately to address two points raised in the dissent, observing that the question of whether appellant's waiver of both the right to be present and counsel violated a "'foundational principle of a fair trial" was not raised by the parties and that a waiver of effective assistance of counsel was permissible. Center for Appellate Litigation (Zoë Root, of counsel) represented Mr. Lewis.

People v Sabb, 2026 NY Slip Op 01590 (3/19/2026)
CONSECUTIVE SENTENCES IMPROPER | GUILTY PLEA | AFFIRMED | DISSENT

ILSAPP: The prosecution appealed from a Third Department order affirming appellant's Albany County conviction, upon his guilty plea, of first-degree manslaughter and first-degree attempted assault, but modifying his sentences to run concurrently rather than consecutively. The Court of Appeals affirmed. The prosecution did not establish "the legality of consecutive sentences because appellant did not admit any facts during his guilty plea allocutions . . . that support the prosecution's claim that he fired separate shots at each victim, causing separate injuries to each." The Court rejected the prosecution's request to adopt a broader rule permitting review of all information available to the trial court. Reaffirming existing precedent, the Court held that in guilty plea cases, the legality of consecutive sentencing turns only on the indictment and the plea allocution. The dissent (Singas, J., joined by Garcia, J.) would have found that the plea record established separate acts, and even if there was any ambiguity in the plea colloquy, the court should have been permitted to consider the presentence report which showed that appellant and his accomplice fired 16 bullets from a moving car, "adequately demonstrating that [the two complainant's] were struck by different bullets." Steven M. Sharp represented Sabb.

First Department

In the online version of the *REPORT*, the name of each case summarized is hyperlinked to the opinion provided on the website of the New York Official Reports, www.nycourts.gov/reporter/Decisions.htm.

People v Holguin, 243 AD3d 419 (1st Dept 11/6/2025)
SENTENCE - Probation/Conditions

LASJRP: The First Department strikes the condition of probation prohibiting defendant "from wearing or displaying gang paraphernalia" or "having any association with a gang or members of a gang if directed by the Department of Probation" where there is no evidence that defendant's crime was connected to any gang activities or that he has any history of gang membership or gang affiliation. (Supreme Ct, New York Co)

People v Pointdexter, 243 AD3d 421 (1st Dept 11/6/2025)
PROBATION | IMPROPER CONDITION: FEES & SURCHARGES | MODIFIED

ILSAPP: Appellant appealed from a Bronx County Supreme Court judgment convicting him of attempted first-degree sexual abuse and sentencing him to 6 months' jail plus 10 years' probation. The First Department modified the judgment by striking the probation condition requiring appellant to pay $1,425, comprising the mandatory surcharge, crime victim assistance fee, DNA fee, SORA fee, and supplemental sex offender victim fee. Payment of these fees would not assist in ensuring appellant would lead a law-abiding life and was not reasonably related to rehabilitation. Appellant was of limited financial means, had not been gainfully employed since 2019, relied on public assistance, and struggled with substance abuse. The prosecution did not oppose the relief. Center for Appellate Litigation (Abigail Everett, of counsel) represented Pointdexter. (Supreme Ct, Bronx Co)

People v Rodriguez, 243 AD3d 423 (1st Dept 11/6/2025)
CONFESSIONS - Interrogation/Investigative Inquiry

LASJRP: During the execution of a search warrant, defendant was discovered asleep in the sole bedroom of the apartment, where drugs were found. When he was taken to the living room, he was wearing a tank top, shorts, and socks. It was 46 degrees outside, and a detective asked him if he was comfortable leaving the apartment in that attire. In response, defendant asked for a sweater that was hanging in the bedroom closet and for a pair of sneakers that were next to the bed.

Finding no Miranda violation, the First Department concludes that the officer's question was reasonably related to administrative concerns and not a disguised attempt at investigatory interrogation. The fact that defendant's response ultimately turned out to be incriminating does not alter the analysis. (Supreme Ct, New York Co)

Matter of L.R.E., 243 AD3d 438 (1st Dept 11/13/2025)
ABUSE/NEGLECT - Leaving Child With Acquaintance - Adjournments

LASJRP: The First Department upholds a neglect finding where the mother permitted a resident of the building to take the two-month-old child to the resident's apartment while the mother consumed alcohol and marijuana to the point of intoxication so severe that she had to be hospitalized. The resident, who was concerned enough about the mother's condition that she volunteered to watch the child and then called 911, was at most a casual acquaintance of the mother and was not known to the child.

The court did not err in denying the mother's request for an adjournment of the fact-finding hearing when she failed to appear, for the second time in several months, on the day she was scheduled to testify, without contacting her attorney or offering any excuse for her absence, and she also had a history of failing to appear at visitations without warning or explanation.

The JRP appeals attorney was Polixene Petrakopoulos. (Family Ct, New York Co)

Matter of C.F. v Miles-Gustave, 243 AD3d 464 (1st Dept 11/18/2025)
ABUSE/NEGLECT - Marijuana Use/Threatening Behavior

LASJRP: In this article 78 proceeding, the First Department concludes that substantial evidence supports OCFS's determination regarding the relevance of an indicated report where petitioner smoked marijuana to such an extent that it caused her child to cough frequently and petitioner became so angry and volatile that the child feared for her physical safety and ran away from the home. Petitioner insisted she was legally allowed to smoke marijuana in her home and appeared unwilling or unable to appreciate the risk that she posed to the child while doing so. This evidence came within the OCFS factors that must be considered in determining whether maltreatment of petitioner's own child is relevant and reasonably related to the care of other children. (Supreme Ct, New York Co)

People v Hawse, 243 AD3d 488 (1st Dept 11/18/2025)
JUROR DISCHARGE | NOT GROSSLY UNQUALIFIED | ENGLISH PROFICIENCY | REVERSED

ILSAPP: Appellant appealed from a Bronx County Supreme Court judgment convicting him of attempted second-degree murder and second-degree CPW. The First Department reversed and ordered a new trial based on the trial court's improper discharge of a sworn juror. Following the prosecution's opening statement, a juror initially stated that his

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conscience made him uncomfortable passing judgment. He then acknowledged that he could be fair and could vote appropriately based on the evidence. Following an off-record conference, the court asked a series of questions about the juror's ability to understand English. The juror's final response was that his conscience was telling him not to judge anybody. Upon the juror's discharge, counsel objected. The record did not support the court's conclusion that the juror could not understand English, which was the basis for the discharge, requiring reversal and a new trial. Center for Appellate Litigation (Bryan S. Furst, of counsel) represented Hawse. (Supreme Ct, Bronx Co)

Matter of Law Office of Cyrus Joubin v Manhattan District Attorney's Office, 243 AD3d 480 (1st Dept 11/18/2025)
FREEDOM OF INFORMATION LAW

LASJRP: The First Department holds that a D.A. datasheet constitutes attorney work product, as it contains the analysis and conclusions of the intake attorney. As a result, CPLR 3101(c) protects the datasheet from disclosure under FOIL, even with redactions. (Supreme Ct, New York Co)

People v Melendez, 243 AD3d 487 (1st Dept 11/18/2025)
INVALID APPEAL WAIVER | INADEQUATE EXPLANATION | FORFEITURE ORDER VALID | AFFIRMED

ILSAPP: Appellant appealed from a Bronx County Supreme Court judgment convicting him, upon his guilty plea, of fifth-degree CPCS and from a forfeiture agreement ordering him to surrender over $6,000 (Lorenzo, J.). The First Department affirmed. The appeal waiver was invalid because the court never explained that the right to appeal was separate and distinct from rights automatically waived by pleading guilty and did not confirm that appellant had understood the written waiver. However, the court properly denied suppression. Appellant's challenges to the forfeiture agreement relating to money seized from his apartment pursuant to a valid search warrant could not be considered because the forfeiture agreement was not part of the sentence but based on a voluntary settlement of a potential civil proceeding. Also, the claims were waived by a specific agreement not to challenge the forfeiture order on appeal. Legal Aid Society of NYC (Mariel Stein, of counsel) represented Melendez. (Supreme Ct, Bronx Co)

Matter of H.K. v F.T., 243 AD3d 503 (1st Dept 11/20/2025)
APPELLATE PROCEDURE | NO STANDING TO APPEAL DISMISSAL ORDER | DISMISSED

ILSAPP: Father appealed from a New York County Family Court order dismissing a custody modification petition filed by the mother. The First Department dismissed the appeal. The father lacked standing under CPLR 5511 to appeal, because he was not aggrieved by Family Court's order. The dismissal order "neither denied any relief sought by him nor made a determination concerning his legal rights or direct interests." Neither the father's status as a parent and party to the proceedings, nor his disagreement with the court's rationale for dismissal, conferred standing to appeal. (Family Ct, New York Co)

Matter of K.F. v F.T., 243 AD3d 506 (1st Dept 11/20/2025)
FAMILY OFFENSES

LASJRP: In this family offense proceeding, the First Department holds that the court was not required to draw a negative inference against the younger child for failing to testify and properly exercised its discretion in not compelling him to do so. Notably, respondent father never sought to compel the younger child to testify.

The Court rejects the father's contention that dismissal is warranted because the events underlying the petition took place several years before the commencement of the proceeding.

The Court also rejects the father's contention that the Family Court erred by not holding a dispositional hearing, noting that there is no explicit statutory requirement for such a hearing. (Family Ct, New York Co)

People v Nesmith, 243 AD3d 533 (1st Dept 11/25/2025)
RESISTING ARREST

LASJRP: The First Department concludes that defendant's conviction of resisting arrest was against the weight of the evidence where defendant was cooperative when he was placed under arrest, handcuffed, physically restrained, and surrounded by police officers, and subsequently offered physical resistance. (Supreme Ct, New York Co)

People v Colon, 244 AD3d 423 (1st Dept 12/2/2025)
SENTENCING | HARSH & EXCESSIVE | ATTEMPTED CPW2 | MODIFIED

ILSAPP: Appellant appealed from a Bronx County Supreme Court judgment convicting him of attempted second-degree CPW and sentencing him, following his guilty plea, to a six-month prison term plus 5 years' probation. The First Department reduced the probationary term, in the interest of justice, to 3 years. Center for Appellate Litigation (Leanna J. Duncan, of counsel) represented Colon. (Supreme Ct, Bronx Co)

People v Montgomery, 244 AD3d 425 (1st Dept 12/2/2025)
SENTENCE - Probation/Conditions

LASJRP: The First Department concludes that a probation condition requiring defendant to "[a]void injurious or vicious habits; refrain from frequenting unlawful or disreputable places; and ... not consort with disreputable people" was reasonably related to defendant's rehabilitation and necessary to ensure that he will lead a law-abiding life, given his admitted use of

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drugs and his repeated sales of illegal drugs.

The Court also rejects defendant's constitutional challenge to this condition as vague and overbroad. (Supreme Ct, New York Co)

People v Small, 244 AD3d 427 (1st Dept 12/2/2025)
SEARCH AND SEIZURE - Common Law Right To Inquire - Stop/Reasonable Suspicion

LASJRP: The First Department orders suppression, noting that if defendant and a woman crossed the street to avoid the patrol car, and defendant then passed a small object to the woman, the circumstances did not justify a common-law inquiry where neither officer could identify what object was passed, there was ambiguous testimony as to whether the encounter took place in a high crime area, and the woman did not give defendant money in exchange or immediately leave without any social interaction.

The police were not justified in escalating the encounter to a level three seizure by restraining defendant's wrists simply because, after he was detained and complied with the officers' request that he show his hands, he turned his body away from one officer, who observed a "shift in weight" in defendant's jacket pocket. Even if there had been a bulge in the pocket, that observation alone would not justify a reasonable conclusion that defendant was armed. (Supreme Ct, New York Co)

Matter of Anthony L., 244 AD3d 453 (1st Dept 12/4/2025)
DISPOSITION/ACD - Least Restrictive Alternative

LASJRP: The First Department upholds a determination that probation was the least restrictive dispositional alternative, particularly in light of respondent's sexual conduct toward a much younger child. An adjournment in contemplation of dismissal would not have provided sufficient supervision under these circumstances.

The JRP appeals attorney was Hannah Kaplan, and the trial attorney was Avery Katz. (Family Ct, Bronx Co)

Matter of J.D., 244 AD3d 477 (1st Dept 12/9/2025)
DISPOSITION - Placement/Modification - Transfer To Secure Facility

LASJRP: The First Department reverses an order that granted the petition to modify respondent's ACS placement and transfer him to a secure facility. Although the dispositional order is moot as the placement has expired, the Court invokes the exception to the mootness doctrine, noting that the issue is likely to recur for other youths in Close to Home placements, will typically evade review due to the time limits on a juvenile's placement, and is substantial and novel.

Under FCA § 355.1(2), the Family Court can modify a dispositional order upon a showing of a substantial change of circumstances by the agency, and place a youth in a secure facility, if the respondent has demonstrated by a pattern of behavior that he or she needs a more structured setting and the social services district has considered the appropriateness and availability of a transfer to an alternative non-secure or limited secure facility. Behaviors meriting a modification include "disruptions in facility programs," "continuously and maliciously destroying property," "repeatedly committing or inciting other youth to commit assaultive or destructive acts."

Here, ACS alleged that during an "absent without consent" incident, respondent "darted out the front door and ran" from a non-secure facility, and that during a second AWOC incident, he fled through a damaged door at a limited secure facility after other youths broke the door while trying to escape. While this behavior is problematic, it does not rise to the level of seriousness contemplated in the statute.

ACS also failed to show that it first considered the appropriateness and availability of a transfer to an alternative non-secure or limited secure facility before seeking modification. According to ACS policies, "[m]odifications must be considered as an option only when all efforts to avoid the modification have been exhausted." ACS's petition was filed only two days after its report concerning interventions addressing the AWOC incidents - such as individual therapy, drug treatment, and transfer to another limited secure facility - and the petition lacked any explanation as to why the proposed interventions were no longer adequate. ACS did not present affirmations or witness testimony regarding the limited secure facility's ability to address respondent's behavior.

The JRP appeals attorney was Hannah Kaplan, and the trial attorney was Rebecca Stegman-Hadar. (Family Ct, Bronx Co)

People v Rich, 244 AD3d 546 (1st Dept 12/11/2025)
BURGLARY - Dwelling - Remains Unlawfully

LASJRP: The First Department, upholding defendant's first-degree burglary conviction, rejects on the merits defendant's claim that the victim's jail cell was not a dwelling and that the People failed to prove that he remained in the cell unlawfully. A rulebook distributed to all inmates informed them that they were prohibited from entering each other's cells (Supreme Ct, New York Co)

People v R.V., 244 AD3d 600 (1st Dept 12/18/2025)
DISMISSAL IN FURTHERANCE OF JUSTICE

LASJRP: The First Department upholds an order which granted defendant's motion to dismiss the indictment in furtherance of justice where defendant purchased the false Covid-19 vaccination card to maintain his employment during the pandemic, when he served as an essential worker during its worst days. (Supreme Ct, New York Co)

People v Sanders, 244 AD3d 601 (1st Dept 12/18/2025)
SENTENCE - Probation/Conditions

LASJRP: The First Department strikes a probation condition

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requiring defendant to "[r]efrain from wearing or displaying gang paraphernalia and having any association with a gang or members of a gang if directed by the Department of Probation" because there is no evidence that defendant's actions were connected to gang activity or that he had a history of gang membership, and defendant unequivocally denied gang affiliation. (Supreme Ct, New York Co)

People v Saunders, 244 AD3d 597 (1st Dept 12/18/2025)
VERDICT - Weight Of The Evidence/Inconsistency

LASJRP: The First Department vacates defendant's criminally negligent homicide conviction where the People's sole theory was that defendant, while driving on the Henry Hudson Parkway under the influence of marijuana, struck and killed the decedent, who was walking on the shoulder of the road after his car became disabled, but the jury acquitted defendant on other charges, obviously concluding that defendant was not impaired by drugs.

The People's contention that the jury must have relied on an alternative theory that defendant was exhausted and distracted to the point of criminal negligence when he chose to drive that night was not advanced at trial. (Supreme Ct, New York Co)

Matter of L.P.G., 244 AD3d 625 (1st Dept 12/23/2025)

The First Department upholds the finding of sexual abuse of the child L.P.G. and Family Court's determination that the child's statements to her treating psychologist were independently admissible and did not require corroboration because they were relevant to her treatment and diagnosis. The Court also concludes the respondent's sexual abuse of L.P.G. supports derivative neglect findings as to three other children. L.P.G. described the respondent flashing a light on her naked body in the room she shared with another child while other family members were asleep. That the other child in the room was of a different sex does not require reversal. And given the serious nature of the respondent's conduct, and that he was not engaged in treatment at the time of the fact-finding, derivative findings as to the two youngest children, who were not yet born when the abuse of L.P.G. occurred, are appropriate.

The First Department vacates the neglect finding on the basis of alcohol abuse, finding no evidence of respondent losing self-control during repeated bouts of excessive drinking that would trigger the FCA 1046(a)(iii) presumption of neglect, and no evidence that the children observed respondent intoxicated or were cared by respondent while intoxicated. (Family Ct, Bronx Co)

Matter of M.T., 244 AD3d 637 (1st Dept 12/23/2025)
ABUSE/NEGLECT - Hearsay Evidence/Corroboration
- Derivative Abuse

LASJRP: The First Department upholds findings of sexual abuse and derivative abuse where the child J.O.'s out-of-court statements to the pediatrician who evaluated J.O. after the child was hospitalized for suicidal ideations were independently admissible and did not require corroboration because they were relevant to J.O.'s treatment, diagnosis and discharge; the pediatrician opined that the child's "disclosure [was] consistent with sexual abuse"; progress notes indicating that J.O. told CPS that respondent grabbed her wrist after being told that she was going to call the police were corroborated by a caseworker's observation that the child's right wrist was a little swollen and red the day after the incident; a caseworker testified that after J.O. reported the abuse, the child was nervous, anxious, sad, crying, trembling, and shaking; and one of the derivatively abused children was present when the abuse occurred.

The JRP appeals attorney was Susan Clement, and the trial attorney was Samantha LePre. (Family Ct, Bronx Co)

People v Rivera, 244 AD3d 631 (1st Dept 12/23/2025)
RIGHT TO COUNSEL - Waiver/Pro Se Representation

LASJRP: The First Department concludes that defendant did not make a valid waiver of his right to counsel, noting, inter alia, that defendant's criminal history and in-court remarks regarding his history of substance abuse issues and present drug use constituted a "red flag" which should have triggered at least a brief inquiry into defendant's mental capacity and comprehension of the proceedings; that the record does not show that the court delved into defendant's age, education, occupation, previous exposure to legal procedures and other relevant factors; that although defendant correctly recited the charges, he also suggested that he could get convicted of additional charges, and the record does not reflect that he was ever informed of the potential aggregate sentence he faced after trial; and that although the court reminded defendant that he was "not trained as a lawyer" and did not "understand about cross-examination," so it was "dangerous" and not in his best interests to proceed pro se, the court failed to warn defendant about the numerous pitfalls of representing himself before and at trial, such as unfamiliarity with legal terms, concepts, and case names, and the potential challenges of cross-examining witnesses and delivering an opening statement and summation. (Supreme Ct, New York Co)

People v Ruffin, 244 AD3d 630 (1st Dept 12/23/2025)
SEARCH AND SEIZURE - Stop And Frisk/Reasonable Suspicion
- Common Law Right To Inquire

LASJRP: The First Department upholds the denial of suppression, concluding that where defendant was observed with a group of others apparently trespassing in a location that was closed to all individuals at night, the police had a founded suspicion of criminal activity; and that the police had reasonable suspicion justifying a stop and frisk based on defendant's subsequent conduct (the Court cites a case in

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which the "defendant was walking with his left arm at a 90-degree angle with his left hand at his waistband, while his right arm was swinging normally"), combined with the late hour and the location's history of firearm-related crime and gang activity. (Supreme Ct, New York Co)

People v Diaby, 244 AD3d 648 (1st Dept 12/30/2025)
PLEAS - Waiver Of Claims
SEARCH AND SEIZURE - Motion Papers

LASJRP: Defendant allegedly discarded a ghost handgun while fleeing police officers. The officers contended that they had observed defendant crossing to the side of the street opposite the officers' marked vehicle while holding his waistband in a suspicious manner. In his motion to suppress, defendant alleged that he "was crossing the street. [Defendant] had engaged in no observable unlawful behavior at that time and in the period preceding the unlawful police conduct. Nothing illegal or suspicious was in open view prior to the police intrusion. The property came to view solely through illegal police conduct. Because the officer lacked the requisite level of suspicion, the police actions were unconstitutional." Defendant also denied that he grabbed his waistband or moved his hand toward his waistband.

