NEW YORK STATE DEFENDERS ASSOCIATION

Public Defense Backup Center

REPORT

Volume XXXX Number 3 September - December 2025

Defender News

Court of Appeals Reverses Termination of Parental Rights in Two Cases

In recent years, there has been little good news from the Court of Appeals (COA) relating to parental rights and family integrity, but that trend is slowly shifting. Parents caught up in the family court system are offered a glimmer of hope by two recent decisions on termination of parental rights (TPR).

First, in *Matter of K.Y.Z.* (summary p. 15), the scathing majority opinion called out the NYC Administration for Children's Services (Child Protective Services – CPS) for falling far short of its statutorily mandated obligation to make "diligent efforts" to reunify families when children have been removed from their home and placed in foster care. "In short, in this proceeding, rather than foster reunification, almost all of the child services agency's actions—and its failures to take action—ensured that the parent-child bond disintegrated. Thus, the child services agency failed to meet its burden as a matter of law, and we reverse."

As family defenders are well aware, parents around the state have their parental rights terminated regularly. This COA case will not stop that, but it does have the potential to reduce the number of TPRs if attorneys are diligent in advocating for what parents are entitled to from CPS. Sometimes that might involve motion practice, such as filing a contempt proceeding against the agency. The defense to any family court case, whether it stems from a TPR or a custody petition, starts from the first court appearance or in cases involving a CPS investigation, from the first contact CPS has with the family. In abuse and neglect cases, family defenders must familiarize themselves with Social Services Law 384-b as soon as possible. In *Matter of K.Y.Z.*, the COA specifically referenced SSL 384-b [1] [a] [ii] and [7] [a].

NYSDA, which noted *Matter of K.Y.Z.* in the October 29th News Picks and discussed it more fully in the December 2nd edition, hosted a December 9th webinar providing continuing legal education (CLE) credit titled From Language to Financial Barriers: Advocating for Meaningful Reunification Efforts Using the Matter of K.Y.Z. This (and many other recorded presentations) is available to attorney members on NYSDA's On-Demand CLE Training webpage.

In the second COA family case, *Matter of Parker J.* (summary p. 20), the Court determined that individuals in family court have the same entitlement to effective assistance of counsel as defendants in criminal court. This should be obvious, but it is the first time that the COA has addressed this issue. The specific factors that led the COA to reverse the TPR based on ineffective representation of counsel include failure of counsel to speak with the mother, despite being assigned two months earlier; not requesting an adjournment to do so; and neglecting to review any of the CPS records. The Court emphasized the importance of having competent counsel to ensure that family court is not treated as a "second-class court."

The Family Justice Law Center, along with the NYU Family Defense Clinic, led an amicus effort in support of the mother in *Matter of Parker J.* on behalf of organizations that represent parents and children in family court. The amicus brief made several compelling points, which the court considered, including that the mother's waiver of the right to counsel, right before trial was set to begin, was not a valid waiver (arguing that a "Valid Waiver of Counsel Requires an

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Offer of Effective Assistance of Counsel; a 'Hobson's Choice' Between Ineffective Counsel and No Counsel Cannot Support a Valid Waiver.")

Court of Appeals Addresses Pretrial Release, Discovery, DVSJA Sentence, and Interrogation

Other decisions from the Court of Appeals were noted in the News Picks of October 29th. They include

- *People ex rel Kon v Maginley-Liddie* (summary p. 16, requiring an individualized flight risk determination and explanation of the basis for that determination and the choice of securing order);
- *People v Fuentes* (summary p. 16, prosecution's certificate of compliance was valid despite absence of a police Internal Affairs Bureau report concerning misconduct allegations against the arresting officer in an unrelated incident; discussed more fully, including confusion as to the decision's relationship to the 2025 amendments of the discovery statute, in News Picks on December 2nd);
- *People v Hernandez* (summary p. 17, five-year term of post-release supervision properly imposed in Domestic Violence Survivors Justice Act sentence, discussed further in News Picks for December 24th as noted below); and
- *People v Robinson* (summary p. 18, defendant was in custody and therefore improperly interrogated).

Several significant criminal cases remained pending in the state's highest court as the *REPORT* went to press. See the list in the Center for Appellate Litigation's November edition of its Court of Appeals Newsletter. NYSDA thanks CAL for making this available!

Domestic Violence: A Tangle for Defenders

An allegation of domestic abuse will complicate almost any case. Both family and criminal defenders need to understand not just current law but also current psychological and social science information on this fraught subject. Current legal developments described below relate to clients who are survivors said to have committed a crime and those whose custody cases include allegations of domestic abuse by one of the parties. Defenders facing any situation where domestic abuse may be a factor are encouraged to contact the Backup Center for information.

DVSJA: Information Defenders Need to Know

Efforts are underway to develop further challenges to the imposition of post-release supervision as part of sentences under the Domestic Violence Survivors Justice Act (DVSJA) following the Court of Appeals decision in *Hernandez,* above, as pointed out in the December 24th edition of News Picks. Also noted was publication of an article for the ABA Criminal Justice magazine by several DVSJA Statewide Taskforce members entitled "The Mitigating Impact of Abuse." For guidance and assistance in representing clients to whom the DVSJA statute, Penal Law 60.12, might apply, attorneys can contact NYSDA's DVSJA Attorney Support Project at info@nysda.org or call 518-465-3524.

DV Allegations are Consequential, No Matter Who Makes the Allegations

Verbal Abuse by One Parent Against the Other is a Factor in Family Court Custody Cases. That was the title and theme of the item that appeared in the October 29th edition of News Picks. But that doesn't tell the whole story. Allegations of domestic violence are one of the most serious and consequential allegations that can be made in a Family Court Article 6 case. Pursuant to Domestic Relations Law 240, courts are statutorily required to consider domestic violence (DV) as a factor in a family court custody "best interests" analysis. "Where either party to an action concerning custody of or a right to visitation with a child alleges in a sworn petition ... that the other party has committed an act of domestic violence against the party making the allegation or a family or household member of either party ... and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making a direction pursuant to this section and state on the record how such findings, facts and circumstances factored into the direction ...." In a Kings County Family Court case, *Matter of K.E. v A.E.* (87 Misc 3d 1213[A] [9/25/2025]),

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the mother was awarded sole custody of the subject child based on the court's determination that the father engaged in a pattern of DV against her.

Allegations of DV can cut both ways; a parent who makes false allegations of DV against the other parent may end up losing custody. In *Matter of David K. v Iris K.* (276 AD2d 421 [2000]), the First Department upheld an award of custody to the father that was based on the mother making false allegations of abuse against the father. The court concluded that "risk of emotional trauma caused by change in custody was outweighed by risk that child would sustain emotional harm if she remained in [the mother's] custody." Another case, *Matter of Beyer v Tranelli-Ashe* (195 AD2d 972 [1993]), resulted in a change of custody after the court determined that the mother "repeatedly filed numerous reports against petitioner, accusing him of physically and sexually abusing the child. Those accusations were determined to be unfounded."

Another aspect of DV to consider is when the alleged violence did not take place in front of the child. In *Laura W. v John U.* (summary p. 37), there were allegations proven to be credible at trial that the father physically abused the mother. As a result, the trial court modified a prior order of joint custody, based on the parents' "'severely antagonistic and embattled history,'" and granted sole custody to the mother; it also issued a five-year order of protection in favor of the mother and child. The Second Department upheld the change of custody but vacated the order of protection on behalf of the child, concluding that, "any alleged actions committed by the [father] that amounted to a family offense did not occur in the child's presence or endanger the child."

Tempers are heated in family cases, and it is not uncommon for parties to "sling mud" at each other for a strategic advantage. Family defenders should remember that the right to have contact with one's child is a right, and not a privilege. Regardless of whether a parent is facing this deprivation because of an abuse or neglect case or in the context of an Article 6 case brought by the other parent or another custodian, defenders should be arguing that both the New York State and the United States Constitution guarantee a parent's right to the care and custody of, and meaningful contact with, their child. This is a right that cannot be interfered with absent a full and fair hearing and a showing of extraordinary circumstances and that restricted or no contact is in the best interests of the child. It is recommended that defenders read and cite to the following cases if necessary to maintain their clients' fundamental right to parent: *Santosky v Kramer* (455 US 745); *Matter of Bennett v Jeffreys* (40 NY2d 453); *Matter of S.L. v J.R.* (27 NY3d 558); and *Matter of Parker J.* (NY Slip Op 06533). There are also a number of appellate division cases that address the issue, including *Matter of Elizabeth C.* (156 AD3d 193) and *Matter of Kerry D.* (230 AD3d 492).