The court summarily denied defendant's motion, ruling as follows: "Defendant has failed to allege that any property was taken from defendant's person or from any place in which defendant had a legitimate expectation of privacy.... Accordingly, the defendant's motion is denied with leave to renew upon a showing of sufficient factual allegations." Subsequently, the People provided further disclosure, including additional body-worn camera footage, surveillance footage, and DNA evidence. Defendant did not renew his suppression motion and pleaded guilty in exchange for a promised prison term of five years.

The First Department concludes that the court's summary denial of defendant's suppression motion qualifies as an "order finally denying a motion to suppress evidence" which preserves the suppression issue for appeal. While phrases like "leave to renew" or "leave to submit" may be some indicia of a lack of finality, they do not, standing alone, render a court's ruling nonfinal.

The court incorrectly rejected defendant's detailed recitation of his suppression theory and there was no further evidence produced by the People that could bolster defendant's theory on renewal of his motion. (Supreme Ct, New York Co)

Matter of S.J. v. B.B., 244 AD3d 643 (1st Dept 12/30/2025)
VISITATION - International Travel

LASJRP: The First Department upholds the Family Court's order allowing the children to travel internationally with the father where the court limited the travel to nations that are signatories of the Hague Convention, and further addressed the mother's concerns by, among other things, prohibiting any international travel until the children reached the ages of 10 and 12, respectively, requiring the father to provide the mother with advance notice of any travel, and mandating the activation of location tracking on the children's smart watches for the duration of the travel. The father has already traveled internationally with the children and returned with them to the United States without incident. (Family Ct, Bronx Co)

People v Aquirre, 2026 NY Slip Op 00025
(1st Dept 1/6/2026)
PROBATION | IMPROPER CONDITION: CONSENT TO SEARCH | MODIFIED

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting him of first-degree sexual abuse and sentencing him to 10 years' probation. The First Department modified by striking the probation condition requiring appellant to consent to searches of his person, vehicle, and home. The condition was improper because appellant was not armed during the offense and had no history of violence, weapons use, or substance abuse. While appellant admitted a limited history of alcohol abuse, the consent-search provision was not limited to circumstances "where alcohol becomes contraband." The issue was not moot, contrary to the prosecution's position, because it covered different search areas than another probation condition which appellant did not challenge. The Legal Aid Society of NYC (Mariel Stein, of counsel) represented Aquirre. (Supreme Ct, New York Co)

Matter of Darlene B. v. Elsie R., 2026 NY Slip Op 00004
(1st Dept 1/6/2026)
FAMILY OFFENSES - Intimate Relationship
- Petition/Amendment

LASJRP: In this family offense proceeding, the First Department upholds the Family Court's determination that the parties were previously involved in an "intimate relationship," noting, inter alia, that it does not matter that the parties were not romantically involved for a number of years before the petition was filed.

The court did not violate respondent's right to due process by referring in its order to certain text messages that petitioner testified to but were not alleged in the original family offense petition, as the court properly conformed the pleadings to the proof. (Family Ct, New York Co)

People v Iyasere, 2026 NY Slip Op 00023
(1st Dept 1/6/2026)
OOP | DURATION IMPROPER | JAIL-TIME CREDIT NOT CONSIDERED | MODIFIED & REMITTED

ILSAPP: Appellant appealed from a Bronx County Supreme Court judgment convicting him of third-degree robbery. The

First Department *continued*

First Department modified by vacating the order of protection (OOP) and remitting for entry of a new order with the proper duration. Supreme Court erred when calculating the order's expiration date without crediting appellant's jail-time, resulting in the expiration date exceeding the statutorily permitted maximum duration. The First Department remanded for a new determination but left the original order in place pending entry of the new order. The Legal Aid Society of NYC (Laura Boyd, of counsel) represented Iyasere.

Matter of Johnathan S. (Chantelle S.), 2026 NY Slip Op 00013
(1st Dept 1/6/2026)
CUSTODY | APPELLATE PROCEDURE | PRIOR NEGLECT FINDING NOT A BAR TO CUSTODY | CROSS-APPEAL MUST BE FILED TO RAISE CUSTODY ARGUMENTS | AFFIRMED

ILSAPP: Appellant father appealed from a Bronx County Family Court order granting mother and father joint legal and physical custody of the subject child. The First Department affirmed. A prior finding of neglect against the mother did not prevent Family Court from awarding custody to her, especially where the record demonstrated that she had taken measures to address the circumstances leading to the child's removal from her care. The First Department did not consider the mother's arguments on appeal in support of her sole custody, since she had not filed a cross-appeal. (Family Ct, Bronx Co)

People v Johnson, 2026 NY Slip Op 00029
(1st Dept 1/6/2026)
PROBATION | IMPROPER CONDITION: GANG PARAPHERNALIA & ASSOCIATION | MODIFIED

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting her of aggravated driving while intoxicated and sentencing her to 5 years' probation and a fine. The First Department modified by striking the probation condition prohibiting appellant from wearing or displaying gang paraphernalia or associating with gang members if directed by the Department of Probation. There was no evidence that appellant's actions were connected to gang activity or that she had a history of gang membership. The condition was not reasonably related to rehabilitation or necessary for appellant to lead a law-abiding life. Center for Appellate Litigation (David J. Klem, of counsel) represented Johnson.

Matter of Miguel C. v Bennie B., 2026 NY Slip Op 00008
(1st Dept 1/6/2026)
CUSTODY - Violations/Relocation

LASJRP: The First Department concludes that the father failed to demonstrate by clear and convincing evidence that the mother willfully violated the prior custody order in a manner that prejudiced him where the mother testified that she notified the father of her intention to move to Georgia with the children, and that the father failed to respond to her notification or to object to the move. (Supreme Ct, New York Co)

Matter of R.M. v S.B., 2026 NY Slip Op 00017
(1st Dept 1/6/2026)
APPELLATE PROCEDURE | NO APPEAL FROM DEFAULT | DISMISSED

ILSAPP: Appellant appealed from a New York County Family Court order finding that he committed various family offenses and entering an order of protection against him upon his default. The First Department dismissed the appeal, finding that he had appealed from a nonappealable paper. Appellant walked out of the hearing after being warned that it would continue in his absence, and the court thus properly treated his conduct as a knowing and willful default. He therefore should have filed a motion to vacate in Family Court, as no appeal lies from a default. (Family Ct, New York Co)

People v Seymore, 2026 NY Slip Op 00028
(1st Dept 1/6/2026)
PROBATION | IMPROPER CONDITION: GANG PARAPHERNALIA & ASSOCIATION | MODIFIED

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting him of fifth-degree CPCS and sentencing him to 3 years' probation. The First Department modified by striking the probation condition prohibiting appellant from wearing or displaying gang paraphernalia or associating with gang members if directed by the Department of Probation. There was no evidence that appellant's actions were connected to gang activity or that he had a history of gang membership. The condition was not reasonably related to rehabilitation or necessary for appellant to lead a law-abiding life. Center for Appellate Litigation (David J. Klem, of counsel) represented Seymore.

People v De Los Santos, 2026 NY Slip Op 00065
(1st Dept 1/8/2026)
ROBBERY - Force Element

LASJRP: In this robbery prosecution, the First Department concludes that the verdict was not against the weight of the evidence where defendant entered the bank wearing a hoodie with the hood raised, reflective blue sunglasses, and a blue surgical mask, and handed the teller a note demanding money, which were implied threats of force, and, immediately after passing the teller the note, defendant reached into his pocket and leaned forward, creating the impression that he had a ready weapon. (Supreme Ct, New York Co)

People v Rivera, 2026 NY Slip Op 00063 (1st Dept 1/8/2026)
PROBATION | IMPROPER CONDITION: SURCHARGE & FEES | MODIFIED

ILSAPP: Appellant appealed from a Bronx County Supreme

First Department *continued*

Court judgment convicting him of third-degree CSCS and sentencing him to 3 years' probation. The First Department modified by striking the probation condition ordering appellant to pay the surcharge and fees. "Under the particular circumstances of this case," this requirement was not reasonably related to appellant's rehabilitation because appellant was unemployed and "indigent." Center for Appellate Litigation (Abigail Everett, of counsel) represented Rivera. (Supreme Ct, Bronx Co)

People v J.P., 2026 NY Slip Op 00099 (1st Dept 1/13/2026)
SEARCH AND SEIZURE - Stop/Seizure
- Reasonable Suspicion/Probable Cause

LASJRP: The First Department concludes that while the assigned detective was engaged in preliminary investigation, defendant's detention in a cell for approximately three hours at the precinct after presenting himself there and telling police that he was "on the video" showing the fatal stabbing of the victim constituted a level three seizure that was supported by reasonable suspicion. In any event, there was probable cause. (Supreme Ct, New York Co)

People v Meggett, 2026 NY Slip Op 00106
(1st Dept 1/13/2026)
SENTENCE - Probation/Conditions

LASJRP: The First Department strikes a condition of probation prohibiting defendant "from wearing or displaying gang paraphernalia" or "having any association with a gang or members of a gang if directed by the Department of Probation" where defendant has a lengthy criminal history, which included numerous drug-related convictions and the multiple arrests in this case which resulted in the recovery of about 180 vials of crack cocaine, but there is no evidence that defendant's crimes were connected to any gang activities or that he has any history of gang membership or gang affiliation.

The Court upholds a condition of probation requiring defendant to "[a]void injurious or vicious habits; refrain from frequenting unlawful or disreputable places; and ... not consort with disreputable people." (Supreme Ct, New York Co)

People v Rodriguez, 2026 NY Slip Op 00100
(1st Dept 1/13/2026)
SEARCH AND SEIZURE - Probable Cause/Unlawful Possession Of A Weapon

LASJRP: In this weapon possession prosecution, the First Department concludes that the warrant application did not require proof of lack of a license because that is not an element of the offenses. The license exemption in Penal Law § 265.20(a)(3), which is separate from the provisions that criminalize unlawful weapon possession, operates as a proviso that need not be pleaded and may be raised by the accused as a bar to prosecution or a defense at trial.

The Supreme Court's decision in New York State Rifle & Pistol Assn., Inc. v. Bruen (597 U.S. 1) did not change the probabilities that govern whether an ordinarily prudent and cautious person would believe that unlawful conduct was occurring. (Supreme Ct, New York Co)

M.T. v Yeshiva University, 2026 NY Slip Op 00218
(1st Dept 1/15/2026)
CHILD VICTIMS ACT

LASJRP: More than a decade ago, well before the passage of the Child Victims Act, the plaintiffs in this CVA action brought two federal lawsuits based on the same facts alleged in this complaint. The first action was dismissed in 2014 in relevant part on state statute of limitations grounds. The Second Circuit affirmed and the Supreme Court denied certiorari. In 2015, plaintiffs brought the second action asserting virtually the same facts and causes of action. That action was dismissed based on res judicata, and that decision also was affirmed on appeal.

The First Department rejects defendants' contention that this lawsuit is foreclosed by defendants' "vested rights" in the federal judgments. Moreover, there is no Supremacy Clause violation. A state legislature, consistently with the Fourteenth Amendment, may repeal or extend a statute of limitations, restore a plaintiff's remedy, and divest the defendant of the statutory bar. (Supreme Ct, New York Co)

People v Balogh, 2026 NY Slip Op 00456
(1st Dept 1/22/2026)
SENTENCE - Probation/Conditions

LASJRP: In a case in which defendant entered a plea to attempted criminal possession of a weapon in the second degree, the First Department upholds conditions of probation requiring that defendant avoid injurious or vicious habits, refrain from frequenting unlawful or disreputable places and not consort with disreputable people, and that he support dependents and meet other family responsibilities, but strikes, as unsupported by the facts, nine conditions, including conditions related to a prohibition on gang affiliation, related to drug and alcohol testing and treatment, and requiring that defendant pay the mandatory surcharge and other fees. (Supreme Ct, Bronx Co)

People v Jhowalli S., 2026 NY Slip Op 00453
(1st Dept 1/22/2026)
POSSESSION OF A WEAPON - Second Amendment
SENTENCE - Probation/Conditions

LASJRP: The First Department rejects challenges raised by defendant, who was barred from obtaining a gun license because he was under 21 years old, to the good moral character requirement and the age restriction on gun licensing.

First Department *continued*

The Court upholds probation conditions requiring defendant to avoid injurious or vicious habits, refrain from frequenting unlawful or disreputable places and not consort with disreputable people, and to refrain from wearing or displaying gang paraphernalia and having any association with a gang or members of a gang if directed by the Department of Probation, where defendant, 18 at the time of the incident, was found in possession of a pistol, admitted to a prior gun conviction while in high school, reportedly used marijuana on a daily basis, and admitted that he "associates with negative peers," and his mother stated that his friends were a negative influence. (Supreme Ct, New York Co)

People v Lazaro, 2026 NY Slip Op 00321
(1st Dept 1/22/2026)
DISCOVERY - Pre-Plea Disclosure

LASJRP: The First Department concludes that CPL § 245.25(2) (pre-plea disclosure) was inapplicable because the plea offer was extended by the court and not the People. (Court of Claims)

People v Acosta, 2026 NY Slip Op 00324
(1st Dept 1/27/2026)

The defendant's challenge to the probation condition requiring him to pay the mandatory surcharge and court fees survived the valid waiver of the right to appeal. Under the circumstances, where the defendant lacks monetary means, "has only sporadic income and otherwise has been supported by his mother," the requirement that he pay $375 will not assist, as is required of probation conditions, in ensuring that he lead a law-abiding life; it is also not reasonably related to his rehabilitation. The claim that certain other conditions of probation are unconstitutional as vague, overbroad, and violative of the First Amendment, is unpreserved. Alternatively, it is unavailing. (Supreme Ct, Bronx Co)

Matter of C. X.-E. B., 2026 NY Slip Op 00307
(1st Dept 1/27/2026)
TERMINATION OF PARENTAL RIGHTS - Evidence/ Progress Notes

LASJRP: The First Department affirms an order terminating parental rights, noting, inter alia, that the mother's attorney consented to admission of the agency's progress notes and confirmed that he was not raising any issue as to certification or delegation of authority, and that FCA § 1046(a)(iv) does not apply to termination of parental rights proceedings, in which the CPLR 4518(a) business record exception controls.

The JRP appeals attorney was Polixene Petrakopoulos. (Family Ct, New York Co)

People v Matias, 2026 NY Slip Op 00328
(1st Dept 1/27/2026)
CONFESSIONS - Voluntariness/Deception

LASJRP: Defendant was arrested for an alleged home invasion, given Miranda warnings and interviewed by a detective and prosecutor in two interrogation sessions. Defendant was hesitant to identify his "friend," expressing fear for his family's safety and referring to his past as a confidential informant and reputation in the neighborhood as a "rat." The detective assured him: "Just so you know, this stays in here. This doesn't get released to anybody. This is, you know, for us … it doesn't go out to the public." The following day, the prosecutor assured defendant that "I'm not going to tell anybody about you giving up somebody's name," and that she was not going to "tell anybody about this conversation," and that "you might be scared of [your friend], but that shouldn't prevent you from telling me the truth here, because I'm not going to tell anybody about this, this conversation that we had, and neither is the detective." She then explained the further investigative steps that would be taken, including DNA testing, and urged defendant to tell the truth. Shortly thereafter, defendant admitted his involvement in the incident.

The First Department upholds an order denying suppression. The Court does not condone the prosecutor's statements, which may have falsely assured defendant that she would withhold information from defendant's accomplice, but they were not sufficiently unfair or deceptive to render defendant's statements involuntary. Defendant has a lengthy criminal history and was familiar with the criminal process. He knew that the interviews were being recorded, and his statements indicate his understanding that the interviews could potentially be used against him. Defendant was not offered unqualified confidentiality and was not told that his statements were off the record and would not be offered at trial. Given the overwhelming evidence of guilt, defendant would not have been particularly motivated to speak in exchange for a promise not to use his statements against him in court.

The prosecutor's statements, at best, were carelessly overbroad and confusing, and at worst, were strategically intended to lull defendant into a false sense of security. The People are reminded that prosecutors must deal fairly with the accused, which did not happen here. (Supreme Ct, New York Co)

Second Department

In the online version of the *REPORT*, the name of each case summarized is hyperlinked to the opinion provided on the website of the New York Official Reports, www.nycourts.gov/reporter/Decisions.htm.

Second Department *continued*

People v Stewart, 244 AD3d 762 (2nd Dept 11/3/2025)
LEGAL SUFFICIENCY | INCLUSORY CONCURRENT COUNTS | DOUBLE JEOPARDY | MODIFIED

ILSAPP: Appellant appealed from a Queens County Supreme Court judgment convicting him of two counts of second-degree attempted murder, five counts of second-degree CPW, three counts of criminal possession of a firearm, and four counts of EWOC, among other charges, upon a jury verdict. The Second Department modified the judgment by dismissing all counts of criminal possession of a firearm, two counts of second-degree CPW, and three counts of EWOC, and, as modified, affirmed. Where charges alleged that on two separate occasions appellant fired gunshots through an acquaintance's bedroom window while the acquaintance and children were sleeping, the evidence was legally insufficient on three of the four counts of EWOC to demonstrate that appellant "knowingly acted in a manner likely to be injurious...to three of the four children present." Further, the firearm counts needed to be dismissed because they were lesser included offenses of the second-degree CPW charges. Preservation of this issue was unnecessary, and vacatur of the firearm counts was required. The Court also dismissed two of the three second-degree CPW counts in the interest of justice because they subjected appellant to double jeopardy. Appellant's "uninterrupted possession of a single weapon" over two separate shooting incidents "constituted a single offense for which he could be prosecuted only once." Appellate Advocates (Sarah B. Cohen, of counsel) represented Stewart. (Supreme Ct, Queens Co)

Bajana v Alvarado, 243 AD3d 538 (2nd Dept 11/5/2025)
DIVORCE | CHILD SUPPORT ARREARS | REVERSED AND REMITTED

ILSAPP: Plaintiff appealed from a Nassau County Supreme Court order granting her motion to enforce the stipulation of settlement during pendency of the divorce action but limiting the child support arrears award to the amount accrued only up to the date the enforcement motion was filed. The Second Department reversed and remitted for a new determination of the amount of child support arrears. Family Court erred by only calculating the arrears that had accrued up to the date of the filing of the enforcement motion, and not up to the date of the hearing. Plaintiff was entitled to recover additional arrears that accrued during the pendency of her motion because she had provided written notice of her intention to include those post-motion arrears. Further, defendant's concession that he failed to pay child support constituted prima facie evidence that such payments had not been made since the date of the filing of the plaintiff's motion. (Supreme Ct, Nassau Co)

People v Bonfante, 243 AD3d 580 (2nd Dept 11/5/2025)
INVALID APPEAL WAIVER | PROBATION | IMPROPER CONDITION: SUPPORT OBLIGATIONS | MODIFIED

ILSAPP: Appellant appealed from a Queens County Supreme Court judgment convicting him of possessing a sexual performance by a child, following his guilty plea, and sentencing him to a term of probation with conditions. The Second Department modified the judgment by vacating the probation condition requiring appellant "to support dependents and meet other family responsibilities," and, as modified, affirmed. The condition was "improperly imposed" because it violated PL § 65.10(1), which requires that probation conditions be "reasonably related to [appellant]'s rehabilitation" or "reasonably necessary to insure that [appellant] will lead a law-abiding life or to assist [them] to do so," and it "was not individually tailored to suit the probationer." While a challenge to the legality of a condition of probation is not subject to an appeal waiver, the court also held that the appeal waiver was invalid where the court did not address the waiver until after appellant admitted guilt. However, appellant's sentence was not excessive. Appellate Advocates (Mark W. Vorkink, of counsel) represented Bonfante. (Supreme Ct, Queens Co)

People v Clarke, 243 AD3d 582 (2nd Dept 11/5/2025)
INVALID APPEAL WAIVER | SURCHARGES & FEES | AFFIRMED

ILSAPP: Appellant appealed from a Queens County Supreme Court judgment (Iannece, J.) convicting her of third-degree attempted grand larceny, following her guilty plea. The Second Department affirmed the judgment but found the appeal waiver unenforceable. The court, rather than the prosecution, imposed the appeal waiver as part of the plea bargain. Where a court demands such waiver, it "should articulate on the record its reasons for doing so." Here, the court did not do so. However, where appellant's request for a waiver of the mandatory surcharge and fees pursuant to CPL § 420.35(2-a) was unpreserved, and in the absence of the prosecution's consent, the Second Department declined to exercise its interest of justice jurisdiction to reach the issue. Appellate Advocates (Joshua M. Levine, of counsel) represented Clarke. (Supreme Ct, Queens Co)

Matter of Dawn A. P.-T. v Sherwyn R., 243 AD3d 573 (2nd Dept 11/5/2025)
CUSTODY | HEARING REQUIREMENT | EXTRAORDINARY CIRCUMSTANCES | REVERSED & REMITTED

ILSAPP: Child appealed from a Kings County Family Court order granting the father's motion for summary judgment and dismissing a custody proceeding filed by the child's maternal aunt. The Second Department reversed, denied the motion, reinstated the petition, and remitted for further proceedings. Family Court erred when it dismissed the aunt's petition on the

Second Department *continued*

basis that it failed to establish the required extraordinary circumstances giving her standing to seek custody. The aunt's allegations, if true—including the child's mental health crisis upon learning that she would be moving out of state with her father and her lack of a close relationship with him—could support a finding of extraordinary circumstances. The Second Department also directed that any hearing be preceded by forensic evaluations of the parties and the child. Liberty Aldrich represented the child. (Family Ct, Kings Co)

People v Dedmon, 243 AD3d 583 (2nd Dept 11/5/2025)
SEARCH AND SEIZURE - Auto Stop/Frisk Of Passenger

LASJRP: At the suppression hearing, the officer testified that he, along with his fellow officer, were in plain clothes on patrol in an unmarked vehicle when he observed a blue "Lincoln Mercury" car fail to stop at a stop sign and a plastic cup being thrown from the passenger side of the vehicle. After stopping the vehicle, he observed the "slight odor of marijuana" and "a small trace amount of burnt marijuana cigarette" visible in the Lincoln's center cup holder. He ordered the driver and defendant, who was sitting in the front passenger seat, to exit the vehicle and proceed to the rear of the Lincoln, after the driver admitted that there was more marijuana in the Lincoln. Defendant exited in "an awkward fashion, not typical with a typical walk to the back of the [Lincoln]." As defendant approached the rear of the Lincoln, "he took the right side of his body and hugged it up against the [Lincoln] and he had his arms raised the entire time." The officer noticed a "bulge on the right side" of defendant's body "that was not consistent with, you know, someone wearing their pants with their belt all the way around" and he shined his flashlight on that area of defendant's waist and observed a black handle, which he believed to be that of a firearm.

The Second Department upholds the denial of suppression of the firearm recovered from defendant, noting, inter alia, that the police had a reasonable suspicion that defendant was armed before frisking defendant's clothing. (Supreme Ct, Queens Co)

People v Gaffar, 243 AD3d 586 (2nd Dept 11/5/2025)
OOP | 23-YEAR DURATION EXCEEDED MAXIMUM PERIOD | INTEREST OF JUSTICE | MODIFIED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him of second-degree kidnapping and second-degree CPW, following his guilty plea. The Second Department modified by vacating the OOP as it related to one individual, vacating the durational portion of the OOP, and remitting for a new determination on duration. The court had no authority to grant an OOP in favor of an individual who was neither the victim of, nor a witness to, the crime to which appellant pleaded guilty. Further, as conceded by the prosecution, the duration of the OOP—23 years—exceeded the maximum time limit pursuant to CPL § 530.12(5). The court reached both unpreserved issues in the interests of justice. Appellate Advocates (Sam Feldman, of counsel) represented Gaffar. (Supreme Ct, Kings Co)

Matter of Giesele T., 243 AD3d 574 (2nd Dept 11/5/2025)

The Second Department affirmed an order of disposition releasing the child to the nonrespondent father, issued after a dispositional hearing and order of fact-finding, where the evidence showed it was in the child's best interests to continue in the father's custody. The evidence at fact-finding established that the respondent mother's untreated mental illness caused the child to be placed at imminent risk of harm, and that the respondent maintained the child's home in a deplorable, unsanitary, and dangerous condition in that there were no child guards on the windows, no smoke alarms, and only moldy food in the premises. (Family Ct, Kings Co)

People v Greenland, 243 AD3d 587 (2nd Dept 11/5/2025)
SEARCH AND SEIZURE - Auto Stop/Reasonable Suspicion

LASJRP: The Second Department upholds the denial of suppression, noting, inter alia, that the presence of defendant's vehicle in the early morning hours at a car dealership, which was the site of a recent burglary and closed at the time, gave the officer a reasonable suspicion of criminal activity justifying the stop of the vehicle. (Supreme Ct, Westchester Co)

Kataeva v Kataev, 243 AD3d 551 (2nd Dept 11/5/2025)
RELOCATION | POST-DIVORCE MODIFICATION OF STIPULATION TERMS | MODIFIED AND REMITTED

ILSAPP: Defendant appealed from a Nassau County Supreme Court order denying, without a hearing, a motion to modify the post-divorce so-ordered stipulation to enjoin plaintiff from carrying out a planned relocation and school enrollment, among other modifications pertaining to custody of the parties' children. The Second Department modified and remitted for a hearing. The court erred in summarily denying defendant's motion without considering whether plaintiff's relocation was in the best interests of the children. The parties' so-ordered stipulation gave plaintiff primary residential custody of the children and prohibited relocation beyond 15 miles from the former marital residence without consent or court order. Although plaintiff's relocation was within the 15-mile limit, it would have required the children to change schools. A hearing was required before modifying custody or permitting relocation, because "a stipulation's geographic restriction on relocation is not dispositive, but rather, is a relevant factor to consider in determining whether relocation is in the best interests of the children." Quatela | Chimeri, PLLC (Christopher J. Chimeri and Sophia Arzoumanidis, of counsel) represented Kataev. (Supreme Ct, Nassau Co)

Second Department *continued*

People v Larkin, 243 AD3d 591 (2nd Dept 11/5/2025)
PROBATION | IMPROPER CONDITION: SUPPORT OBLIGATIONS | MODIFIED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting her of third-degree assault, following her guilty plea, and sentencing her to a term of probation with conditions. The Second Department modified the judgment by vacating the probation condition requiring appellant "to support dependents and meet other family responsibilities," and, as modified, affirmed. As conceded by the prosecution, the probation condition "was improperly imposed because it was not individually tailored in relation to the offense and therefore, was not reasonably related to [appellant]'s rehabilitation or necessary to insure that [s]he will lead a law-abiding life." A challenge to the conditions of probation is not precluded by a valid appeal waiver and does not require preservation. Appellate Advocates (Denise A. Corsi, of counsel) represented Larkin. (Supreme Ct, Kings Co)

People v Proffitt, 243 AD3d 592 (2nd Dept 11/5/2025)
YO | FAILURE TO MAKE YO DETERMINATION | MODIFIED & REMITTED

ILSAPP: Appellant appealed from two Kings County Supreme Court judgments convicting him of second-degree attempted murder and criminal possession of a firearm, following his guilty pleas. The Second Department modified by vacating the sentences imposed and remitted for a determination of whether appellant should be afforded youthful offender treatment. The prosecution correctly conceded on appeal that appellant was an eligible youth. The sentencing court failed to make a YO determination pursuant to CPL § 720.20(1), despite such a determination being required "in every case where the defendant is eligible, even where the defendant fails to request it, or agrees to forego it as part of a plea bargain." Appellate Advocates (Samantha Jerabek, of counsel) represented Proffitt. (Supreme Ct, Kings Co)

People v Rosa, 243 AD3d 593 (2nd Dept 11/5/2025)
SURCHARGES & FEES | UNDER 21 YEARS OLD | MODIFIED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him of second-degree attempted CPW, following his guilty plea. The Second Department vacated, on consent of the prosecution, the imposition of the mandatory surcharge and fees in the interest of justice. CPL § 420.35(2-a) permits the waiver of surcharges and fees for individuals under 21 years old at the time of offense. Appellate Advocates (Sarah B. Cohen, of counsel) represented Rosa. (Supreme Ct, Kings Co)

People v Roseborough, 243 AD3d 594 (2nd Dept 11/5/2025)
INVALID APPEAL WAIVER | BRUEN | AFFIRMED

ILSAPP: Appellant appealed from an Orange County Court judgment (Freehill, J., at plea; Kim, J., at sentence) convicting him of second-degree CPW, following his guilty plea. The Second Department affirmed but found the appeal waiver invalid because the plea court's colloquy mischaracterized the rights being waived as an absolute bar to taking an appeal, and the written waiver did not cure the deficient oral colloquy. However, appellant's argument that PL § 265.03(3) is unconstitutional in light of Bruen was unpreserved and, in any event, without merit. Anthony N. Iannarelli, Jr. represented Roseborough. (County Ct, Orange Co)

People v Scarlett, 243 AD3d 595 (2nd Dept 11/5/2025)
OOP | FAILURE TO CREDIT JAIL TIME | INTEREST OF JUSTICE | MODIFIED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him of first-degree assault, following his guilty plea. The Second Department vacated the durational portion of the OOPs and remitted for a new determination as to their duration. The duration exceeded the maximum time limit pursuant to CPL § 530.13(4) because they failed to consider appellant's jail-time credit. The court reached the unpreserved issue in the interest of justice. Appellate Advocates (Denise A. Corsi, of counsel) represented Scarlett. (Supreme Ct, Kings Co)

Shzu v Marrelli, 243 AD3d 609 (2nd Dept 11/5/2025)
DIVORCE | CHILD SUPPORT MODIFICATION | REVERSED & REMITTED

ILSAPP: Defendant appealed from a Kings County Supreme Court order that, among other things, denied his request to modify his child support obligation and granted his request to modify his pro rata share of the children's add-on expenses. The Second Department reversed and remitted for a new determination on the motion. Plaintiff conceded that her income had increased by more than 15% since the entry of the judgment of divorce, which warranted a new determination of the parties' respective child support obligations. But Supreme Court failed to enter a finding reflecting that, instead focusing on the credibility of defendant's assertions regarding his own income. Contrary to the lower court's findings, the increase in plaintiff's income alone warranted a new child support determination, regardless of any potential change in defendant's income. The Second Department also modified the date of the change in add-on expenses to the date of defendant's motion, rather than the date of the subsequent judgment. Brian D. Perskin & Associates P.C. (Evan S. Seckular, of counsel) represented defendant. (Supreme Ct, Kings Co)

People v Stanley, 243 AD3d 596 (2nd Dept 11/5/2025)
ANDERS BRIEF | DEFICIENT | NEW COUNSEL ASSIGNED

ILSAPP: Appellant appealed from a Nassau County Court

Second Department *continued*

judgment convicting him of third-degree CPCS, following his guilty plea. Assigned counsel filed an Anders brief to withdraw. The Second Department granted leave to withdraw and assigned new appellate counsel finding that nonfrivolous appellate issues existed, including the validity of the appeal waiver and whether the sentence imposed was excessive. "In analyzing whether nonfrivolous appellate issues exist, it is essential to appreciate the distinction between a potential appellate argument that is merely meritless or unlikely to prevail and one that is frivolous." (County Ct, Nassau Co)

Matter of Amari G., 243 AD3d 658 (2nd Dept 11/12/2025)
SEARCH AND SEIZURE - Fruits/Attenuation
CONFESSIONS - Fruits/Subsequent Statements

LASJRP: Two police officers approached a group of individuals in a public housing complex parking lot. Respondent and other members of the group walked away from the officers. The officers pursued respondent on foot but lost sight of him. The police established a perimeter, which included one of the buildings in the complex, and two other officers arrested respondent on the roof approximately eight minutes after the first officers lost sight of him. The roof was inaccessible to the general public, and there was signage to that effect. The arresting officer searched respondent and recovered a loaded firearm from his pocket. At the station house approximately three hours later, after being informed of his Miranda rights, respondent made statements.

The Second Department upholds the denial of suppression. Respondent's act of trespassing on the roof during the period of time when the officers were unaware of his location constituted a calculated, independent criminal act, which broke the chain of events and dissipated the taint of the unlawful police pursuit.

Respondent's contention that his post-Miranda statements should have been suppressed is preserved for appellate review, as it was raised in respondent's motion and the Family Court expressly decided the question (CPL 470.05[2]). However, the statements were sufficiently attenuated from respondent's pre-Miranda statement.

The JRP appeals attorney was John Newbery, and the trial attorney was Werdeh Hassan. (Family Ct, Richmond Co)

People v Cabrera, 243 AD3d 672 (2nd Dept 11/12/2025)
CONFESSIONS/RIGHT TO COUNSEL - Spontaneous Statements

LASJRP: The Second Department upholds the denial of suppression where defendant's spontaneous statement to his attorney on the phone after he invoked the right to counsel was made while defendant could see a police officer standing nearby. (Supreme Ct, Queens Co)

People v Johnson, 243 AD3d 679 (2nd Dept 11/12/2025)
SEARCH AND SEIZURE - Auto Stop/Blocking Vehicle - Reasonable Suspicion

LASJRP: The Second Department upholds a suppression order, noting that the officer's conduct in stopping police vehicles both in front of and behind defendant's vehicle blocked defendant's vehicle and constituted a stop which required reasonable suspicion; that defendant was stopped in a fire lane, but the People failed to present any evidence showing that the officers observed any criminal activity at the time they blocked defendant's vehicle; and that while the officers testified that they relied upon a police bulletin stating that defendant was driving without a license and was known to carry a firearm, the People did not present any evidence regarding the source of that information at the hearing. (County Ct, Nassau Co)

People v Khalil H., 243 AD3d 806 (2nd Dept 11/19/2025)
ILLEGAL SENTENCE | YO: FINES & FEES IMPROPERLY IMPOSED | INTEREST OF JUSTICE | MODIFIED

ILSAPP: Appellant appealed from two Kings County Supreme Court judgments, one adjudicating him a youthful offender upon his guilty plea to second-degree CPW, and the other convicting him of second-degree CPW upon his guilty plea. The Second Department modified the first judgment by vacating the imposition of the mandatory surcharge and crime victim assistance fee, and modified the second judgment, in the interest of justice, by vacating the mandatory surcharge, DNA databank fee, and crime victim assistance fee. The statutory provision authorizing the imposition of mandatory surcharges and crime victim assistance fees on youthful offenders was repealed on August 24, 2020, before appellant's sentence. Therefore, as conceded by the prosecution, the court had no authority to impose the surcharge and fees as to appellant's YO adjudication. Further, in the interest of justice and on consent of the prosecution, pursuant to CPL § 420.35(2-a) the Second Department also vacated the mandatory surcharge and fees as to the second judgment because appellant was under 21 years old at the time of the offense. Appellate Advocates (Sean H. Murray, of counsel) represented Khalil H. (Supreme Ct, Kings Co)

Matter of McCook v Delbrune, 243 AD3d 791 (2nd Dept 11/19/2025)
CUSTODY MODIFICATION | PARENTAL ACCESS | IMPROPER DELEGATION OF AUTHORITY | MODIFIED

ILSAPP: Father appealed from a Nassau County Family Court order denying his petition to modify the parties' divorce judgment to grant him sole legal and physical custody and granting the mother's modification petition to limit his parenting time to supervised therapeutic parental access with the parties' children. The Second Department modified by vacating the provisions resuming father's unsupervised parental access

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when "deemed appropriate by the therapeutic agency," directing that the therapeutic parental access continue until successful discharge by the therapeutic agency and granting the therapeutic agency the discretion to expand and/or modify father's parental access but otherwise affirmed. Family Court impermissibly delegated its authority to the therapeutic agency: (1) to determine when therapeutic parental access would cease and when the father's prior stipulated unsupervised parental access schedule would be reinstated, and (2) to exercise the discretion to expand and/or modify the father's access to the children. Quatela | Chimeri, PLLC (Christopher J. Chimeri, Nicole J. Brodsky, and Sophia Arzoumanidis, of counsel) represented McCook. (Family Ct, Nassau Co)

People v Mingo, 243 AD3d 808 (2nd Dept 11/19/2025)
INVALID WAIVER OF APPEAL | 30.30 | INADEQUATE RECORD FOR REVIEW | HELD IN ABEYANCE & REMITTED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment (Riviezzo, J.) convicting him of third-degree CPW, following his guilty plea. The Second Department found the appeal waiver invalid, held the appeal in abeyance, and remitted for a new determination on the CPL § 30.30 motion to dismiss on speedy trial grounds. The appeal waiver was invalid where the court failed to adequately advise appellant of his attendant rights to counsel and poor person relief on appeal, or to explain that the waiver did not encompass the loss of those attendant rights. Further, the court did not ascertain on the record whether appellant fully read and discussed the written waiver with counsel. However, the record was inadequate to enable appellate review of the denial of appellant's CPL § 30.30 motion. Appellant argued for the first time in reply papers below that the supplemental COC (SCOC) was illusory due to subsequent disclosures. The court improperly denied the motion without affording the prosecution an opportunity to submit opposition papers to satisfy its burden of establishing that it exercised due diligence and made reasonable inquiries to ascertain the existence of discovery material prior to filing the SCOC. Appellate Advocates (Sean H. Murray, of counsel) represented Mingo. (Supreme Ct, Kings Co)

Matter of Toppins v Gibbs, 243 AD3d 802 (2nd Dept 11/19/2025)
CUSTODY - In Camera Lincoln Interview

LASJRP: The Second Department upholds an award of custody to the father, noting, inter alia, that where, as here, the child's relationship and preferences regarding each parent were made known through a forensic evaluation, and neither the parties nor the child's attorney requested an in camera interview, the court did not err when it declined to conduct an in camera interview.