The fact pattern in *Laura W.* is complicated, but the review of the law regarding parents' rights to have contact with their children is well worth reading. Additionally, this right applies even if the parent seeking contact is incarcerated. (See January-March 2023 issue of the *REPORT*, pg. 6). Allegations of DV are serious, but not necessarily determinative of the outcome of a case. The question should be how and not if contact is going to be ordered. NYSDA offers many resources to support defenders in custody cases, such as training videos and sample motions, including a "motion to compel discovery." Those with questions may contact our Family Court Staff Attorney, Kim Bode, at kbode@nysda.org.

Raise the Age Issues Raised in Courts and in Politics

Throughout 2025, prosecutors and other politicians periodically targeted the Raise the Age reforms of 2017 while appellate courts considered specifics of the statute. A key legal issue has been the "extraordinary circumstances" exception to the presumption that "adolescent offender" cases, which begin in the Youth Part of criminal courts, should be transferred to Family Court. The Second Department's decision in *People v Lloyd F.* (summary p. 36) garnered a *New York Law Journal* writeup on August 12th that included quotes saying the decision provides the first appellate definition of "extraordinary circumstances."

Earlier, leave to appeal was granted by the dissenting judge in a Fourth Department Raise the Age case, *People v Guerrero* (235 AD3d 1276 [2/7/2025]), that had been mentioned in the Jan.-May issue of the *REPORT*. Both *Guerrero* and *Lloyd F.* were cited by the Third Department in *People v Aaron VV.* (summary p. 47), which found that County Court had erred in granting a prosecution motion to prevent removal. The *Aaron VV.* court pointed to, among other things, legislative history including a statement by then-Assembly Member Joseph Lentol stressing that retention of cases in criminal court would be extremely rare.

Note: Appellate attorneys arguing legislative history should be aware that obtaining amicus support for legislative history arguments has been curtailed by amendments to Rule 500.23 of the Court's Rules of Practice. See the Notice to the Bar, reported in the December 24th News Picks. The amended rule

allows amici addressing statutory language and "canons of statutory construction" to include "publicly available contemporaneous legislative history" but not "the views of individual lawmaker(s) outside of the publicly available contemporaneous legislative history to address legislative intent."

Raise the Age and the presumption that the cases of most children should be removed to family court reflect an understanding that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Graham v Florida*, 560 US 48 (2010). NYSDA joined a brief filed in *Guerrero* on behalf of many amici by Proskauer Rose LLP that highlight the differences between youth and adults and "the power of age-appropriate interventions to transform young people's lives and make communities safer."

The *New York Law Journal* article about *Lloyd F.* said that the ruling was "handed down as Gov. Kathy Hochul told reporters she's willing to review the reforms, as a means of targeting serious offenders," a gubernatorial statement covered by the *New York Post*. An August 18th post on *NYStateOfPolitics.com* headlined "N.Y. district attorneys set sights on Raise the Age tweaks next year" said it was not clear whether prosecutors pushing for changes will have Hochul's support.

NYSDA continues to provide information about the unique needs of young clients, including not only the teens covered by Raise the Age but also young adults. Alan Rosenthal, whose manual on representing adolescents is noted below, presented a webinar on November 21st. One attorney who attended that training said later that they used information from the program materials to "walk[] the court and DA's office through" the process, achieving a transfer to Family Court on consent.

And see our webpage on defending youth.

On the legislative scene, protecting Raise the Age will be among priorities for the 2026 legislative session. One development in that effort can be found in the December 2nd media release of the Raise the Age Coalition unveiling the Coalition to Protect Raise the Age: Build Futures, Invest in Youth. The statewide alliance of 221 organizations is "committed to preserving New York's landmark Raise the Age law, combating misinformation, and promoting investments in youth that deliver true community safety across New York State." NYSDA is a member.

As a reminder, a client's youth does not affect a defender's duty to determine whether the client was born in the U.S. and, if they were not, to contact a Regional Immigration Assistance Center about potential immigration consequences. At NYSDA's CLE event last April, Protecting the Rights of Non-Citizens in Family Court, presenters included information reminding lawyers that young non-citizen clients can be confronted with immigration consequences.

Appellate Divisions Issue a Few Favorable Decisions for Parents

Family defenders will find good news in some of the decisions summarized in this issue.

Agency Failure Leads to TPR Reversal

The COA is not the only court issuing favorable decisions for family integrity. In *Matter of Syiah C.M.* (summary p. 33), the Second Department reversed a TPR based on permanent neglect. The decision reads in part, "the petitioner failed to meet its initial burden of establishing by clear and convincing evidence that it exercised diligent efforts to strengthen the parental relationship between the mother and the child. The evidence … failed to establish that the petitioner assisted the single, working mother with obtaining childcare services … or built a rapport with her in order to engage in cooperative dialogue." [Citation omitted.]

Neglect Based on Mental Illness Reversed

In *Matter of S.M.W.* (summary p. 26), the First Department reversed a neglect against a father based on mental illness. "Although the father did not dispute that he suffered from depression, he … engaged in mental health treatment … and petitioner did not provide either documentary evidence or expert testimony demonstrating that the father's mental illness interfered with his 'judgment and parenting abilities' or connecting the father's depression with his inadequate efforts to ensure the children attended school, 'thereby placing the children at imminent risk of physical, mental or emotional impairment.'"

Two Courts Find No Neglect Based on Corporal Punishment

The question of what type of corporal punishment rises to the level of neglect is a question that many parents, attorneys, and finders of fact struggle with. Appellate courts declined to make a finding of neglect in two separate cases. First, in *Matter of Ziyoda* (summary p. 35), the Second Department upheld the dismissal of a neglect based on corporal punishment. The specific allegations were not in the decision, but the court found that the child's out-of-court statements were not corroborated by non-hearsay evidence, resulting in the county not meeting its burden of proving its case by the necessary preponderance of the evidence.

In *Matter of I.G.* (summary p. 30), the First Department declined to conclude that the 14-year-old child was a victim of neglect based on an open-handed slap in the face from the parent. "The record indicates that the child did not report that the slapping caused him pain, nor were there any marks or bruising on his face or body. A parent has a common-law privilege to use reasonable physical force to discipline a child." These cases are very fact-specific but offer a window into some

of the arguments that a family defender may be able to successfully make in a neglect case.

Appellate Division Addresses the Standard for Grandparent Visitation

In *Matter of Alisa H. v Ayanna B.* (summary p. 31), the First Department upheld the dismissal of a visitation petition brought by the grandmother. The family court "properly balanced the possible benefits to the children of visitation with the grandmother against the circumstances of the children's family and concluded that court-ordered visitation with the grandmother was not in the children's best interests."

This case reminds us that the standard for grandparent visitation is two-pronged. First, standing must be pleaded in the petition and established pursuant to Domestic Relations Law 72(1). "Where either or both of the parents of a minor child, residing within this state, is or are deceased, or where circumstances show that conditions exist which equity would see fit to intervene...." Only once standing is established can the court move on to the second prong, which is to determine if visitation is in the best interests of the child(ren). As a practice note, ideally, the standing issue will be decided in a separate hearing to determine if the best interests hearing is even necessary. If the petition does not make out a prima facie case for extraordinary circumstances, defenders should consider making a motion to dismiss at the first court appearance or as soon as possible.

Please keep in mind that the standard for visitation is separate and apart from the standard for non-parent custody (not just grandparents). Custody is governed by Domestic Relations Law 72(2), as well as case law. The seminal COA case on parent versus non-parent custody is *Matter of Bennett v Jeffreys* (40 NY2d 543, 549 [1976]), but there have been recent appellate division cases that have addressed this matter as well. In the October 29th edition of News Picks, we highlighted *Matter of Bell v Bell* (2025 NY Slip Op 05078). There, the Second Department reversed a family court dismissal of a grandparent's visitation for lack of standing based on the erroneous "extraordinary circumstances" standards.

The decision in *Matter of Dawn A. P.-T. v Sherwyn W.* (2025 NY Slip Op 06063) dismissed an aunt's petition for lack of standing. In this case, the court used the correct standard of extraordinary circumstances but incorrectly dismissed the case for failure to allege a prima facie case in the petition. The appellate division stated that the allegations in the petition, "if true, might support a finding that extraordinary circumstances exist" thus requiring the court to hold a hearing on standing, that would then be followed by a hearing to determine the best interests of the child. Those with questions are encouraged to email NYSDA's Family Court Staff Attorney at kbode@nysda.org.

ILS Issues Investigation Standards

Following approval by the Indigent Legal Services Board on September 19th, the NYS Indigent Legal Services Office (ILS) issued The Standards for the Investigation Function of Interdisciplinary Defense Teams. These standards emphasize the need for defense-specific investigative training. Commentary says that "[w]hile a defense investigator's responsibilities can overlap with law enforcement experience, the investigator's obligation is to serve the client," and sets out a long, non-exhaustive list of what defense-specific training should include:

> case proceedings; elements of a charge; defense theories and objectives; ethical obligations, including confidentiality and proper self-identification; chain of custody; subpoenas; fact-finding interviews; discovery review, management, and preservation; rules of evidence and criminal procedure; police procedures; child protective services procedures; interacting with law enforcement, child protective services, the prosecution or agency attorney; and interviewing techniques and methodologies.