The JRP appeals attorney was Diane Pazar, and the trial attorney was Michelle Rattoballi. (Family Ct, Kings Co)

People v Trigueros-Hernandez, 243 AD3d 817 (2nd Dept 11/19/2025)
INVALID APPEAL WAIVER | SENTENCE NOT EXCESSIVE | AFFIRMED

ILSAPP: Appellant appealed from a Putnam County Court judgment (Molé, J.) convicting him of first-degree rape, following his guilty plea. The Second Department affirmed the judgment but found the appeal waiver invalid because both the colloquy and written waiver mischaracterized the appeal waiver as an absolute bar to taking an appeal. Further, the initial colloquy portrayed the waiver as a forfeiture of the attendant right to counsel, and further statements by the court failed "to clarify the issue in light of the confusion expressed by [appellant] during the oral colloquy and [appellant]'s lack of experience with the criminal justice system." However, appellant's sentence was not excessive. Steven A. Feldman represented Trigueros-Hernandez. (County Ct, Putnam Co)

People v Williams, 243 AD3d 818 (2nd Dept 11/19/2025)
ILLEGAL SENTENCE | CONSECUTIVE SENTENCES FOR SINGULAR ACT | MODIFIED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him of third-degree robbery and fourth-degree CPSP, following his guilty plea, and imposing consecutive indeterminate terms of 2-to-4 years' imprisonment on each conviction. The Second Department modified by running the two sentences concurrently and, as modified, affirmed. The trial court violated Penal Law § 70.25(2) by sentencing appellant to consecutive sentences because "[b]ased on the superior court information and the facts adduced during the plea colloquy, the People failed to establish that [appellant] did not commit the robbery and possession of stolen property offenses through the single and inseparable act of seizing the complainant's property." Appellate Advocates (Sankeerth Saradhi, of counsel) represented Williams. (Supreme Ct, Kings Co)

People ex rel. Cassar v Toulon, 243 AD3d 846 (2nd Dept 11/24/2025)
HABEAS | BAIL MODIFICATION | REASONING MUST BE ON RECORD | SUSTAINED & REMITTED

ILSAPP: Petitioner commenced a habeas petition in the Appellate Division, Second Department, asking the court to release on recognizance or to set reasonable bail after Suffolk County Supreme Court modified a previously issued securing order such that petitioner was remanded and bail revoked. The Second Department sustained the petition to the extent that the matter was remitted to Suffolk County Supreme Court for further proceedings. Where the prosecution moved to modify the securing order under CPL § 530.50(2)(b)(iv), the court was required to demonstrate its basis for modifying the securing

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order under the factors listed in CPL § 530.50(2)(d)(iii) and CPL § 510.10(1). The record did not sufficiently demonstrate the basis for the securing order modification and "failed to set forth whether the principal posed a flight risk or its reasoning for the selection of its choice of securing order." Christopher J. Cassar represented petitioner. (Supreme Ct, Suffolk Co)

Capruso v Capruso, 243 AD3d 875 (2nd Dept 11/26/2025)
APPELLATE PROCEDURE | MOOT ISSUE | SUA SPONTE SANCTIONS FOR FRIVOLOUS CONDUCT | AFFIRMED & OTSC DIRECTED

ILSAPP: Appellant appealed from a Nassau County Supreme Court order denying his post-divorce judgment motion to enforce parental access and granting respondent's cross-motion for counsel fees. The Second Department affirmed the order, dismissed the appeal as academic, sua sponte directed the parties to submit an Order to Show Cause (OTSC) as to the imposition of sanctions and/or costs, and awarded one bill of costs to respondent. The parental access appeal was moot because the subject child had turned 18 during the pendency of the appeal. Further, appellant's motion to enforce access was "frivolous," because this issue was previously raised and decided adversely to appellant on appeal. The Second Department, on its own motion, issued an order directing the parties to file an OTSC as to why sanctions and/or costs should not be imposed upon appellant or his counsel for pursuing a frivolous appeal under 22 NYCRR 130-1.1 as it "created unnecessary litigation by repeatedly raising these arguments" before three different courts. As conceded by appellant's counsel, the parental access issue had become academic once the child turned 18 years old, however, neither appellant nor "his counsel undertook any efforts to withdraw that portion of the appeal in order to conserve [the] Court's time and resources." (Supreme Ct, Nassau Co)

People v Carmona, 243 AD3d 919 (2nd Dept 11/26/2025)
IDENTIFICATION - Confirmatory Photo Identification

LASJRP: The Second Department concludes that the People established at a Rodriguez hearing that the complainant's photo identification of defendant was confirmatory where the complainant knew defendant by the nickname "Chulo" and saw defendant in his neighborhood on a weekly basis for approximately three to four years leading up to the shooting; and a police investigation revealed that defendant's nickname was Chulo. (Supreme Ct, Kings Co)

Rothman v Rothman, 243 AD3d 942 (2nd Dept 11/26/2025)
DIVORCE | MOTION TO VACATE | NO NEWLY DISCOVERED EVIDENCE OR FRAUD/MISCONDUCT | AFFIRMED

ILSAPP: Appellant appealed from a Nassau County Supreme Court order denying her motion, among other things, to vacate prior orders in a divorce action.

The Second Department affirmed, with costs. Supreme Court properly denied vacatur pursuant to CPLR § 5015(a), which authorizes relief based on specified grounds like newly discovered evidence or fraud, misrepresentation, or misconduct by the adverse party. Appellant failed to show that the "newly discovered evidence . . . could not have been obtained earlier through due diligence" and, in any event, that it would have produced a different result. She likewise did not meet her burden of establishing fraud, misrepresentation or misconduct on the part of respondent. Further, appellant did not "establish unique or unusual circumstances" warranting vacatur "in the interests of substantial justice." (Supreme Ct, Nassau Co)

People v Xi Liu, 243 AD3d 923 (2nd Dept 11/26/2025)
ILLEGAL SENTENCE | A MISDEMEANOR | VACATED & REMITTED FOR RESENTENCING

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him of criminally negligent homicide and third-degree criminal possession of a forged instrument, among other charges, upon a jury verdict, and sentencing him, as a second felony offender, to an indeterminate term of 2 to 4 years' imprisonment on the highest charge, with all other sentences running concurrently. The Second Department modified by vacating the sentence imposed on the conviction of third-degree criminal possession of a forged instrument, otherwise affirmed, and remitted the matter for resentencing on that conviction. As conceded by the prosecution, an indeterminate term of 1 1/2 to 3 years' imprisonment on the forged instrument charge was illegal because it exceeded the maximum sentence permitted by law for a class A misdemeanor. (Supreme Ct, Kings Co)

People v Aldea, 244 AD3d 745 (2nd Dept 12/3/2025)
PROBATION | IMPROPER CONDITION: SUPPORT OBLIGATIONS | MODIFIED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him of second-degree assault, following his guilty plea, and sentencing him to a term of probation with conditions. The Second Department modified the judgment by vacating the probation condition requiring appellant to "support dependents and meet other family responsibilities," and, as modified, affirmed. The probation condition was improperly imposed because it was "not individually tailored in relation to the offense and therefore, was not reasonably related to the defendant's rehabilitation or necessary to insure that he will lead a law-abiding life." Appellate Advocates (Alina R. Tulloch, of counsel) represented Aldea. (Supreme Ct, Kings Co)

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People v Gibson, 244 AD3d 751 (2nd Dept 12/3/2025)
SENTENCE - Probation/Conditions

LASJRP: The Second Department strikes a probation condition requiring defendant to consent to a search by a probation officer of his person, vehicle, and place of abode, and the seizure of any illegal drugs, drug paraphernalia, gun/firearm, or other weapon or contraband found, in a case in which defendant was convicted of criminal contempt in the first degree upon his plea of guilty.

Defendant's only prior conviction was for disorderly conduct, the offense at issue did not involve the use of a weapon or alcohol or other substances, and defendant was not under the influence of any substances at the time of the offense. (Supreme Ct, Queens Co)

People v Hall, 244 AD3d 753 (2nd Dept 12/3/2025)
RIGHT TO PROCEED PRO SE | INQUIRY INSUFFICIENT | REVERSED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him of second-degree grand larceny, four counts of second-degree criminal possession of a forged instrument, and first-degree offering a false instrument for filing, upon a jury verdict. The Second Department reversed and remitted for a new trial. Appellant's waiver of the right to counsel was invalid where the court failed to conduct the requisite "searching inquiry" before permitting appellant to proceed pro se. The record did not demonstrate that appellant was aware, or that the court ascertained his awareness, "of the disadvantages of representing himself or the benefits of having an attorney." Nor did the court inquire about appellant's "pedigree information, aside from the fact that he did not have a law license," or ensure he "understood the potential sentence," especially considering appellant's "continually…disruptive" and "obstreperous conduct." Appellate Advocates (David Fitzmaurice, of counsel) represented Hall. (Supreme Ct, Kings Co)

Matter of Kurtzrock, 2025 NY Slip Op 06708
(2nd Dept 12/3/2025)
ATTORNEY DISCIPLINE | PROSECUTORIAL MISCONDUCT | PUBLIC CENSURE | GRANTED

ILSAPP: The Attorney Grievance Committee for the Tenth Judicial District (AGC) instituted a disciplinary proceeding against Glenn Ross Kurtzrock for six charges of alleged prosecutorial misconduct in four criminal proceedings while he was an ADA with the Suffolk County District Attorney's Office. The Second Department granted the AGC's motion to confirm the Special Referee's report sustaining four of the six charges and found that circumstances warranted Kurtzrock's public censure. Kurtzrock violated Rules 3.8(b), 8.4(d), and 8.4(h) of the Rules of Professional Conduct by failing to make timely disclosure to defense counsel of favorable and mitigating evidence in two criminal cases indicted in 2011 and 2012, respectively: photo array identifications in *People v Gonzales-Martinez*, and codefendant statements made to law enforcement in *People v Portillo-Aquilar*. This evidence was withheld despite specific discovery demands from defense counsel in each case. Kurtzrock testified that in failing to disclose the evidence, he "would have acted in accordance with the advice of his supervisors." While the Special Referee's report noted that Kurtzrock was already suspended from practice due to prior misconduct under Rule 3.8(b) and Brady, the report also found that there was a "lack of venality or malicious or fraudulent intent," and Kurtzrock accepted responsibility, expressed remorse, and cooperated with the investigation. Catherine A. Sheridan represented AGC. (Grievance Committee)

People v Treyvon A. E., 244 AD3d 749 (2nd Dept 12/3/2025)
ADOLESCENT OFFENDERS - Removal

LASJRP: In these actions in which then 17-year-old defendant was charged with and entered pleas of guilty to robbery in the second degree, the Second Department holds that the Youth Part judge erred in grating the People's motion pursuant to CPL § 722.23(1) to prevent removal to the Family Court. The People failed to demonstrate that extraordinary circumstances existed. The matter is remitted for the entry of an order removing the actions. (County Ct, Rockland Co)

Matter of Christian J. C., 244 AD3d 845
(2nd Dept 12/10/2025)
TPR | NO PERMANENT NEGLECT | NO FAILURE TO PLAN OR MAINTAIN CONTACT | REVERSED

ILSAPP: Father appealed from a Queens County Family Court order finding that he permanently neglected the child and terminating his parental rights. The Second Department reversed and dismissed the petition. While the petitioning agency demonstrated that it made diligent efforts to strengthen the parent-child relationship, it "failed to establish, by clear and convincing evidence, that during the relevant period of time, the father failed substantially and continuously to maintain contact with the child or plan for the child's future, although physically and financially able to do so." Despite father's initial 3-month lapse in visits with the child, he subsequently consistently attended visitation and substantially complied with all terms of the service plan. Moreover, the agency's own progress notes indicated a "flourishing" relationship between father and child, and no record evidence "support[ed] the court's finding that the father lacked insight into his substance abuse treatment needs and the child's special needs." Accordingly, the record supported "the conclusion that the father planned for the child's future to the extent he was physically and financially

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able to do so." Center for Family Representation, Inc. (Tehra Coles and Charles S. Rosenberg, of counsel) represented Jorge C. (Family Ct, Queens Co)

Matter of Daisy N., 244 AD3d 857 (2nd Dept 12/10/2025)
DERIVATIVE ABUSE AND NEGLECT | AGENCY APPEAL | REVERSED

ILSAPP: Agency appealed from a Queens County Family Court order dismissing a petition against the father for derivative abuse and neglect. The Second Department reversed, reinstated the petition, made a finding of derivative abuse and neglect, and remitted for a dispositional hearing. The Family Court erred in not making a finding that the father derivatively abused and neglected his son based on the father's sexual abuse of his stepdaughter, despite the son being unaware of the abuse and having been born after the stepdaughter's sexual abuse occurred. The Court found that "the evidence demonstrated that the father's parental judgment and impulse control were so defective as to create a substantial risk to any child in his care." Further, the father did not establish that his conduct "cannot reasonably be expected to exist currently or in the foreseeable future." (Family Ct, Queens Co)

Fleurantin v Fleurantin, 244 AD3d 817 (2nd Dept 12/10/2025)
ANNULMENT | CHILD SUPPORT | STATUTORY DEDUCTIONS TO IMPUTED INCOME | MODIFIED

ILSAPP: Appellant appealed from a Westchester County Supreme Court order granting a judgment of annulment, following a bench trial on the issues of maintenance, child support, and equitable distribution. The Second Department vacated the portion of the order directing appellant to pay $4,323.41 per month in child support and 74% of certain add-on expenses, affirmed as modified, and remitted for a new child support calculation. Supreme Court erroneously calculated the final child support amount because it failed to apply certain statutory deductions to appellant's imputed income, specifically for the spousal maintenance he was ordered to pay, necessitating a new determination of the parties' combined annual income and appellant's child support obligation. Gallet Dreyer & Berkey, LLP (Kenneth S. Glasser, of counsel) represented appellant. (Supreme Ct, Westchester Co)

Matter of Winter D., 244 AD3d 848 (2nd Dept 12/10/2025)
ABUSE/NEGLECT - Excessive Corporal Punishment

LASJRP: The Second Department upholds a neglect finding where the father hit the child with a boot, leaving a mark on the child's right arm that was visible to an ACS caseworker.

The JRP appeals attorney was Zoe Allen, and the trial attorney was Jill Wade. (Family Ct, Kings Co)

People ex rel. Bright v Maginley-Liddie, 244 AD3d 911 (2nd Dept 12/16/2025)
STATE HABEAS | CPL § 530.30 | 730 EXAM| HARM+HARM | IMPROPER REMAND | SUSTAINED & REMITTED

ILSAPP: Petitioner commenced a habeas petition in the Appellate Division, Second Department asking the court to release on recognizance or to set reasonable bail after Richmond County Court denied an application pursuant to CPL § 530.30. The Second Department sustained the petition to the extent that the matter was remitted to Richmond County Supreme Court for further proceedings. Where petitioner was only charged with misdemeanor offenses, the Criminal Court "should not have remanded the [him] [sic] into custody." And since he was not in custody, remand was not authorized based solely on the lower court having ordered a competency evaluation under CPL § 730. The Second Department cited *People ex rel. Molinaro v Warden, Rikers Is.* (39 NY3d 120 [2022]), which stated that for someone not in custody, "a court only has the authority to either order a competency examination on an outpatient basis or to direct that the [individual] be confined in a hospital pending completion of the examination upon proper medical recommendation that such confinement is necessary." The Legal Aid Society of NYC (Elizabeth Bright, of counsel) represented Petitioner. (Supreme Ct, Richmond Co)

People ex rel. Larson v Spano, 244 AD3d 910 (2nd Dept 12/16/2025)
STATE HABEAS | CPL § 530.30 | BAIL INCREASE UNAUTHORIZED | SUSTAINED & REMITTED

ILSAPP: Petitioner commenced a habeas petition in the Appellate Division, Second Department asking the court to release on recognizance or to reduce bail after Westchester County Court raised the amount of monetary bail set by the local court after a bail review pursuant to CPL § 530.30. The Second Department sustained the petition to the extent that the petitioner was "restored to his prior bail status" pending another hearing or application pursuant to CPL § 530.30. Although a CPL § 530.30 determination is made de novo, the statute "does not authorize a superior court judge to order bail in a greater amount or more burdensome form than the bail fixed by the local criminal court." The plain language of CPL § 530.30(1) authorizes a court to "fix bail in a lesser amount or in a less burdensome form" but does not authorize a bail increase. The Legal Aid Society of Westchester County (Sarina Larson, of counsel) represented Petitioner. (County Ct, Westchester Co)

People v Parris, 244 AD3d 1005 (2nd Dept 12/17/2025)
PREDICATE SENTENCING | VERMONT CONVICTION NOT PROVEN EQUIVALENT | MODIFIED & REMITTED

ILSAPP: Appellant appealed from a Kings County Supreme

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Court judgment convicting him of second-degree CPW and resisting arrest, following a jury verdict, and sentencing him as a persistent violent felony offender (PVFO). The Second Department modified by vacating the PVFO adjudication and sentences, affirmed as modified, and remitted for resentencing. Although appellant had "admitted at sentencing that he was the person convicted of two prior felonies," the prosecution failed to satisfy its burden of establishing that appellant's prior felony conviction in Vermont for assault and robbery with a dangerous weapon was "equivalent to a New York criminal offense designated as a violent felony." Andrea S. Ferrante represented Parris. (Supreme Ct, Kings Co)

Aguilar v Wishner, 2025 NY Slip Op 07265
(2nd Dept 12/24/2025)
FORCIBLE TOUCHING
SEXUAL ABUSE

LASJRP: The offense of forcible touching under Penal Law § 130.52(1) requires that there be a nonconsensual touching of "sexual or other intimate parts" of another person for the purpose of degradation or abuse of such person or for the purpose of gratifying the actor's sexual desire. The offense of sexual abuse in the third degree under Penal Law § 130.55 requires nonconsensual "sexual contact."

In this proceeding brought under the Adult Survivors Act (CPLR 214-j), the Second Department holds that where, as here, the alleged nonconsensual touching or sexual contact involved a part of the body other than an anatomically sexual part, in the classic sense - the part of the body that was contacted was the lower back at the bilateral locations of the kidneys - these Penal Law offenses may still qualify as a predicate for an action pursuant to the ASA if the broader facts, manner, and circumstances of the touching or sexual contact involve intimacy or the alleged sexual gratification of the abuser.

Here, plaintiff was positioned on a stepstool, bent over an examination table and scantily clad in only underwear, while defendant was seated behind her within mere inches of her buttocks. The touching occurred when defendant placed his two hands on plaintiff's uncovered waist while pressing his two thumbs onto the areas of the kidneys. Plaintiff testified to her perception that when she glanced backwards, defendant looked as if he was "enjoying something." She testified that based upon her own limited medical school training, the purported procedure utilized by defendant was not the typical means of diagnosing the kidneys as a cause of back pain and "did not match what he described he was doing."

The complaint states a cause of action upon which the relief sought may be granted. (Supreme Ct, Suffolk Co)

Matter of Cali C., 244 AD3d 1109 (2nd Dept 12/24/2025)
ABUSE/NEGLECT - Removal/Imminent Risk

LASJRP: The Second Department upholds an order that, after a hearing, denied the father's FCA § 1028 application for the return of subject children to his custody where petitioner commenced proceedings alleging abuse based on allegations that the children's eight-month-old sibling died while in the parents' care and that toxicology results revealed the presence of cocaine in the infant's body at the time of death.

The JRP appeals attorney was Claire Merkine, and the trial attorney was Jess Rao. (Family Ct, Queens Co)

People v Grigoroff, 244 AD3d 1233 (2nd Dept 12/31/2025)
EXPERT TESTIMONY - False Confessions

LASJRP: In a murder prosecution that rests upon defendant's confession, defendant retained an expert in the field of disputed confessions who conducted a psychological evaluation of defendant and concluded that defendant "is more vulnerable than the average person to falsely confessing." The court limited the scope of the expert's testimony by precluding the mention of a study by the Innocence Project, which found that of the more than 300 people who had been, at the time, exonerated by DNA, approximately 25% had confessed, and a study conducted at the University of Michigan Law School, where researchers found that of the 1,405 exonerations that took place between 1989 and 2012, 10% of the people had falsely confessed and that people with mental illness or intellectual disability were overrepresented in the 10% group.

The Second Department concludes that defendant was deprived of his due process right to a fair trial. The excluded studies were relevant to illustrate the risk of false confessions, and a study related to mental disability is proper where defendant was found to have an IQ lower than 93% of individuals in his age group. The expert could not effectively offer an opinion about defendant's psychological vulnerabilities to falsely confessing without discussing the relevant science and research that had been done in the area over the last 10 to 15 years.

The court also erred in denying admission of a portion of the expert's curriculum vitae that included the titles of certain articles, thereby depriving the jury of information relevant to the credibility and weight of the expert's testimony, and allowing the People's expert to testify that research in the area of false confessions is scant and that the study of false confessions and the evaluation of psychological vulnerabilities was a "primitive subdiscipline."

The court also scheduled the trial on a date when defendant's expert was not available, so the jury was able to observe the in-court testimony of the People's expert but was able to observe defendant's expert only on a television screen. (County Ct, Putnam Co)

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Matter of Jonathan C., 2025 NY Slip Op 07383
(2nd Dept 12/31/2025)
PETITIONS - Date Of Offense

LASJRP: The Second Department upholds respondent's juvenile delinquency adjudication in this sex crime prosecution, concluding that the petition, which alleged that the acts occurred on a "weekday in late June 2022 or early July 2022," was not facially deficient given the relevant circumstances, including the complainant's age, and the fact that time is not a material element of any of the crimes, the crimes occurred in the complainant's home when no one else but respondent was present, and the complainant did not report the incident until approximately one year later.

The JRP appeals attorney was Hannah Kaplan, and the trial attorney was Lisa Tuntigian. (Family Ct, Queens Co)

People v Mead, 2025 NY Slip Op 07412
(2nd Dept 12/31/2025)
DEFENSES - Justification

LASJRP: The Second Department reverses defendant's manslaughter and weapon possession convictions, concluding that the People erred in failing to include in the charge to the grand jury instructions on the defense of justification.