The standards are set out in segments. These are A. Design and Duties of Defense Investigation Teams; B. Special Ethical Considerations; C. Training; and D. Investigator Responsibilities.

The ILS Board said in approving them that such standards of practice "do not reflect what is the current standard of practice; rather, they reflect what should be the standard of practice." As the Board went on to say, "[t]his is particularly true for public defense, which has historically been under-resourced, resulting in a significant gap between 'what is' and 'what should be.'"

The October 29th edition of News Picks pointing out the new standards emphasized that NYSDA encourages defenders to use public defense standards to improve the quality of representation clients receive. See NYSDA's Public Defense Standards webpage, which includes NYSDA's Client-Centered Representation Standards (with a versión española).

News and Information from NYSDA's DFS Unit

NYSDA's Discovery and Forensic Support Unit (DFS Unit) provided training and information on a variety of topics in the last months of 2025. CLE events included: Deciphering Data from the Lab: Introduction to Reports in DNA & Toxicology (webinar) and Fall Forensics Conference: Evidence Unlocked (2-day in person).

In addition to the new resources from the DFS Unit noted on page 21, a blog article on oral fluid testing for THC and other substances authored by Unit Staff Attorney Ashley Hart is available as noted in the September 30th News Picks; her membership on the National College of DUI Defense (NCDD) Forensic Science Task Force led to the item, posted on the NCDD website. Other News Picks items conveyed information about forensic evidence, discovery, and related subjects,

including several in the September 4th edition:

- Forensic Science Commission's Practice Advisory Letter to Lab Directors: Brady and Giglio Obligations and Discovery Laws Extend to Labs
- Scope of Manufacturer Error in DNA Kit is Unknown
- NYC Mayor Adams' Secret Surveillance Network
- Body-worn Camera Compliance Issues in Suffolk County Police Department.

Whole-Genome Sequencing OK'd by Long Island Court for Use in Murder Trial

Developments in the testing of DNA samples for use as evidence in court continue to pose challenges for defense lawyers. In September, a Suffolk County judge ruled that the prosecution may introduce DNA evidence obtained through "'use of whole genome sequencing, to extract DNA from rootless hairs to generate SNP [single nucleotide polymorphism] data and create a DNA profile,'" as reported on *BabylonBeacon.com*. The ruling, said an article on *Nature.com* on September 25th, "paves the way for … whole-genome sequencing—used to decipher ancient DNA in fossilized remains, for example—to be admitted as evidence in US criminal trials." The decision is *People v Heuermann* (2025 NY Slip Op 25203 [9/3/2025]). An introductory explanation of whole-genome sequencing (WGS) and how it differs from currently standard DNA testing was published by A&E on November 20th.

While new in forensic use here, WGS itself is not new. In 2012, a Presidential Commission for the Study of Bioethical Issues issued a report, Privacy and Progress in Whole Genome Sequencing, which recognized various issues raised by what had become a "readily available technique for determining the complete sequence of an individual's deoxyribonucleic acid (DNA)—that person's unique genetic blueprint." Saying that "[c]urrent sequencing technologies and those in development are diverse and evolving, and standardization is a substantial challenge," the report stated that "[o]ngoing efforts are critical to achieving standards for ensuring the reliability of whole genome sequencing results…."

In *Heuermann*, the court looked at some of those efforts in order "to determine whether Astrea Forensics[']s use of whole genome sequencing, to extract DNA from rootless hairs in order to generate SNP data and create a DNA profile therefrom, as well as the use of IBDGem—their probabilistic genotyping software program used to compare the DNA profile generated by them with the DNA profile of a known suspect—is generally accepted in the relevant scientific community." The lengthy decision includes summaries of expert testimony such as a prosecution expert's statement that "[w]hole genome sequencing has been used for decades, and has been used in forensic science for the past 5 to 7 years," and description of terms such as SNP and STR (short tandem repeat) necessary to understanding the issue and ruling. Among the prosecution witnesses was Dr. Richard Green, founder of Astrea Forensics, which "is in the process of being accredited by ANAB (the National Accreditation Board)."

The court concluded that the method "is generally accepted as reliable within the scientific community based not only on the expert testimony of Dr. Harris, Dr. Novroski, and Dr. Green, but also on the numerous peer-reviewed articles submitted by the People into evidence regarding whole genome sequencing and the use of SNP data to create a DNA profile, and also based on its use in other jurisdictions including Idaho and California (see Vaughn, 43 NY3d 190; Wakefield, 38 NY3d 367; Williams, 35 NY3d 24)." The court held similarly as to "use of IBDGem—their probabilistic genotyping software program used to compare the DNA profile generated by them with the DNA profile of a known suspect …."