A surveillance video shown to the grand jury indicated that defendant approached the deceased inside a store while holding a knife. But the deceased pointed a gun at defendant, defendant stabbed the deceased to defend himself from the imminent use of deadly physical force against him, and defendant could not safely retreat. (Supreme Ct, Kings Co)

Matter of Samake v Sy, 244 AD3d 1212
(2nd Dept 12/31/2025)
VISITATION - Location Of Exchanges

LASJRP: The Family Court granted the father's request for modification of temporary orders so as to provide that exchanges of the children for purposes of the father's parental access take place at the children's daycare facility rather than at a police station as previously directed.

The Second Department reverses, noting the history of animosity between the parties and allegations of domestic violence, and the corresponding safety concerns that required continued caution in determining an appropriate exchange location. (Family Ct, Kings Co)

Matter of Asani J. (Assata A.), 2026 NY Slip Op 00130
(2nd Dept 1/14/2026)
NEGLECT | AGENCY APPEAL | DV IN CHILD'S PRESENCE | PETITION REINSTATED | REVERSED & REMITTED

ILSAPP: Agency appealed from a Suffolk County Family Court order dismissing a neglect petition against the mother after a hearing. The Second Department reversed, reinstated the petition, made a finding of neglect against the mother, and remitted for a dispositional hearing. The agency met its burden in proving neglect by a preponderance of the evidence by establishing that mother "commit[ed] acts of domestic violence against the child's father in the child's presence." Family Court erroneously concluded that the child was not present when the mother cut the father's face with a knife because a recorded 911 call made after the incident showed that the child was outside of the apartment at some point during the call. "[A]n imminent danger of impairment to the physical condition of the child should be inferred from the mother's acts of violence against the father in close proximity to the child, 'even absent evidence that the [child was] aware of or emotionally impacted by the violence.'" (Family Ct, Suffolk Co)

People v Coleman, 2026 NY Slip Op 00145
(2nd Dept 1/14/2026)
JUDICIAL MISCONDUCT - Excessive Interference In Trial

LASJRP: The Second Department finds reversible error where the central issue to be determined by the jury was whether defendant had intentionally slashed the complainant with a sharp object or the complainant was inadvertently cut when falling onto a vehicle during a struggle with defendant, and the trial court engaged extensively in its own areas of inquiry, which detailed the nature of the complainant's injury and clarified whether the injury was likely to have been intentionally caused by a sharp instrument.

The court asked numerous leading questions of the People's witness, a paramedic, as to what the paramedic observed, and guided the prosecution at length in its questioning of the paramedic. The court also assisted the prosecution in laying a foundation for the admission of evidence and repeatedly engaged in lengthy colloquies with prosecution witnesses so as to effectively instruct the witnesses how to refresh their recollections so they could provide evidence favorable to the prosecution. At times, the court engaged in commentary on the testimony against defendant, as well as on questions posed by defense counsel. (Supreme Ct, Queens Co)

Matter of Mohmed v Elkhauly, 2026 NY Slip Op 00132
(2nd Dept 1/14/2026)
FAMILY OFFENSE | ASSAULT 3 | INSUFFICIENT EVIDENCE OF PHYSICAL INJURY | OOP APPROPRIATE | MODIFIED

ILSAPP: Appellant appealed from a Kings County Family Court order issued after a hearing finding that appellant committed the family offenses of third-degree assault and second-degree harassment, and imposing a stay-away order of protection. The Second Department vacated the finding that appellant committed third-degree assault and otherwise affirmed. Petitioner failed to establish that appellant's conduct caused her to sustain a "physical injury,"–defined as an "impairment of

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physical condition or substantial pain" under Penal Law § 10.00(9)–and therefore she did not establish by a fair preponderance of the evidence that appellant committed the family offense of third-degree assault. However, given petitioner's "testimony regarding prior incidents of abuse and past injuries," the Court found "that the issuance of the two-year order of protection was reasonably necessary to provide meaningful protection to the petitioner and to eradicate the root of the domestic disturbance." Peter A. Wilner represented Elkhauly. (Family Ct, Kings Co)

People v Moselem, 2026 NY Slip Op 00152
(2nd Dept 1/14/2026)
OOP | DURATION EXCEEDED MAXIMUM | AFFIRMED & MODIFIED OOP

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him of third-degree attempted burglary, upon his guilty plea. The Second Department affirmed the judgment but granted appellant's request to modify the durational provision of the OOP. As conceded by the prosecution, the duration of the OOP "exceeded the maximum period permissible under CPL [§] 530.13(4)(A)." The court modified the OOP to expire one year earlier. Appellate Advocates (Victoria L. Benton, of counsel) represented Moselem. (Supreme Ct, Kings Co)

People v Nymeen C., 2026 NY Slip Op 00144
(2nd Dept 1/14/2026)
SENTENCE - Domestic Violence Survivors Justice Act APPEALS

LASJRP: The Second Department, disagreeing with the Third Department, concludes that an order "dismiss[ing]" an application for resentencing pursuant to the Domestic Violence Survivors Justice Act "without prejudice" pursuant to CPL § 440.47(2)(d) is appealable. Such [an] order is an order "denying resentencing," rendering it appealable as of right pursuant to CPL 440.47(3)(a).

Otherwise, a defendant would never be able to obtain appellate review of a court's determination, at step one, that a defendant is ineligible for resentencing pursuant to CPL § 440.47(1)(a) on the ground that the offense itself is ineligible for resentencing or the defendant was not serving a sentence of at least eight years, or a court's determination, at step two, that even accepting the truth of the defendant's allegations, he or she was not eligible for resentencing because all of the abuse had happened in the distant past

However, the Court affirms, concluding that while defendant presented evidence that she was abused as a child and by her husband until she left him in 2004, she presented no evidence corroborating her claim that she was subjected to abuse in 2008, when the crime was committed. (Supreme Ct, Kings Co)

Matter of Rodriguez v Serrano, 2026 NY Slip Op 00136
(2nd Dept 1/14/2026)
CHILD SUPPORT | CALCULATIONS NOT BASED ON MOST RECENT TAX RETURN | REVERSED & REMITTED

ILSAPP: Appellant mother appealed from a Nassau County Family Court order (1) denying her objections to an amended order of child support issued after a hearing on her petition for an upward modification of child support (2) and sua sponte terminating father's obligation to pay the child's educational expenses. The Second Department reversed the order, sustained mother's objections, reinstated father's obligation to pay educational expenses, issued an interim order directing father to pay $293.32 per week in child support and 77% of childcare expenses, and remitted for: (1) a new calculation of father's modified child support obligation, (2) a recalculation of basic child support and childcare expense arrears owed by father, and (3) a computation of educational expense arrears owed by father. Pursuant to the Child Support Standards Act, child support obligations must be calculated using "the parent's gross (total) income as should have been or should be reported in the most recent federal income tax return." Since the hearing occurred in 2024, the Support Magistrate should have calculated father's child support obligation by applying the gross income reported on father's 2023 federal income tax return, rather than his 2022 W-2. Further, there was "no basis in the record for vacating the award for educational expenses, particularly in the absence of a petition or request by the father seeking that relief." Rodriguez represented herself. (Family Ct, Nassau Co)

People v Anthony, 2026 NY Slip Op 00254
(2nd Dept 1/21/2026)
***ANDERS* BRIEF | DEFICIENT | NEW COUNSEL ASSIGNED**

ILSAPP: Appellant appealed from a Suffolk County Court judgment convicting him of second-degree CSCS and third-degree CSCS, upon his guilty plea. Assigned counsel filed an *Anders* brief to withdraw. The Second Department found counsel's brief deficient, granted leave to withdraw, and assigned new counsel. Although counsel identified appellant's attempts to withdraw his guilty plea, the brief "failed to evaluate those claims, thereby acting as 'a mere advisor to the court.'" Moreover, counsel "fail[ed] to analyze potential appellate issues with reference to legal authority or to highlight facts in the record that arguably might support the appeal." (County Ct, Suffolk Co)

People v Hespinobarros, 2026 NY Slip Op 00260
(2nd Dept 1/21/2026)
DISCOVERY - Impeachment Material/Police Misconduct

LASJRP: The Second Department declines to invalidate the People's certificate of compliance and statement of readiness where the People provided the defense with "Law Enforcement

Second Department *continued*

Officer as Witness" reports for six police officers they intended to call at trial, which summarized their disciplinary history, information on civil lawsuits, information on completed and/or pending investigations by the New York City Civilian Complaint Review Board, and certain documents relating to internal police investigations regarding one of the officers.

Although the People did not provide defendant with certain underlying disciplinary records, the officers' disciplinary infractions did not have any bearing on the subject matter of this case, and there was no indication that any prior testimony of the officers had ever been found incredible. The court correctly determined that the People exercised due diligence and made reasonable efforts to satisfy their discovery obligations at the time they filed the COC. (Supreme Ct, Queens Co)

People v Jones, 2026 NY Slip Op 00262
(2nd Dept 1/21/2026)
EVIDENCE - Prejudice Outweighing Probative Value

LASJRP: The Second Department finds error, albeit harmless, in the admission of an enhanced compilation video, which depicted, inter alia, a photograph of a knife while highlighting an object in defendant's hand, and a photograph of the victim's fatal wound while highlighting what appeared to be blood on the victim's shirt; and the admission of police body-worn camera footage, which depicted, among other things, the victim as he lay dying in the street, while a woman pleaded with him to open his eyes and a police officer attempted CPR. (Supreme Ct, Kings Co)

Matter of Sevastianov v Sevastyanova, 2026 NY Slip Op 00249 (1/21/2026)

The petitioner appealed from an order dismissing his family offense petition against the respondent, his ex-wife. The Second Department affirmed. The court properly granted the respondent's motion to dismiss at the close of the petitioner's case at the fact-finding hearing. The petitioner must establish that the charged conduct was committed as alleged in the petition by a fair preponderance of the evidence. Even after accepting all evidence as true and giving petitioner the benefit of every reasonable inference that could be drawn from the evidence, the petitioner "failed to establish, prima facie, that the respondent committed acts constituting a family offense based on allegations actually charged in the petition." (Family Ct, Kings Co)

Matter of Emily M., 2026 NY Slip Op 00377
(2nd Dept 1/28/2026)
FOSTER CARE - Contempt/Failure To Place Child As Ordered

LASJRP: In this SSL § 358-a proceeding, the court directed petitioner to place the child in a traditional foster home no later than January 26, 2024. Thereafter, the attorney for the child moved to hold petitioner in civil contempt for failing to comply with the order. After a hearing, the court granted the motion, determined that the child had suffered actual injury as a result and imposed a fine of $250 per day of noncompliance - a total amount of $48,750 - upon petitioner.

The Second Department upholds the finding of contempt, noting that the child suffered actual injury, and, with respect to petitioner's unpreserved claim that the court erroneously considered hearsay testimony about the child's injuries, that inadmissible hearsay admitted without objection may be considered civil cases.

However, the court should not have imposed a $250 fine per day of noncompliance, as that fine appears to be based upon the statutory maximum amount for unprovable damages. Where the aggrieved party's losses are shown to be actual and reasonably ascertainable, a court should impose a reasonably certain compensatory fine that is properly related to the scope of the injury. The aim of civil contempt is to vindicate a party's right to the benefits of a judicial mandate or to compensate that party for the interference by the contemnor. Any penalty must be designed not to punish but, rather, to compensate the injured private party or to coerce compliance with the court's mandate or both. The court specifically invoked petitioner's "inconsisten[cy] and carelessness," and thus the fine appears to represent an improper attempt to punish the contemnor rather than compensate the injured party. The matter is remitted for a new determination on the amount of the fine.

The JRP appeals attorney was Judith Stern, and the trial attorney was Denise Barry. (Family Ct, Kings Co)

People v Garcia, 2026 NY Slip Op 00386
(2nd Dept 1/28/2026)
SEARCH AND SEIZURE - Auto Stop/Reasonable Suspicion - Probable Cause

LASJRP: Police officers received radio transmissions about a burglary and GPS location information for a stolen cell phone. The GPS location was updating in "close to real time," leading the officers to believe that the tracked phone was inside a red Ford Focus that was the only moving non-police vehicle at the GPS location. The officers stopped the red Ford Focus less than 10 minutes after the burglary report. The officers requested that an alert be sent to the phone, and a ringtone was heard from the passenger side of the red Ford Focus.

The Second Department concludes that there was reasonable suspicion justifying the stop, which later ripened into probable cause to arrest defendant. (County Ct, Suffolk Co)

Third Department

In the online version of the *REPORT*, the name of each case summarized is hyperlinked to the opinion provided on the website of the New York Official Reports, www.nycourts.gov/reporter/Decisions.htm.

People v Ferrara, 243 AD3d 962 (3rd Dept 11/6/2025)
ACCUSATORY INSTRUMENTS - Time Frame Of Offense

LASJRP: The Third Department rejects defendant's contention that the time frame alleged by the People in the indictment was unreasonably overbroad and deprived defendant of the ability to conduct a defense where the indictment charged defendant with predatory sexual assault of a child based upon his commission of the crime of course of sexual conduct against a child in the first degree, which requires, among other things, that the conduct occur "over a period of time not less than three months in duration"; and the indictment alleged a time frame in excess of two years.

During the victim's testimony, she recalled multiple incidents occurring between when she was six and eight years old. Considering the victim's young age and that she was recalling events from several years prior, as well as the nature of the charge, the time frame set forth in the indictment was reasonable. (Supreme Ct, Albany Co)

People v Martin, 243 AD3d 968 (3rd Dept 11/6/2025)
VALID WAIVER OF APPEAL | ORAL COLLOQUY CURED OVERBROAD WRITTEN WAIVER | COLLATERAL CONSEQUENCES | AFFIRMED

ILSAPP: Appellant appealed from a Saratoga County Court judgment (Murphy III, J.) convicting him of third-degree CPW and failure to register as a sex offender. The Third Department affirmed. Appellant's waiver of the right to appeal was valid. The oral colloquy cured the overbroad language in the written waiver. Further, the written waiver did not wrongly suggest that appellant was barred from seeking collateral relief in state or federal court. The Third Department acknowledged that its decision in People v Freshwater, 238 AD3d 1347, 1348 (3d Dept 2025), which found an identical waiver invalid, erroneously conflated potential collateral immigration consequences resulting from a guilty plea with the collateral relief available to an appellant following conviction. (County Ct, Saratoga)

People v Nelson, 243 AD3d 958 (3rd Dept 11/6/2025)
CPL § 440.10 | RIGHT TO COUNSEL AT 440 HEARING | IAC | ACTUAL INNOCENCE | RIGHT TO COMPULSORY PROCESS | AFFIRMED

ILSAPP: Appellant appealed from a Washington County Court order summarily denying his CPL § 440.10 motion, which set forth IAC and actual innocence claims challenging his convictions for CPCS. The Third Department affirmed. Initially, although the Court of Appeals has never explicitly recognized a right to counsel in all post-judgment criminal proceedings, the Third Department opined that, once counsel is appointed in a 440 proceeding, as here, "counsel is required to provide meaningful representation." However, summary denial was appropriate. Appellant had submitted with his motion, inter alia, an affidavit from his co-defendant claiming ownership of the drugs in question, averring that appellant did not know there were drugs in the vehicle, and stating that the co-defendant would have testified to that effect had he been contacted by trial counsel. When the codefendant subsequently refused to testify at the 440 hearing, summary denial was appropriate, since his refusal to testify "undermine[d]" the veracity of his affidavit and, without that testimony, appellant was unable to establish either actual innocence or IAC. The Third Department did not address appellant's argument that his Sixth Amendment right to compulsory process required a mechanism to secure a material witness' attendance at his 440 hearing, which was not argued below. (Supreme Ct, Washington Co)

People v Roblee, 243 AD3d 1027 (3rd Dept 11/13/2025)
PLEAS - Waiver Of Claim On Appeal

LASJRP: In a prosecution charging defendant with violating a no-contact order of protection, the Third Department holds that defendant's claim that the underlying order of protection was invalid does not survive defendant's guilty plea. A challenge to the validity of an underlying order of protection does not assert a nonwaivable jurisdictional defect. (County Ct, Warren Co)

People v Young, 243 AD3d 1020 (3rd Dept 11/13/2025)
YOUTHFUL OFFENDERS

LASJRP: In 2021, the Legislature enacted CPL § 720.20(5) to provide a "second chance" for youthful offender determinations. To be eligible to apply for a new youthful offender determination, a defendant must have been eligible for a youthful offender adjudication at the time of conviction; and at least five years must have passed since the imposition of sentence, or, if the individual was sentenced to a period of incarceration, since the individual's latest release from incarceration, provided that such individual has not been convicted of any new crime since the imposition of such sentence.

After citing the statutory factors, the Third Department upholds a determination denying defendant's application in this robbery prosecution. Although the court acknowledged certain mitigating factors, including defendant's acceptance of responsibility and positive accomplishments during his incarceration, the court also noted how this conviction - in addition to defendant's other serious felony conviction for robbery in the first degree - reflect a "poor respect for the law." (County Ct, Albany Co)

Third Department *continued*

People v Fowler, 243 AD3d 1067 (3rd Dept 11/20/2025)
SORA | FAILURE TO REGISTER INSTAGRAM ACCOUNT | AFFIRMED

ILSAPP: Appellant appealed from a Schenectady County Court judgment convicting him of failing to register as a sex offender and sentencing him to 1-to-3 years' imprisonment. The Third Department affirmed. The basis for the failure-to-register charge was appellant's failure to inform the Department of Criminal Justice Services of an Internet Identifier—specifically his Instagram account screen name—within 10 days of its creation or use, in violation of CL §§ 168-t and 168-f(4). The Third Department held that an Instagram account "designation," screen name, or alias, which identifies a person and serves as a means of interacting with other users on this social networking site, falls within the definition of an "Internet identifier" under CL § 168-f(4). The court rejected appellant's argument that he did not commit a crime where there was no indication that the Internet identifier was used for the purpose of communication. Accordingly, the indictment properly charged appellant with conduct that constituted a crime and did not suffer from a jurisdictional defect. Hug Law, PLLC (Matthew C. Hug, of counsel) represented Fowler. (County Ct, Schenectady Co)

People v Hall, 243 AD3d 1070 (3rd Dept 11/20/2025)
YOUTHFUL OFFENDERS

LASJRP: In a case in which defendant was found guilty after a jury trial of attempted assault in the first degree, in connection with an altercation on the campus of the State University of New York at Albany during which the victim suffered stab and slash wounds to her abdomen and arm, the Third Department, with one judge dissenting, upholds the denial of defendant's request to be adjudicated as a youthful offender.

The majority notes, inter alia, that this was defendant's first involvement with the criminal justice system and he is not a "hardened criminal," but the crime at issue was not the result of a "hasty or thoughtless act"; that the trial proof evidences that defendant harbored some level of indifference when it comes to violence against women; that at sentencing, defendant did not take accountability for his role in the underlying altercation and has consistently suggested that the victim was in some way responsible for her own injuries; and that defendant was approximately 3½ months shy of his 19th birthday at the time the crime was committed, at which point he would have been categorically ineligible for a youthful offender adjudication.

The Court also cautions that when defendant's appellate counsel described the victim as a "teen drama queen," counsel "crossed the line from what may be seen as zealous representation and, instead, presented an objectionable minimization of the facts presented. While we do not fault defendant in any way for this offensive language, we caution counsel to choose his words more carefully in the future."