The *Heuermann* court's critique of one of the defense experts' testimony illustrates the importance of finding qualified experts; the difficulties in doing so are not addressed. While the initial defense challenge to the DNA evidence has been decided, defense counsel has pursued another avenue to challenge it. Astrea Forensics is a private lab performing DNA analysis in this New York State case. The defense team has argued that their analysis was "unlawful and must be deemed presumptively unreliable" (Syracuse.com article, Sept. 3, 2025) because the company is not approved or accredited by the New York State Department of Health. That motion is pending before the court.

Defenders facing DNA evidence can contact the DFS Unit for assistance. Email forensics@nysda.org.

AI Policy for New York Courts Announced as AI Use and Concerns Grow

Chief Administrative Judge Joseph Zayas released an "Interim Policy on the Use of Artificial Intelligence" for the New York Unified Court System in early October. As described in News Picks for October 29th, the document includes a brief explanation of how generative AI works, some problems associated with the technology—including "inaccurate, wholly fabricated, or biased outputs"—and an appendix outlining approved AI tools "procured and managed" by OCA, as well as one approved public tool (OpenAI's free version of ChatGPT).

The interim policy is another in a growing set of judicial and legal guidelines. Others include the Federal Judicial Center's Introduction to Artificial Intelligence for Judges and New Jersey's Preliminary Guidelines on the Use of Artificial Intelligence by New Jersey Lawyers. Both are noted, along with other information, in NYSDA's Artificial Intelligence Starter Guide, mentioned on page 21.

The New York Association of Counties (NYSAC) released Navigating AI in County Operations: Policy, Practice, and

Possibilities in September. Given New York State's county-by-county public defense system, many defender offices may have to deal with county policies in making decisions about use of some AI programs. Back in April, the State Comptroller released an audit looking at "the state's overall AI policy and how AI was used at four state agencies: the Office for the Aging …, the Department of Corrections and Community Supervision (DOCCS), the Department of Motor Vehicles (DMV), and the Department of Transportation …." It found that "centralized guidance and oversight of agencies' use of Artificial Intelligence (AI) is inadequate and creates a risk that the technology could be used irresponsibly …."

The union for a district attorney's staff has objected to the use of AI for inputting records. According to a *New York Law Journal* article on October 9th, CSEA Nassau County Local 830 "filed an improper practice charge against a county official for instituting an AI records inputting program that it says took roles and opportunities for overtime pay from members." The union objected to use of a technology company "to input records from police, the Department of Motor Vehicles, and criminal histories, along with discovery compliance and court dispositions, into an office system …." A cease-and-desist order is being sought from the Public Employment Relations Board, the article said. Meanwhile, a prosecutor's office in California "'recently used artificial intelligence in preparing a filing, which resulted in an inaccurate citation,'" the District Attorney said in a statement to the *Sacramento Bee* as reported by *The Guardian*. This might be "the first instance of a prosecutors' office using generative AI in a court filing in the United States"; errors or "hallucinations" may have occurred more than once, though the office denied that there had been multiple uses of (and errors by) AI.

Defenders Nationwide Face Cyber Security Problems

The *Insurance Journal* published, on October 29th, 'Catastrophic' Hack Underscores Public Defender Security Gaps, recounting "[r]ecent cyberattacks on public defenders' offices in multiple Western US states" that highlight the "technological vulnerabilities of an often overlooked but critical part of the US judicial system." Such attacks on "cash-strapped organizations" who are unlikely to pay a "ransom" but are "sitting on troves of data" creates pressure by showing "just how indiscriminate and damaging these attacks have become," one strategist said. A New Mexico breach led to about 1.5 terabytes of data being dumped online, "including death certificates, driver's license suspension notices, and the names of inmates held in a county detention center …."

NYSDA works to address the need for public defenders to try to shield records from cyberattacks. For example, the 2023 Annual Conference CLE schedule included a session on Cybersecurity in Client Centered Representation. This last September, a session on Cyber-Ethics for Defense Counsel in Modern Practice was included in the Criminal and Family Defense Update presented in Cattaraugus County.

Invalid Appointment of Special District Attorney Results in Dismissal of Indictment

"County Court's authority to appoint a special district attorney to act in place of the disqualified, duly elected district attorney is derived solely from County Law § 701," which requires the appointed attorney to "have an office in or reside in the relevant county or an adjoining county," the Court of Appeals noted in *People v Callara* (summary p. 15). Despite the defendant's failure to challenge prior to appeal the appointment of an attorney who did not meet the residency requirements, the indictment secured by the special prosecutor had to be dismissed; the appointing court lacked authority to appoint someone who did not meet the residency requirement. A separation of powers concern exists where the judiciary appoints a special prosecutor to replace a district attorney, who is an elected constitutional officer. Such concern does not exist when a governor makes an appointment under County Law 63(2) or when a district attorney appoints as special assistant district attorneys the Attorney General and some Assistant Attorneys General.

Amicus District Attorneys Association of the State of New York argued that it is hard, in rural areas, to find qualified attorneys who meet the current statutory requirements and are willing to serve as special district attorneys. That is a matter for the Legislature, the decision states.

Veterans Day: Highlighting Veterans, Their Defenders, and VDP

On Veterans Day, November 11th, NYSDA and its Veterans Defense Program (VDP) posted on social media a statement honoring "all who served," including those on staff and in the public defense community. The message also thanked those in the public defense community who provide strong advocacy to veteran clients.

Find information about VDP's work with and for veterans and those who represent them on the VDP webpage, including the 2024 Annual Report. As the report states, VDP "provides training, support and legal assistance to promote trauma-informed effective representation of veterans and service members in New York State's criminal and family court systems." A new VDP Staff Attorney, Sarah Lee, joined the staff in October, see p. 63.

The VDP Annual Report also includes a note that "VDP's mitigations have a proven track record of reducing punitive outcomes for the veterans, increasing the likelihood of acceptance into Veteran Treatment Courts … [VTCs]." Where VTCs exist, they can provide veterans with an alternative path.

The official opening of a VTC in Ulster County was reported by the *Daily Freeman* in November.

Nationwide, Veterans Are Disproportionately Represented on Death Row

Veteran clients face many problems in New York, but at least there is no death penalty here. Nationally, as the Death Penalty Information Center (DPI) reported just before Veterans Day, "approximately 200 military veterans await execution on death rows across the U.S., and one in seven executions since 1972 has been a military veteran." DPI's research is said to reveal the "many failures that have led to an overrepresentation of military veterans on death rows and the troubling mischaracterization of many veterans as the "worst of the worst." DPI points to research from the Council on Criminal Justice, which "confirms that service-connected conditions substantially increase the likelihood of criminal justice involvement among military veterans."

Conditions in DOCCS Make News, and It Is Not Good

"Restrained, Beaten, Asphyxiated: New York Prison Guards' Brutality Grows," read the headline of a *New York Times* article on November 24th. The story resulted from analysis of "thousands of disciplinary, medical and use of force records, hundreds of lawsuits," and dozens of interviews with incarcerated people and their relatives. The conclusion: "state prison guards have been credibly accused of engaging in [violent] behavior — putting [incarcerated people] in restraints and then assaulting them — far more often than was previously known." The incidents were of course already known to those who were attacked, their families, and many who have protested prison conditions for years.

A month before, jurors in Oneida County convicted one former state correction officer of murdering Robert Brooks, incarcerated at Marcy Correctional Facility. "[T]wo other guards were acquitted of contributing to his death," as reported by *Gothamist.com* on October 20th. Six officers had already entered guilty pleas in the matter.

The news item noted that a leader of the End Prison Violence (EPV) campaign said the split verdict should spur the Governor to sign a prison oversight bill passed in June. Days before the verdict in the correction officers' trial, a post on *Gothamist* had quoted justice advocates saying that Governor Hochul was "trying to water down legislation that would bolster oversight of New York's corrections system...." A November 19th article on *NYStateOfPolitics.com* said that "[l]egislative staff and the governor's office are in deep negotiations" over the so-called omnibus bill .... The article also noted that bills to reduce incarceration were not included in the reform package. A December 4th article in the *Times Union* described a letter to the Governor, signed by 150 organizations including NYSDA that said "individuals and organizations across the state demand further action in response to the crises unfolding in local jails and state prisons under your administration." See News Picks for December 24th.

On December 3rd, an article entitled "In New York prisons, lack of medical care led to preventable deaths" described a number of situations in which incarcerated people died after being denied medical care for treatable conditions. Among the topics discussed was limitations on reports from the State Commission of Corrections (SCOC); it noted that reforms of the SCOC are included in the prison omnibus bill that the Governor has yet to sign. Asked about it, she told a reporter "she was taking the time needed to read 'every word of the bills that have been passed, over 850 this year.'" An *NYSFocus.com* article on the anniversary of Robert Brooks' death said that the prison bills had been forwarded to the Governor, who had 10 days to act; the *REPORT* went to press before any action was taken.