The dissenting judge asserts, inter alia, that defendant appears to have a strong likelihood of successfully reentering and becoming a productive member of society at the conclusion of his sentence, but that path can easily be derailed by the stigma associated with a conviction of this nature; that the sequence of events from defendant's receipt of a text to come outside with a knife to his criminal act spanned a matter of minutes, and thus involved precisely the type of "hasty or thoughtless" conduct warranting consideration of youthful offender status; that granting youthful offender status to defendant and imposing the maximum term allowable - four years - would not have a great impact on the term of incarceration imposed by the court; and that "although one might fairly state that a defendant who is at the younger end of the age spectrum at the time of his or her criminal offense might have a more persuasive position in requesting youthful offender status, that does not concomitantly establish that a defendant on the other end of that age range should have that held against him or her." (Supreme Ct, Albany Co)

Matter of Shaw v Martuscello, 243 AD3d 1095 (3rd Dept 11/20/2025)
HALT ACT | ARTICLE 78 | FINDINGS REQUIRED TO IMPOSE LONG-TERM SOLITARY | MODIFIED & REMITTED

ILSAPP: Petitioner appealed from the denial of his article 78 motion seeking review of a determination finding him guilty of violating certain prison disciplinary rules and imposing a penalty of 120 days of segregated confinement. The Third Department modified by annulling the imposed penalty and remitted for an administrative redetermination of the penalty and, as modified, confirmed. There was substantial evidence to support the determination of guilt of the violations of making threats and destroying state property. However, as respondent conceded, the Hearing Officer failed to make the findings necessary under the Humane Alternatives to Long-Term Solitary Confinement (HALT) Act (Correction Law § 137[6][k][ii]) to impose segregated confinement for more than three consecutive days. Due to potential consequences of this penalty remaining on petitioner's intuitional record, the penalty was annulled and the matter remitted for the imposition of an appropriate penalty. Prisoners' Legal Services of New York (Guy E. Owen, of counsel) represented Shaw. (Supreme Ct, Albany Co)

People v Benton, 243 AD3d 1118 (3rd Dept 11/26/2025)
***ANTOMMARCHI* | INVALID WAIVER | SANDOVAL | RIGHT TO BE PRESENT | ABUSE OF DISCRETION| REVERSED**

ILSAPP: Appellant appealed from a Fulton County Court judgment convicting him of second-degree sexual abuse and EWOC. The Third Department reversed and remitted to County Court for a new trial. Nothing in the record indicates that appel-

Third Department *continued*

lant was advised of his right to be present, and there were several sidebars where it was unclear from the record whether appellant was present. The Third Department held that appellant's *Antommarchi* rights were definitively violated when he was clearly excluded from a material off-the-record *Sandoval* conference about the admissibility of evidence regarding his termination from his job at the YMCA. County Court's ruling allowing impeachment based on this evidence turned on a determination that appellant was fired due to the instant charges—an issue of which appellant had personal knowledge and with which he could have meaningfully assisted counsel. Counsel's statement at the end of the conference that "I can waive his appearance" was "patently deficient" to establish a knowing, voluntary, and intelligent waiver—which must be on the record—and, in any event, was made after appellant's exclusion from this material stage of trial. The Third Department was also troubled by statements by the trial court suggesting that appellant's autism diagnosis meant he "would have had nothing to contribute to any sidebar discussions." Finally, the trial court abused its discretion in its Sandoval ruling by permitting cross-examination of appellant about two uncharged incidents, where the prejudicial effect of the evidence outweighed any probative value. Hug Law PLLC (Matthew C. Hug, of counsel) represented Benton. (County Ct, Fulton Co)

People v Caselnova, 243 AD3d 1123 (3rd Dept 11/26/2025)
PROSECUTION'S APPEAL | GRAND JURY IMPAIRMENT | JUSTIFICATION CHARGES | AFFIRMED

ILSAPP: The prosecution appealed from a Saratoga County Court order granting respondent's motion to dismiss an indictment charging attempted second-degree murder, first-degree assault, and related charges, on the basis that the integrity of the grand jury proceedings was impaired by the prosecution's failure to properly instruct the grand jury on justification. The Third Department affirmed. When the evidence suggests that a complete defense like justification may be present, the prosecution must charge grand jurors on that defense so they can evaluate whether prosecution is precluded. In a case involving a shooting that occurred during a melee between appellant and a group of people, the trial court properly dismissed the indictment because the prosecution "failed to instruct the jury that [appellant]'s use of deadly force in defense of himself extended beyond [the decedent] and to the entire group." Video and testimonial evidence, viewed in the light most favorable to appellant, supported the defense. "With no indication of who possessed the gun amongst the group [attacking appellant] and considering that he was being assailed from multiple directions, [appellant] could have reasonably believed that deadly force was necessary to protect himself against the entire group and the charge to the grand jury should have reflected that scenario." Further, based on the video evidence, the Third Department found that, even assuming appellant was the initial aggressor, there was "no reasonable view of the evidence that [he] had a duty to retreat before employing deadly force." County Court also properly held that the evidence supported a justification charge based on a reasonable belief that appellant's assailants were committing a kidnapping or attempted kidnapping. Danielle Neroni Reilly represented Caselnova. (County Ct, Saratoga Co)

Matter of Denise D. v Alissa E., 243 AD3d 1159 (3rd Dept 11/26/2025)
SUA SPONTE CUSTODY MODIFICATION IN VISITATION PROCEEDING | INSUFFICIENT NOTICE | REVERSED

ILSAPP: Grandmother appealed from a Warren County Family Court order removing her as the child's joint legal custodian and entering an order of joint custody between the child's mother and father. The Third Department reversed. Family Court erred when it issued its order modifying legal custody upon the grandmother's petition seeking additional visitation. Although no party filed a petition seeking that relief, Family Court raised the issue sua sponte after opening statements in the visitation hearing. The grandmother did not have adequate notice to properly litigate the issue, particularly given the "heavy burden" placed upon her as a non-parent to prove extraordinary circumstances. The record also lacked any testimony or determination regarding the best interests of the child. Theresa M. Suozzi represented appellant grandmother Denise D. (Family Ct, Warren Co)

Matter of Jack V., 243 AD3d 1174 (3rd Dept 11/26/2025)
TERMINATION OF PARENTAL RIGHTS - Permanent Neglect/Lack Of Neglect Finding - Failure To Plan

LASJRP: In this permanent neglect proceeding, the Third Department upholds an order terminating the father's parental rights, concluding that SSL § 384-b(7)(a) does not condition a permanent neglect finding on the presence of an underlying FCA Article Ten neglect adjudication and dispositional order.

The incarcerated father's plan for the children was to have them remain in foster care until he got out of prison, and have his girlfriend check in on them during that period. That is not a feasible plan, as an unnecessarily protracted stay in foster care is not in a child's best interests (the fact-finding hearing took place in March 2024, and, the Court disclosed in a footnote, the father was released to parole supervision on August 27, 2025 and his maximum post-release supervision date is three years later). (Family Ct, Broome Co)

Jaime KK. v Monica JJ., 243 AD3d 1143 (3rd Dept 11/26/2025)

The Third Department dismissed the mother's appeal, claiming

Third Department *continued*

that the lower court improperly modified the existing joint custody order to grant primary physical and legal custody to the father. "The record amply demonstrates that the parties' acrimonious relationship further deteriorated since the previous order and that they were unable to effectively communicate and cooperate to meet the child's ongoing educational, medical and general needs. In fact, both parties testified as to their inability to communicate effectively. Thus, the court's determination that a change in circumstances had occurred since entry of the prior order is supported by a sound and substantial basis in the record." The court noted that the father can provide structure for the child and see to their everyday needs, as opposed to the mother's "unconventional" lifestyle resulting in her being unemployed with an unstable living situation, and the child being constantly late for school while in the mother's custody. (Supreme Ct, Schenectady Co)

Matter of Jeffrey SS. v Myah TT., 243 AD3d 1156 (3rd Dept 11/26/2025)
CUSTODY - Lincoln Hearings

LASJRP: In this custody proceeding, the Third Department reminds Family Court judges that protecting the child's right to confidentiality remains a paramount obligation after a Lincoln hearing. Here, the record contains numerous instances where the Family Court disclosed information provided by the child. While the Family Court may consider the information shared by a child in a Lincoln hearing to render its final determination, such considerations must remain silent. (Family Ct, Chemung Co)

Matter of Jennifer HH. v Alavanh II., 243 AD3d 1170 (3rd Dept 11/26/2025)
CUSTODY - Change In Circumstances - Relocation/Interference With Parent-Child Relationship

LASJRP: The father and the mother shared joint legal custody of the child, with primary physical custody awarded to the father and significant parenting time to the mother. In May 2023, the mother filed a modification petition seeking primary physical custody of the child with parenting time to the father, citing her move to Pennsylvania in late 2021 and the father's alleged attempts to alienate the child from her, among other grounds. The Family Court found that the requisite change in circumstances had been demonstrated and that the best interests of the child were served by granting the mother primary physical custody, while affording the father parenting time every other weekend and on other occasions.

The Third Department affirms, noting, inter alia, that the mother's move to Pennsylvania rendered the prior custody arrangement unworkable and the father made efforts to restrict the mother's communications with him and the child, and thus there was a change in circumstances. (Family Ct, Broome Co)

Matter of Josiah Y., 243 AD3d 1161 (3rd Dept 11/26/2025)
CUSTODY - Extraordinary Circumstances

LASJRP: The Third Department agrees that the aunt proved extraordinary circumstances and, based on the child's best interests, upholds an award of custody of the mother's youngest child to the aunt.

The Court notes, inter alia, that the mother abused and neglected the oldest child and derivatively abused and neglected the younger children, and, although the incident occurred in 2017, it was not an isolated incident, as the youngest child also reported physical abuse by the mother; that the mother has failed to take responsibility for her actions or even acknowledge that she was the perpetrator of the abuse; that DSS caseworkers testified that the mother was uncooperative during several home visits, did not attend an anger management course for over three years before finally enrolling in a course that was not approved by DSS, initially refused to participate in a mental health evaluation with a DSS-approved provider and sought her own evaluation before eventually agreeing to an approved evaluation in 2019, attended a parenting class but did not meaningfully participate, and blatantly lied to a caseworker about her pregnancy with a fourth child; and that the youngest child has lived with the aunt since the mother was incarcerated in 2017 and they have developed a strong bond. (Family Ct, Schenectady Co)

Matter of Raivyn BB., 243 AD3d 1140 (3rd Dept 11/26/2025)
NEGLECT | SUBSTANCE ABUSE | INSUFFICIENT PROOF | REVERSED

ILSAPP: Parents appealed from a Tompkins County Family Court order finding that they neglected the subject children. The Third Department reversed and vacated the finding of neglect. After the child's birth, urine screens for mother and baby were positive for amphetamines and Subutex, a prescribed medication. While the baby had low birth weight and exhibited other symptoms of withdrawal, there was no testimony regarding whether these symptoms were due to the methamphetamine use or to the Subutex, which the mother testified that medical professionals advised was fine for the child, despite "some withdrawals." The baby also required no specialized care beyond a short stay in the nursery rather than a specialized hospital unit. The agency thus failed to prove the required causal connection between the mother's actions and harm to the child. The father's "hostile" behavior toward hospital staff and his purported knowledge of the mother's drug use—unsupported by any testimony—were likewise insufficient to sustain a finding of neglect. Lisa K. Miller and Michelle I. Rosien represented the parents. (Family Ct, Tompkins Co)

Third Department *continued*

Matter of Richard CC. v Lacey DD., 243 AD3d 1186 (3rd Dept 11/26/2025)
PARENTAL ACCESS | IMPERMISSIBLE DELEGATION OF AUTHORITY | MODIFIED & REMITTED

ILSAPP: Father appealed from an Otsego County Family Court order suspending parenting time with his children and limiting contact with them to therapy sessions at a therapist's discretion. The Third Department modified by vacating the portion of the order suspending parenting time and remitted for further proceedings. Family Court's implicit determination that visitation with the father would be harmful to the children was unsupported by a sound and substantial basis in the record, and allowing the therapist to determine any potential contact was an impermissible delegation of the court's authority. Further proceedings before a different judge—including an updated Lincoln hearing, mental health evaluations, and a court-ordered investigation—were needed to determine the best interests of the children. Hancock Estabrook, LLP (James P. Youngs, of counsel) represented Richard CC. (Family Ct, Otsego Co)

Matter of Brian Q. v Allysa R., 244 AD3d 1328 (3rd Dept 12/4/2025)
CUSTODY - Joint Custody
VISITATION - Schedule

LASJRP: The Third Department, noting the child's young age at the time of the hearing and the need to foster a relationship with both parents, affirms an order awarding joint legal and physical custody, with the child's time to be split equally between the two states on an alternating weekly schedule, where the court acknowledged that, when the child reaches school age, a primary physical custodian would need to be determined if the parties continued to live in different states and were unable to reach an agreement. (Family Ct, Chemung Co)

People v Gerhard, 244 AD3d 1313 (3rd Dept 12/4/2025)
RIGHT TO PRESENT A DEFENSE | DEFENSE SUMMATION CURTAILED | HARMLESS ERROR | AFFIRMED

ILSAPP: Appellant appealed from a Broome County Court judgment convicting him, upon a jury verdict, of third-degree CPW and from a judgment of the same court revoking his probation. The Third Department affirmed. By precluding the prosecution's introduction of appellant's jail calls, County Court improperly limited appellant's summation, since defense counsel was prevented from arguing that appellant did not know there was a weapon in the residence, based upon the substance of the calls. However, the error was harmless. "Although a court's directive to not make misleading statements about the evidence may apply to inadmissible or precluded evidence..., the statements referenced during the jail calls did not speak directly to [appellant's] knowledge of the presence of the revolver." Moreover, counsel was able to make arguments about appellant's knowledge, and there was "overwhelming evidence" that appellant constructively possessed the gun. Angela Kelley represented Gerhard. (County Ct, Broome Co)

Matter of Kelly SS. v Justin TT., 244 AD3d 1345 (3rd Dept 12/4/2025)
VISITATION - Schedule/Delegation Of Court's Authority

LASJRP: The Third Department rejects the father's contention that the Family Court improperly delegated its authority and granted the mother unilateral decision-making where the order states that the father "shall be entitled to exercise supervised parenting time with the child at times as may be agreed upon between the parties" and that agreement and consent shall not be unreasonably withheld by either the mother or the father.

There is no support in the record for the father's claim that this arrangement is untenable because the mother will unreasonably withhold her consent. Moreover, the Family Court's decision to place the burden on the father to schedule therapeutic visitation, and to provide the mother with the name, location and time at least 96 hours in advance, will afford the father the opportunity to largely control when and if he and the child begin working on their relationship. (Family Ct, Saratoga Co)

Matter of K.F. v T.E., 244 AD3d 1324 (3rd Dept 12/4/2025)
CUSTODY - Right To Counsel/Role Of The AFC

LASJRP: The Third Department upholds an order granting the mother sole legal and primary physical custody of the child, rejecting a contention by the father and the appellate attorney for the child that the child (born in 2009) was deprived of effective representation where the trial AFC failed to promote the child's wishes that the father be awarded either joint or sole custody.

The difficulty presented in this matter is defining the proper balance between the child's strong bond with the father, and the harm caused to the child by the father's domineering behavior. Under these difficult circumstances, the record shows that the trial AFC acted appropriately in opting to partially substitute her judgment for the child's by recommending an award of legal custody to the mother, with "substantial parenting time to both parents."

The Family Court prudently adopted this balanced recommendation and did not err by authorizing the mother to limit communication between the father and child when the child is with the mother and to determine whether the child may travel internationally with the father. Accordingly, we find that Family Court's determination is supported by a sound and substantial basis in the record.

The Court also finds no error in the Family Court's denial of the child's motion for new counsel on the seventh day of testimony in the fact-finding hearing. The child asked the court

Third Department *continued*

to replace the trial AFC with another AFC representing him in a separate Family Court proceeding. The application accurately mirrored the rules of advocacy set forth in 7 NYCRR § 7.2 and referenced relevant case law. "It is difficult to discern how a 14-year-old child could be so legally astute without assistance." In any event, the trial AFC appropriately responded by reviewing her advocacy efforts on behalf of the child over the previous two years, emphasizing that she "[did] not wish to cast any doubt about [the child's] credibility." (Family Ct, Tompkins Co)

People v Mack, 244 AD3d 1289 (3rd Dept 12/4/2025)
JUSTIFICATION DEFENSE - Use Of Deadly Force
PUBLIC TRIAL - Audiovisual Coverage

LASJRP: The Third Department finds reversible error in the denial of defendant's request for a jury instruction on the defense of justification, noting that the evidence in the record fails to indicate who was the initial aggressor with respect to the use of physical force, and suggests that both individuals started fighting immediately after someone - presumably defendant - yelled derogatory remarks; that the other man was larger than defendant and had gained the upper hand during the fight, knocking defendant down with several blows; and that there is evidence that the other individual had unfolded a knife prior to being stabbed by defendant.

The Court also notes that the trial court violated the prohibition in Civil Rights Law § 52 when it allowed audiovisual coverage of the testimonial portion of the trial. (County Ct, Chemung Co)

People v Rickett, 244 AD3d 1284 (3rd Dept 12/4/2025)
INVALID APPEAL WAIVER | SUFFICIENCY ARGUMENT UNPRESERVED | CPL § 440.10 | IAC | AFFIRMED

ILSAPP: Appellant appealed from a Rensselaer County Court judgment convicting him of first-degree manslaughter, as well as a separate order of the same court denying, after a hearing, his CPL § 440.10 motion alleging ineffective assistance of counsel (IAC). The Third Department affirmed. Although an appeal waiver after trial is unusual, the court noted that it is permissible and that here, the purported waiver was negotiated in exchange for a lesser predicate status at sentencing. However, as the prosecution conceded, the appeal waiver was invalid because the written waiver was overbroad and County Court's oral colloquy did not cure the defect. Appellant's argument that the trial evidence was legally insufficient was not preserved for appellate review because he failed to renew his motion for a trial order of dismissal after the defense rested. Furthermore, appellant forfeited the right to challenge the legal sufficiency of the evidence by affirmatively requesting that first-degree manslaughter be submitted to the jury, the lesser included offense of which he was convicted. The Third Department also affirmed denial of appellant's 440.10 claim alleging ineffective of counsel for failure to present an alibi defense in a homicide case that relied entirely on eyewitness testimony. The 440 hearing evidence established that counsel had spoken to the proposed alibi witnesses and that the decision not to call them at trial was a reasonable strategy. (County Ct, Rensselaer Co)

People v Gomez, 244 AD3d 1382 (3rd Dept 12/11/2025)
PHYSICIAN-PATIENT PRIVILEGE - Statutory Reporting Requirement

LASJRP: The Third Department holds that Public Health Law § 2101(1), which requires physicians to "immediately give notice of every case of communicable disease required by the [Department of Health] to be reported to it, to the health officer of the local health district where such disease occurs," is a limited reporting obligation imposed upon physicians that does not abrogate the physician-patient privilege in a criminal proceeding against the patient. Thus, defendant's objection to [a] physician's testimony about his chlamydia diagnosis should have been sustained. (County Ct, Warren Co)

People v Greene, 244 AD3d 1391 (3rd Dept 12/11/2025)
MURDER - Depraved Indifference

LASJRP: The Third Department upholds a depraved indifference murder conviction, noting that the People established the systematic physical and psychological abuse of the victim - who had a developmental disability - and his brother before the date of the underlying incident; that defendant failed to immediately summon medical care for the victim despite knowing how the injuries were inflicted, and misled first responders; that as a certified foster parent, defendant had been trained in proper disciplinary techniques and knew that any corporal punishment was forbidden, making his use of these techniques - such as stomping on the stomach of a child - particularly egregious; and that where the defendant is the one who inflicted the fatal injuries, the sincerity and motivation behind post-injury rescue efforts create credibility questions for the jury to resolve, and there is no reason to disturb the jury's finding that defendant's belated expressions of concern did not reflect genuine interest in the victim's welfare.

A dissenting judge asserts that the alleged course of conduct must evince depraved indifference in order for the jury to attribute that mental state to the final fatal act; that neither the history of physical abuse nor defendant's failure to desist from that conduct supplies an inference of an utter disregard for the victim's life; that the majority gets a different result by using a rule custom-made for this case, according to which depraved indifference may be found where the defendant subjected the victim to a prolonged period of abuse leading up to the final fatal assault and failed to obtain medical care; and that each affirmed conviction in the majority's cases rests on proof of sustained brutality, an extended failure to summon any aid to a

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suffering victim with profound injuries, or both. (County Ct, Schenectady Co)

Matter of Kalam EE. v Amber EE., 244 AD3d 1523 (3rd Dept 12/18/2025)
CUSTODY/VISITATION - Lincoln Hearings - Right To Counsel/Child

LASJRP: The father filed a modification petition seeking additional parenting time and an enforcement petition alleging that the mother continued to use physical discipline on the children and was drinking to excess in the presence of the children. At the fact-finding hearing, the Family Court found no corroborating evidence to support the father's allegations, dismissed the petitions, and sua sponte canceled the Lincoln hearing that was scheduled for the following day.

The Third Department reverses, concluding that the Family Court abused its discretion in canceling the Lincoln hearing. Information shared by the children during a Lincoln hearing may serve to corroborate other evidence adduced at a fact-finding hearing. At the time of the hearing, the children were nine and six years of age and the record lacks any indication that the children were unwilling or incapable of participating in the Lincoln hearing.

The Court orders assignment of a new attorney for the children, noting its concern about the AFC's "passive representation," including the failure to object to the cancellation of the Lincoln hearing. (Family Ct, Tioga Co)

Matter of Sherab X. v Michelle Y., 244 AD3d 1532 (3rd Dept 12/18/2025)
CUSTODY - Appeal/Record On Appeal

LASJRP: The Third Department affirms an order awarding the parties joint legal custody with the father having primary physical custody, declining to consider a litany of references in the mother's brief to websites purportedly containing information she now deems relevant.

The Court may take notice of new facts and allegations to the extent they indicate that the record is no longer sufficient for a determination of the issue at hand. The information now presented by the mother is not new; rather, it is information she could have provided in the first instance. (Family Ct, Sullivan Co)

Matter of Tompkins County Department of Social Services v Sawyer, 244 AD3d 1528 (3rd Dept 12/18/2025)
CHILD SUPPORT

LASJRP: Family Court Act § 449 (2) provides that "[a]ny order of child support made under this article shall be effective as of the earlier of the date of the filing of the petition therefor, or, if the children for whom support is sought are in receipt of public assistance, the date for which their eligibility for public assistance was effective."

The Third Department concludes that the statute applies where petitioner's basis for seeking a modification of the existing child support order was to add a second child. The modification order should have been made effective as of the date that the second child became eligible for public assistance, which was the date of the child's birth. (Family Ct, Tompkins Co)

People v Hoffman, 244 AD3d 1588 (3rd Dept 12/24/2025)
DISCOVERY - Sanctions

LASJRP: In this prosecution involving defendant's alleged criminal sexual conduct against the victim when the victim was less than 15 years old and defendant was over the age of 18, a Third Department majority rejects defendant's contention that he was deprived of his right to a fair trial, noting, inter alia, that the court did not err in precluding three of defendant's five character witnesses from testifying as a sanction for repeated discovery violations and due to the repetitive nature of their testimony. (County Ct, Schuyler Co)

Matter of Liam DD., 244 AD3d 1625 (3rd Dept 12/24/2025)
ABUSE/NEGLECT - Drug Misuse

LASJRP: The Third Department upholds a finding of neglect where the mother admitted to methamphetamine use and had a positive drug-screen approximately six days later. Overnight methamphetamine use would ordinarily impair the mother's judgment, and while the mother argues that the presumption in FCA § 1046(a)(iii) was inapplicable because her relapse was an isolated incident, prior indicated reports concerning her methamphetamine misuse in 2019 and alcohol abuse in 2014 were properly considered as evidence of recurrence and lack of sustained rehabilitation. The mother's implausible explanation regarding a search of her vehicle and her positive methamphetamine test also supports the conclusion that her drug use was ongoing. While the mother argues that she obtained safe housing, medical treatment and supplies for the child, the presumption of neglect that arises under FCA § 1046(a)(iii) cannot be rebutted by evidence that the child was well cared for and not in danger. Even without the statutory presumption, the record establishes that the child was at imminent risk of harm in the mother's care. (Family Ct, Schuyler Co)

Matter of Maria RR., 244 AD3d 1623 (3rd Dept 12/24/2025)
ABUSE/NEGLECT - Removal/Imminent Risk

LASJRP: The Third Department upholds an order that, after a three-day FCA § 1027 hearing, temporarily removed the child from respondent's custody.

The child was born with medical issues that required admission to the neonatal intensive care unit. The mother's medical records indicated that the mother began exhibiting aggressive and threatening behavior toward hospital staff. At one point, she threatened to take the child from the hospital, which prompted a lockdown of the NICU. She was combative

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with hospital staff regarding the child's care and repeatedly refused to follow hospital security protocols. Petitioner offered a letter from the mother's therapist, who indicated that the mother's personality disorder rendered her extremely distrustful of others, which would impact her ability to parent.

Caseworkers' attempts to discuss available resources were rebuffed, with the mother refusing to answer questions or otherwise engage with caseworkers. The mother had been offered services in connection with the removals of her other children, including mental health counseling and domestic violence counseling, and she had failed to meaningfully engage in those programs. She often exhibited aggressive behavior during supervised visits with the other children. (Family Ct, Albany Co)

People v Kadar, 244 AD3d 1669 (3rd Dept 12/31/2025)
DISCOVERY - Pre-Plea Disclosure

LASJRP: The Third Department rejects defendant's contention that the court improperly accepted his plea without ensuring that the People had satisfied their disclosure obligations. The disclosure requirements of CPL § 245.25(2) apply "where the prosecution has made a guilty plea offer," but here the plea offer accepted by defendant was made by the court. (Supreme Ct, Schenectady Co)

Matter of McCarra v Chiaramonte, 244 AD3d 1679 (3rd Dept 12/31/2025)
FAMILY OFFENSES - Intimate Relationship

LASJRP: The Third Department reverses an order that dismissed this family offense proceeding, concluding that petitioner's assertions that she had known respondent throughout her life, that he acted as an uncle figure who helped raise her, and that she had frequent contact with him until 2021, sufficiently alleged a longstanding and direct association that, if credited, could constitute an "intimate relationship" as defined by the statute.

The Family Court relied solely upon counsels' oral representations and made its jurisdictional determination without taking testimony, receiving affidavits or permitting amendment of petitioner's handwritten petition to clarify her allegations regarding the nature of the parties' relationship. Given the conflicting, unsworn representations of counsel regarding the parties' relationship, the Family Court should have conducted a hearing and considered the factors set forth in Family Court Act § 812(1)(e). (Family Ct, Albany Co)

People v Bjork, 2026 NY Slip Op 00037 (3rd Dept 1/8/2026)

While it is error for a prosecution expert witness "to opine that a victim's death was a homicide, as 'such characterization improperly invades the province of the jury,'" no error was found where the medical examiner testified about his findings that "the cause of death was '[s]ubarachnoid hemorrhage, multiple left rib fractures, and hemothorax with hemoperitoneum due to blunt force trauma'" and that he "had ruled out natural, accidental or suicidal explanations...." He did not opine as to whether the decedent's "death could be characterized as a homicide, nor did he express any conclusion as to the issue of culpability...." (County Ct, St. Lawrence Co)

People v Bonville, 2026 NY Slip Op 00039 (3rd Dept 1/8/2026)
UNPRESERVED PLEA CHALLENGE | INTEREST OF JUSTICE | CONSECUTIVE TO CONCURRENT | MODIFIED

ILSAPP: Appellant appealed from an Essex County Court judgment convicting him of second-degree robbery and second-degree burglary, following his guilty plea, and sentencing him to consecutive prison terms of 15- and 12-years' imprisonment, respectively, followed by periods of post-release supervision. The Third Department modified, in the interest of justice, by running the sentences concurrent to one another. Both convictions stemmed from a single home invasion robbery, where appellant had threatened the elderly complainants with a firearm and struck one of them in the head with the weapon. Although appellant's challenge to the voluntariness of the plea survived his unchallenged appeal waiver, it was not preserved for review because he had not moved to withdraw his plea or to vacate his conviction. Although Penal Law § 70.25(2) authorized imposition of consecutive sentences, the Third Department acknowledged that appellant's written plea agreement contemplated imposing concurrent sentences and that during the plea proceedings County Court used "confusing and ambiguous language . . . regarding the possibility of consecutive sentencing" and stated that the maximum sentence appellant faced was 15 years. Under those circumstances, imposition of concurrent sentences was appropriate. Law Offices of Gerard V. Amedio PC (Gerard V. Amedio, of counsel) represented Bonville. (County Ct, Essex Co)

Deutsche Bank National Trust Company v LeTennier, 2026 NY Slip Op 00040 (3rd Dept 1/8/2026)
ETHICS - Misuse Of GenAI/Fabrication Of Legal Authorities

LASJRP: In this civil appeal, the Third Department finds that defendant submitted at least 23 fabricated legal authorities across five filings during the pendency of this appeal. He also misrepresented the holdings of several real cases as being dispositive in his favor when they were not. During oral argument defense counsel estimated that 90% of the citations he used were accurate, which, even if it were true, is unacceptable by any measure of candor to any court. The Court is most troubled by the fact that defendant offered more than half of the fake cases after he was on notice of this issue. Defense counsel took no remedial measures and did not express remorse and essentially doubled down during oral

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argument on his reliance on fake legal authorities as not "germane" to the appeal."

The Court, recognizing this as the first appellate-level case in New York addressing sanctions for the misuse of GenAI, finds imposition of a monetary sanction on defense counsel in the amount of $5,000 to be appropriate, with the further goal of deterring future frivolous conduct by defendant and the bar at large.

Attorneys and litigants are not prohibited from using GenAI to assist with the preparation of court submissions. The issue arises when attorneys and staff are not sufficiently trained on the dangers of such technology, and instead erroneously rely on it without human oversight. The use of GenAI in no way abrogates an attorney's or litigant's obligation to fact check and cite check every document filed with a court.

Moreover, given the baseless nature of this appeal, an additional sanction of $2,500 shall be imposed on defense counsel and $2,500 shall be imposed on defendant. (Supreme Ct, Delaware Co)

[*Ed. Note:* *We stress that the term "GenAI" is used in the decision to mean the general type of AI software used —"generative AI"—and not a specific brand or type; use of any generative AI should be approached with the same care.*]

Matter of Alison EE. v Stephen FF., 2026 NY Slip Op 00180
(3rd Dept 1/15/2026)
HARASSMENT/FAMILY OFFENSES

LASJRP: The Third Department upholds an order dismissing a family offense petition alleging second degree harassment by the father, concluding that the mother failed to prove a course of conduct or repeated acts where the mother and the father arrived at the meeting place for the father to visit with the children, but the mother brought only the youngest child; the father then became angry, called the mother several curse words, and threw a piece of cheese at her vehicle; and the entire interaction lasted approximately five minutes. (Family Ct, Saratoga Co)

People v Brown-Shook, 2026 NY Slip Op 00172
(3rd Dept 1/15/2026)
INVOLUNTARY PLEA | UNPRESERVED | DVSJA HEARING TESTIMONY TRIGGERED DUTY TO INQUIRE |REVERSED | DISSENT

ILSAPP: Appellant appealed from a Rensselaer County Court judgment convicting her, following her guilty plea, of second-degree assault and third-degree CPW and sentencing her, pursuant to the DVSJA, to concurrent terms of 2 years' imprisonment, followed by 3 years' PRS. The Third Department, in a 3-2 decision, held that appellant's plea was involuntary and remitted for further proceedings. Appellant's testimony at her DVSJA hearing that she acted in self-defense when she stabbed her ex-boyfriend "suggested a plausible justification defense" and that she lacked the requisite intent to commit either crime. Although the due process claim was not preserved by a post-allocution motion to withdraw the plea, the majority determined that the Lopez exception to the preservation argument applied based on her post-plea, pre-sentencing statements in open court, which triggered the court's duty to inquire further or to offer plea withdrawal. The majority cited *People v Gresham* (151 AD3d 1175 [3d Dept 2017]) (appellant's statements at sentencing negating element triggered duty to inquire) and *People v Dupree* (235 AD3d 120 [1st Dept 2025]) (prosecution's reference at sentencing to appellant's out-of-court statements undermining guilt triggered duty to inquire). The dissent (McShan and Mackey, JJ.) would have affirmed, finding that the preservation exception should not apply, since "[a]t no point during the 11-month period" between plea and sentence did appellant "move to withdraw her plea or otherwise object to its entry." Nor did appellant's "statements during the DVSJA hearing…signify a lack of understanding about the nature of the charges…or that her plea was involuntary." While the dissent agreed that appellant's testimony suggested a potential justification defense, the testimony was for purposes of DVSJA consideration only, and defense counsel explicitly stated that the plea was knowing and voluntary. Amanda FiggsGanter represented Brown-Shook. (County Ct, Rensselaer Co)

People v Edwards, 2026 NY Slip Op 00171
(3rd Dept 1/15/2026)
SEARCH AND SEIZURE - Emergency Assistance Exception

LASJRP: The Third Department rejects defendant's contention that the emergency exception to the warrant requirement was improperly applied where dispatchers informed the responding officers that the victim's family had relayed their concerns about the victim and her young child, who had not returned home after visiting with defendant at his residence, and that the victim's cellphone was "pinging" in the area of defendant's residence; the victim's mother also advised dispatchers that the victim and defendant had a past history of domestic violence, and the responding officers were advised that defendant and the victim could have been arguing; and, after a decision was made not to enter the residence, a sergeant learned that defendant had arrived at a nearby hospital with stab wounds. The appropriately measured response of the police should not be declared illegal merely because they thoughtfully delayed entry for a relatively brief time.

The facts establish that there was a reasonable basis for associating the emergency with defendant's residence. The cellphone tracking is only one piece of information that law enforcement possessed, as they were also aware that the victim had informed her family that she was going to defendant's residence and that she and the child remained unaccounted for.

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Law enforcement's entry was not motivated by an intent to seize evidence or make an arrest. (County Ct, Rensselaer Co)

Matter of King P., 2026 NY Slip Op 00173
(3rd Dept 1/15/2026)
PERMANENCY HEARINGS - Time Deadline/Permanency Goal
LASJRP: The Third Department finds no error where, in January 2023, petitioner filed a permanency hearing report which recommended continuation of the permanency goal of return to parent with a concurrent plan of placement for adoption; the permanency hearing commenced in January 2023, and continued over eleven dates between February and September 2023; by the end of the hearing, the children had been in foster care for nearly four years; and the Family Court issued a decision and order modifying the permanency goal from return to parent to free for adoption.

The father was not denied due process by the duration of the hearing, as the hearing involved scheduling the father's four out-of-state witnesses and the father's own interstate travel. Good cause existed to extend the hearing beyond the statutory time limit.

Given the proof of the father's noncompliance with the supervision order and the duration of the children's placement, modification of the permanency goal was appropriate. (Family Ct, Montgomery Co)

People v Cavanagh, 2026 NY Slip Op 00287
(3rd Dept 1/22/2026)
GRAND JURY | APPELLANT IMPROPERLY SHACKLED | HARMLESS ERROR | AFFIRMED
ILSAPP: Appellant appealed from an Ulster County Court judgment convicting him of second-degree burglary, following his guilty plea. The Third Department affirmed. The shackling of appellant before the Grand Jury, without an articulated "reasonable and specific basis" outside the presence of the Grand Jury, and without curative instructions, impaired the integrity of the proceedings. Nor was it sufficient for the prosecution to attempt to proffer a basis for the shackling in their response to the omnibus motion. These errors were harmless, however, because "the evidence presented to the grand jury was so overwhelming that it eliminated the potential for prejudice." Surveillance video showed appellant and his accomplice entering the burglarized motel and leaving with items they did not have on arrival. Additionally, photographs showed the motel room in disarray with an apparent point of forced entry, and items taken from the room were later recovered from appellant's vehicle. Appellant's testimony was "inconsistent, self-contradictory, and implausible," because he "denied any familiarity" with the items reported stolen and could not explain how they came to be in his possession. (County Ct, Ulster Co)

Matter of Shannon JJ. v George JJ., 2026 NY Slip Op 00293
(3rd Dept 1/22/2026)
CHILD SUPPORT | WILLFUL VIOLATION FOUND | REVERSED & REMITTED
ILSAPP: Mother appealed from a Delaware County Family Court order partially dismissing her application to find the father in willful violation of a prior support order. The Third Department reversed and remitted for further proceedings. The mother met her prima facie burden by demonstrating that the father failed to voluntarily make any child support payments between August 2021 and December 2022 as ordered. The burden then shifted to the father to demonstrate an inability to pay, which he failed to do. Although the father left his job as a union laborer, he received income from independent subcontracting jobs, as well as "thousands of dollars from his sister." He also admitted he lived on his sister's land to shield the home he constructed there from judgment. Based on the lack of evidence of inability to pay, the Third Department deemed his claims of financial hardship to be "conclusory" and found that he willfully violated the order. The Law Office of Corrie A. Damulis (Corrie A. Damulis, of counsel) represented Shannon JJ. (Family Ct, Delaware Co)

Matter of Alex Y. v Mindy X., 2026 NY Slip Op 00411
(3rd Dept 1/29/2026)
CUSTODY - Right To Counsel/Child
- Joint Custody
- Domestic Violence
LASJRP: In this appeal from an order awarding the father sole legal and primary physical custody of the child (born in 2012), the Third Department modifies the order and awards joint legal custody. The issues as to which the parents cannot agree - putting aside the limited testimony regarding the matter of therapy - largely stem from claimed ambiguities in the parenting time schedule itself. They are fit and loving parents who can constructively communicate about the child.

The Court disagrees with the Family Court's characterization of testimony by the father's former romantic partners, detailing the acrimonious nature of those relationships, as an attempt by the mother to gain "advantage over the [f]ather." Presentation of relevant aspects of relationship history is illustrative of not only a parent's stability, but also who the parent may involve in a child's life. However, the trial court did adequately consider the allegations of domestic violence raised by those witnesses.

The Court rejects the mother's assertion that the child was not meaningfully represented at trial by the attorney for the child, who failed to timely submit a summation and advocated for a position adverse to the child's wishes. The AFC made clear that she was substituting judgment and adequately informed the Family Court of the child's wishes. The AFC indicated that this substitution was the result of what she believed to be

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coaching from both parents which, in conjunction with the years of ongoing litigation, had impacted the child's ability to make a voluntary judgment despite her age and relative maturity. However, the AFC erred when, in a written summation submitted after the order on appeal was entered, the AFC stated the child's wishes expressed during a Lincoln hearing, which should have remained confidential. (Family Ct, St Lawrence Co)

People v James, 2026 NY Slip Op 00406 (3rd Dept 1/29/2026)
SEARCH AND SEIZURE - Search Warrants/Probable Cause

LASJRP: The Third Department rejects defendant's challenge to a warrant authorizing the search of a hotel room, concluding that there was a proper nexus between the alleged crime at the scene of a traffic stop and the place to be searched.

Although the application made no mention of the co-defendant being associated with the hotel room, it did indicate that he was in the vehicle with defendant and that defendant admitted to having just come from the hotel. This admission, in addition to the large quantity of glassine envelopes found in the vehicle rented in defendant's name, the marihuana found on defendant's person, and the crack cocaine found on the co-defendant, provided a reasonable belief that more illicit drugs would be found in the hotel room. Moreover, the co-defendant's possession of the crack cocaine in six individually wrapped bags, which suggested an intent to sell, the indication in the warrant application that drug dealers often use rental vehicles and hide their supply elsewhere, the early morning hour, and defendant's admission that he had traveled from New York City, provided added reason to believe that the search would uncover more illicit drugs. (Supreme Ct, Albany Co)

People v Peterson, 2026 NY Slip Op 00410 (3rd Dept 1/29/2026)
INVALID APPEAL WAIVER | EXPLANATION OF APPELLATE RIGHTS INADEQUATE | AFFIRMED

ILSAPP: Appellant appealed from a Greene County Court judgment (Wilhelm, J) convicting him, upon his guilty plea, of aggravated vehicular homicide and DWAI and sentencing him to an aggregate indeterminate term of 7 to 21 years' imprisonment. The Third Department affirmed. Appellant's waiver of the right to appeal was invalid. The plea court "failed to ensure that [appellant] understood that some appellate rights survive the appeal waiver." However, appellant's sentence was not excessive where he had a prior DWI conviction and the mitigating circumstances did not outweigh appellant's choice to again "operate a vehicle after consuming alcohol and drugs, resulting in the death of a motorist." David E. Woodin represented Peterson. (County Ct, Greene Co)

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In the online version of the *REPORT*, the name of each case summarized is hyperlinked to the opinion provided on the website of the New York Official Reports, www.nycourts.gov/reporter/Decisions.htm.

People v Alexander, 243 AD3d 1243 (4th Dept 11/21/2025)
POSSESSION OF A WEAPON - School Grounds

LASJRP: Penal Law § 265.01-a states that "[a] person is guilty of criminal possession of a weapon on school grounds when [they] knowingly [have in their] possession a … firearm in or upon a building or grounds, used for educational purposes, of any school, college, or university."

The Fourth Department concludes that the hospital used by the University of Rochester as a teaching hospital is encompassed by § 265.01-a but agrees with defendant that the evidence is legally insufficient because there is no evidence that defendant knew he was in a building used for educational purposes. The only evidence presented by the People was two photographs of signs at the hospital that could have alerted defendant that the hospital was used for educational purposes. The People produced no evidence that defendant saw the signs. (Supreme Ct, Monroe Co)

People v Anderson, 243 AD3d 1246 (4th Dept 11/21/2025)
WAIVER OF APPEAL ENCOMPASSED CHALLENGE TO SUPPRESSION RULING | AFFIRMED | CONCURRENCE

ILSAPP: Appellant appealed from a Monroe County Court judgment convicting him, upon his guilty plea, of second-degree CPW. The Fourth Department affirmed. Appellant's valid waiver of appeal encompassed his challenge to the court's suppression ruling. To the extent that he received ineffective assistance of counsel because trial counsel did not understand that the appeal waiver encompassed the suppression ruling, that argument involves matters outside the record and must be raised via a CPL § 440.10 motion. The concurrence (Bannister and Delconte, JJ.) disagreed that the waiver of appeal encompassed appellant's suppression claim, but they still would have affirmed on the merits. In the concurrence's view, the plea court's failure to specifically inform appellant that an appeal waiver would preclude appellate review of the suppression ruling rendered the waiver unknowing and involuntary. Given the court's ambiguous colloquy, it was reasonable for appellant to believe that the court's suppression ruling was one of the "other" issues that were "so important" that they would survive the waiver. Moreover, at sentencing, defense counsel requested that the court stay sentencing so that appellant could appeal the suppression ruling. Although the court denied the request, it did not advise appellant or counsel that appellant's waiver of appeal foreclosed review of the suppression ruling. (County Ct, Monroe Co)

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People v Brown, 243 AD3d 1225 (4th Dept 11/21/2025)
SUPPRESSION | SEARCH WARRANT SUFFICIENCY | SENTENCING | RIGHT TO BE PRESENT | MODIFIED | DISSENT

ILSAPP: Appellant appealed from an Oneida County Court judgment convicting him of third-degree CPCS, third-degree unlawful fleeing a police officer, and resisting arrest. The Fourth Department affirmed the judgment, vacated the sentence, and remitted the matter for resentencing. Appellant's contention that the search warrants lacked sufficient particularity due to their failure to reference a specific crime was unpreserved. The court declined to decide whether the search warrants were overbroad and lacked particularity based on the absence of any date restrictions, and whether the lower court erred in applying the doctrine of severability. Any errors were harmless because the evidence of appellant's guilt was overwhelming. Finally, as the prosecution conceded, the trial court erred in imposing sentence at a virtual sentencing proceeding without appellant's consent to an electronic appearance. The dissent (Bannister and DelConte, JJ.) would have modified by reversing appellant's convictions for third-degree CPCS, granting his suppression motion, and granting a new trial on the first count of the indictment. The dissent would have found the search warrants at issue invalid because they lacked sufficient particularity, and the argument was preserved by appellant's assertions in his omnibus motion. Further, the dissent opined that the trial court erred in applying the doctrine of severability because the search warrants here were wholly, not partially, invalid. According to the dissent, this error was not harmless because the proof of appellant's guilt was not overwhelming: appellant possessed a small amount of narcotics and the only evidence the prosecution offered as to appellant's intent to sell those drugs was that he possessed two cell phones, $2,301 in cash, and had no paraphernalia suggesting the drugs were for personal use. Oneida County Public Defender (David A. Cooke, of counsel) represented Brown. (County Ct, Oneida Co)

People v Dent, 243 AD3d 1291 (4th Dept 11/21/2025)
WITNESSES - Material Witness Order

LASJRP: The Fourth Department holds that defendant was not entitled to notice of an application for a material witness hearing. Neither party is entitled to notice, and neither party has standing to contest or to participate in a hearing on an application made by the other.

Here, the material witness proceeding was held only to determine what steps should be taken to secure the witness's testimony, the court did not pressure the witness to alter her testimony, and the hearing did not veer into the content of the witness's testimony or any legal or factual issue that might involve defendant. (Supreme Ct, Monroe Co)

People v Engles, 243 AD3d 1238 (4th Dept 11/21/2025)
ILLEGAL SENTENCE | INCLUSORY CONCURRENT COUNT | ASSAULT 2 | ASSAULT ON A PEACE OFFICER | MODIFIED

ILSAPP: Appellant appealed from an Erie Supreme Court judgment convicting him of assault on a peace officer and second-degree assault. The Fourth Department modified by vacating the second-degree assault conviction and otherwise affirmed. Second-degree assault is an inclusory concurrent count of assault on a peace officer, warranting dismissal of the lesser included charge. The Legal Aid Bureau of Buffalo, Inc. (Axelle LeComte Mathewson, of counsel) represented Engles. (Supreme Ct, Erie Co)

People v Evans, 243 AD3d 1338 (4th Dept 11/21/2025)
IAC | SINGLE ERROR | FAILURE TO REQUEST ADVERSE INFERENCE CHARGE | MODIFIED & REMITTED

ILSAPP: Appellant appealed from a Monroe County Court judgment convicting him, upon his guilty plea, of attempted second-degree CPW. The Fourth Department modified and remitted for further proceedings on his suppression motion. Defense counsel's single error in failing to request an adverse inference charge at the suppression hearing constituted ineffective assistance of counsel. A request for the charge was warranted based on inconsistencies in police testimony about the traffic stop leading to discovery of the weapon and the failure to preserve video from surveillance cameras in the area. Suppression of the weapon would have been dispositive of the case, and counsel's error thus infected the plea bargaining process. The Fourth Department remitted for further legal argument on the suppression hearing and a reopened hearing upon the parties' request. The Monroe County Public Defender (Jonathan Garvin, of counsel) represented Evans. (Supreme Ct, Monroe Co)

Matter of Goddess H., 243 AD3d 1352 (4th Dept 11/21/2025)
ABUSE/NEGLECT - Exposing Child To Sexual Conduct

LASJRP: The Fourth Department upholds a finding of neglect where the father allowed the child to witness the father engaging in sex and sexual conduct in open areas of his home. (Family Ct, Erie Co)

People v Hills, 243 AD3d 1241 (4th Dept 11/21/2025)
LEGAL SUFFICIENCY | MDD DEFENSE | EXCESSIVE SENTENCE | AFFIRMED | DISSENT

ILSAPP: Appellant appealed from an Oneida County Court judgment convicting her, upon a jury verdict, of second-degree murder and fourth-degree CPW. The Fourth Department affirmed. While the record was replete with evidence, including expert testimony, that appellant was experiencing serious mental health issues at the time of the crime, it was not unreasonable for the jury to reject the affirmative defense of lack of criminal responsibility by reason of mental disease or

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defect. The sentence was not excessive. The dissent (Ogden, J.) would have reduced the sentence to 15 years-to-life in the interest of justice, finding that appellant's "mental health impacted her ability to fully understand her actions" and that her conduct prior to the offense "demonstrate[d] that she [was] capable of rehabilitation in the future." (County Ct, Oneida Co)

Matter of Makayla, 243 AD3d 1350 (4th Dept 11/21/2025)

The Fourth Department upholds the determination that the respondent's consent to the adoption of his child by the petitioner, the child's mother's spouse, is not required. Pursuant to Domestic Relations Law 111, the respondent failed for a period of six months to visit the child and communicate with the child or person having legal custody of the child, although able to do so. The court rejected the respondent's testimony that he was unable to contact the child more than once while incarcerated, considering evidence that he had the means to contact other people. Although the respondent testified that he could not contact the child following his release from prison due to the conditions of his parole, there was no indication that he was precluded from contacting the mother, which he failed to do. (Family Ct, Yates Co)

People v Jazmine D.S., 243 AD3d 1204
(4th Dept 11/21/2025)
RESTITUTION | DVSJA | MODIFIED & REMITTED | DISSENT

ILSAPP: Appellant appealed from a Monroe County Court judgment convicting her, upon a jury verdict, of second-degree murder. The Fourth Department affirmed the conviction and the denial of DVSJA sentencing but modified and remitted for a new determination on the issue of restitution. The record did not contain sufficient evidence to support the amount of restitution imposed, warranting remittal for a hearing. The Fourth Department deferred to County Court's finding that appellant testified incredibly regarding abuse by the decedent, including that he attacked her on the night of the offense. The Fourth Department found that no record evidence undermined that credibility determination and deferred to County Court's rejection of the testimony of a psychiatric expert "inasmuch as it was based on [appellant's] self-report." Given appellant's prior criminal history and the circumstances of the crime, a homicide involving "stabbing and slashing [decedent] 76 times, ["] the sentence was not unduly harsh. The dissent (Ogden, J.) agreed that appellant did not establish an entitlement to alternative sentencing under the DVSJA, despite the dissenter's contrary finding that appellant had been a victim of domestic violence (DV) throughout her childhood and adolescence, and that she was a DV victim at the time of offense. The dissent would have reduced the sentence to 15 years-to-life, citing appellant's DV history, mental health and cognitive struggles, acceptance of responsibility, and expressions of remorse. The Monroe County Public Defender (Jane Yoon, of counsel) represented Jazmine D.S. (County Ct, Monroe Co)

Matter of Kevin V. (Sara L.), 243 AD3d 1270
(4th Dept 11/21/2025)
TPR | SEVERE ABUSE | HEARING REQUIRED | REVERSED

ILSAPP: Parents appealed from a Wayne County Family Court order terminating their parental rights on the ground of severe abuse. The Fourth Department reversed. Family Court erred when it summarily terminated the parents' parental rights based solely on testimony at a prior Family Court Article 10 proceeding. Family Court made an improper retroactive finding that the earlier testimony supported a finding of severe abuse, when that issue was not before the court in the Article 10 proceeding. Further, its findings in that earlier proceeding were based on a preponderance of the evidence standard, not clear and convincing evidence, as required for a finding to support a TPR on that ground. Petitioner never moved for summary judgment or for a finding that reasonable efforts to reunite the family were no longer required under Family Court Act § 1039-b. Finally, Family Court erred in entering a dispositional order in the matter before holding a dispositional hearing. Veronica Reed and Thomas L. Pelych represented the parents. (Family Ct, Wayne Co)

People v Loveland, 243 AD3d 1290 (4th Dept 11/21/2025)
OOP | DURATION | FAILURE TO CREDIT JAIL TIME | INTEREST OF JUSTICE | MODIFIED & REMITTED

ILSAPP: Appellant appealed from a Livingston County Court judgment convicting him of second-degree assault. The Fourth Department modified by amending the order of protection and remitting to County Court to set its duration and otherwise affirmed. County Court erred by failing to consider any potential credit for jail time served when setting the order's expiration date. Although the issue was not preserved, the Fourth Department reached it in the interest of justice. Caitlin M. Connelly represented Loveland. (County Ct, Livingston Co)

Matter of Mariah W. (Amber N.), 243 AD3d 1349
(4th Dept 11/21/2025)
NEGLECT | CONFORMING PLEADINGS TO PROOF | REVERSED

ILSAPP: Parent appealed from an Erie County Family Court order finding that she neglected the subject child. The Fourth Department reversed and vacated the finding of neglect. The petition alleged that the parent knew or should have known the child was being abused by her stepfather. In its decision, Family Court opined that the mother did not know of the abuse, but it then made a finding of neglect because her reaction upon learning of the abuse nevertheless placed the child at risk of emotional harm. This alternative theory of neglect was never

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the subject of an amended petition. While Family Court Act § 1051(b) allows the court to conform the pleadings to the proof, the statute also requires the respondent to be given a reasonable opportunity to answer the new allegations, which did not occur here. Caitlin M. Connelly represented appellant parent Amber N. (Family Ct, Erie Co)

People v Mosley, 243 AD3d 1345 (4th Dept 11/21/2025)
30.30 | COC | INCORRECT STANDARD APPLIED | REVERSED & REMITTED

ILSAPP: Appellant appealed from a Monroe County Court judgment convicting him of third-degree CPCS and resisting arrest. The Fourth Department reversed and remitted. County Court erred when it denied the defense motion to dismiss under CPL § 30.30 on speedy trial grounds solely on the basis that the prosecution had acted in good faith with respect to their discovery obligations. The court was also required to determine whether the prosecution acted with due diligence and made reasonable efforts to comply with their discovery obligations at the time they filed their COC. The Fourth Department remitted for County Court to consider the additional required factors and reserved decision on the remainder of the appeal. The Monroe County Public Defender (Aaron Friedman, of counsel) represented Mosley. (County Ct, Monroe Co)

Matter of Osirus K., 243 AD3d 1334 (4th Dept 11/21/2025)

The Fourth Department upholds an order terminating parental rights on abandonment grounds, where the father failed to maintain contact with the child for the six-month period immediately preceding the filing of the proceeding. Efforts to contact the child were "minimal, sporadic [and] insubstantial," and the father failed to demonstrate circumstances that rendered contact with the child or agency infeasible. The fact that the father had a paternity petition pending at the time petitioner commenced this proceeding is insufficient to prevent a finding of abandonment, in the absence of evidence that the father was taking other affirmative steps to assert his paternity. (Family Ct, Erie Co)

People v Young, 243 AD3d 1303 (4th Dept 11/21/2025)
30.30 | CPL § 245.20 | PROPER STANDARD | LEGAL SUFFICIENCY | HELD IN ABEYANCE & REMITTED | DISSENT

ILSAPP: Appellant appealed from a Monroe County Court judgment convicting him of predatory sexual assault against a child, upon a jury verdict. The Fourth Department held the appeal in abeyance, reserved its decision, and remitted for further proceedings on the CPL § 30.30 motion. In determining appellant's motion to dismiss the indictment on statutory speedy trial grounds for failure to disclose "voluminous social media records," rendering any SOR illusory, the court conflated the standard applicable to requests for sanctions under CPL 245.80—which does involve a prejudice analysis—with the standard for evaluating the propriety of a certificate of compliance for purposes of determining whether the People's statement of readiness was valid." Because the court applied the wrong standard and did not consider whether the prosecution exercised due diligence, the matter was remitted for a determination on the motion. The dissent (Greenwood and Nowak, JJ.) would have reversed, concluding that the verdict was not supported by legally sufficient evidence. The child complainant's testimony regarding course of conduct—that the sexual abuse occurred on more than one occasion when complainant was living with appellant and ended a few days before police came to the house in mid-April 2020—was insufficient to establish that the alleged conduct happened "over a period of time not less than three months in duration." While the testimony did not need to identify "precise dates when the incidents occurred," the prosecution failed to establish any "markers" indicating when the conduct began, such as the season, the timing in the school year, the child's age, any holiday, or any particular location. Monroe County Public Defender, Banasiak Law Office, PLLC (Piotr Banasiak, of counsel) represented Young. (County Ct, Monroe Co)

People v Jacobs, 244 AD3d 1711 (4th Dept 12/23/2025)
ADOLESCENT OFFENDERS - Removal
PLEAS - Waiver Of Removal Claim

LASJRP: In this adolescent offender proceeding, the Fourth Department, in a 3-2 decision, first holds that defendant's contention that the court erred in denying removal, based on the court's conclusion that the People established that defendant "caused significant physical injury to a person other than a participant in the offense," was not forfeited by his guilty plea. The majority notes, inter alia, that an admission of factual guilt does not moot the issue and arguably renders the issue more important; and that forfeiture would contravene the legislative intent to provide guilty adolescent offenders the best chance of effective rehabilitation.

On the merits, the majority rules in defendant's favor. It was the co-defendant who possessed the firearm, drove the vehicle that was used to stop the victim's vehicle, and ultimately shot the victim. The People's reliance solely on accomplice liability principles was insufficient to meet their burden. The Legislature did not intend for the circumstances preventing removal to be coextensive with criminal liability, including principles of accessorial liability. Even assuming, arguendo, that the plain language of the statute could be considered ambiguous, the legislative history reflects the intent to disqualify from removal those adolescent offenders who directly caused the injury, who displayed the weapon in their own hand, and who personally engaged in the unlawful conduct. Moreover, although the prosecution's submissions

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established that defendant knew that his co-defendant was armed and that defendant participated in the carjacking by pounding on the exterior of the victim's car, the submissions did not support the conclusion that defendant's actions forged a link in the chain of events that actually brought about the victim's death.

The matter is remitted for further proceedings including, if appropriate, a motion to prevent removal.

The dissenting judges assert that the issue of removal is neither jurisdictional nor constitutional and does not implicate the integrity of the process, and that the Legislature has not specifically exempted it from the general rule regarding claims that do not survive a guilty plea. (County Ct, Monroe Co)

Matter of Morris v Smith, 244 AD3d 1741 (4th Dept 12/23/2025)

The Fourth Department reverses an order awarding custody to the father and remits for a best interests hearing, saying that the court below erred in finding that the grandmother failed to establish extraordinary circumstances and thus did not have standing to contest both parents' custody petitions. Although the grandmother did not establish extraordinary circumstances with respect to the father based on an extended disruption of custody, as most of the child's separation from the father occurred during his formal attempts to obtain custody, she demonstrated other extraordinary circumstances with respect to both parents. The now-six-year-old child has lived exclusively with the grandmother from the age of two years and the mother was incapable of caring for the child due to her mental illness. The father has never been significantly involved in the child's life. having had only limited and sporadic visitation with the child and never having had the child with him overnight. The child is emotionally attached to the grandmother as well as to the child's half-brother, who has also been raised by the grandmother.

According to undisputed facts proffered to the Fourth Department by the attorney for the child, the father's contact with the child was also "sporadic" during the first three months following entry of the custody order, which was stayed pending appeal; the father has not seen the child since April 2025. (Family Ct, Monroe Co)

People v Ogden, 244 AD3d 1774 (4th Dept 12/23/2025)
ADOLESCENT OFFENDERS - Removal
APPEAL - Waiver Of Right To Appeal

LASJRP: The Fourth Department, in a 3-2 decision, concludes that defendant's waiver of the right to appeal precludes review of defendant's contention that the court erred in declining to remove the case to Family Court under CPL § 722.23. A court need not expressly delineate for a defendant those appellate issues that are foreclosed by a waiver of the right to appeal, and those that survive, and this issue is not jurisdictional in nature (County Ct, Wayne Co)

People v Scott, 244 AD3d 1798 (4th Dept 12/23/2025)
MURDER - Acting In Concert

LASJRP: The Fourth Department reverses defendant's second-degree murder conviction, which is based on a theory of accessorial liability and arises from his alleged involvement in the fatal shooting of the victim by the co-defendant.

Given the video evidence showing defendant picking up the co-defendant immediately after the shots were fired and speeding away from the scene, the jury lawfully could have found that defendant intentionally aided the co-defendant after the murder, but the Court cannot conclude that there is legally sufficient evidence to support the inference that defendant shared the co-defendant's intent to kill the victim. There was no evidence at trial establishing that defendant and the co-defendant had any conversations pertaining to the shooting of the victim, and hardly any evidence establishing that defendant and the co-defendant had much, if any interaction with each other before the day of the murder. (County Ct, Monroe Co)

Wade v County of Monroe, 244 AD3d 1751 (4th Dept 12/23/2025)
PRISONERS RIGHTS - Duty To Protect Prisoners From Sexual Assault

LASJRP: Plaintiffs commenced these actions under the Adult Survivors Act (see CPLR 214-j) against defendants Monroe County and Monroe County Sheriff's Office alleging that plaintiffs were sexually assaulted by certain staff members while confined at the Monroe County Jail. The court denied defendants' motion to dismiss certain causes of action against defendant Monroe County.

The Fourth Department affirms, noting, inter alia, that plaintiffs allege that the County was negligent in failing to fulfill its responsibility to install, set up, and maintain its premises and facilities such that staff could not sexually abuse an inmate without being detected, recorded, and/or seen; that irrespective of whether plaintiffs can establish the County's liability for its own negligence independent of the acts or omissions of the Sheriff and their deputies, plaintiffs have adequately pleaded facts in support of the claim that the County failed to protect plaintiffs from a risk of sexual assault that was reasonably foreseeable to the County; and that there may be a civilian employee for whose conduct the County could be vicariously liable. (Supreme Ct, Monroe Co)

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