Meanwhile, other reform bills have yet to pass the legislature. They include the Earned Time Act and Second Look Act, meant to end the warehousing of people—too often Black and brown people—and create fair pathways home for those who have transformed while inside. NYSDA maintains its support of many bills that would reform our state's sentencing and parole laws.

On October 24th, *The City* published information that the results of "a comprehensive review of the state's troubled prison system," which the law firm of WilmerHale has been hired to conduct, will not be ready until at least the end of this year. That report was initially expected by the end of the summer.

The verdicts in the recent trial and the culture that led to Brooks' killing remain entwined topics. Among the charges that did not yield guilty verdicts were gang assault counts. A *RochesterFirst.com* article on the day the jury began deliberations pointed out that "Prosecutor Bill Fitzpatrick ... [alleged] the officers acted as part of a violent 'gang' that showed no care for Brooks' life." But the language of the gang assault statutes does not define "gang." The laws require only the elements of acting with intent to cause (physical or serious physical) injury "when aided by two or more other persons actually present," and causing such injury.

The *Times Union* also noted, on October 6th, that the indictment included reference to a DOCCS directive requiring "employees to intervene and 'prevent the use of unreasonable force' by other workers." A defense attorney "argued that the use-of-force protocol 'can be the basis for discipline (and) it can be the basis for civil liability; (but) it cannot be the basis for criminal charges,'" the news coverage said. Legislation that would require police officers to "'intervene and report when such officer witnesses the unauthorized use of force by another police officer'" has been introduced since 2019 but not passed,

the article noted. Future versions could add peace officers, which would include correction officers, the report said. A *Times Union* editorial on October 24th called for "a lucid definition of the duty to intervene" to be added to New York law.

Conditions Decried

Other fallout from the ongoing crisis in DOCCS includes continued restrictions of programming vital to the well-being of people in prisons. An October 14th opinion piece posted by The Vera Institute of Justice outlines the harms flowing from ongoing limits on family visits. An October 30th article on *NYSfocus.com* said that "dire conditions represent a new normal" for many incarcerated people since the illegal strike by DOCCS correction officers eight months earlier. "While some facilities are running normally, others remain in states of effective lockdown," the article said.

The November 7th death of a civilian staff member, Imam Abdallah Hadian, inside Marcy Correctional Facility from a gunshot wound in what was deemed a suicide, raised many concerns. The unions representing correction officers and civilian staff focused on "the emotional toll our profession exacts on everyone who walks through those gates" (statement of the NYS Public Employees Federation; see also the NYSCOPBA statement quoted on *www.Corrections1.com*.) Authorities asserted after the death that "[t]here is no risk to the public or to incarcerated individuals," as noted on a *www.newyorkupstate.com* post the same day. However, that a firearm was brought into the prison certainly raises questions about the safety of incarcerated people as well as staff inside. A media release from the Parole Preparation Project (PPP) said that "a loaded firearm carried into a maximum-security prison by staff was an alarming and entirely preventable failure." State Senator Julia Salazar "questioned why security staff allowed a civilian to enter with a firearm," angering NYSCOPBA, according to a post on www.WKTV.com. PPP's release highlighted the admitted refusal of staff to submit to body scans while people seeking to visit someone incarcerated are subjected to intrusive searches. See also a post entitled "If DOCCS Can't Secure Marcy, They Can't Secure the State" on From Inside to Impact (on LinkedIn).

Proposals Says Judges Should See Prisons

A proposal has been made to strengthen the little-known rule that judges must visit certain types of facilities (jails, prisons, etc.), with the type depending on the courts they preside in. See Part 17 of the Rules of the Chief Judge, Section 17.1. The proposed rule would require visits annually rather than every four years and sets out in some detail the key elements of a visit. Those include a tour of specified, major areas of the facility and a meeting with incarcerated people. Issued on September 29th, the proposal called for public comments; if adopted, the new rule would become effective in 2027. The proposal was discussed in an article in *The City* on November 4th and one on *Law.com* on November 11th.

National Report Uses In-Custody Deaths to Examine Medicolegal Death Investigation System

Questions about deaths inside prisons extend beyond fatalities resulting from staff engaging in violence. The National Academies of Sciences Engineering and Medicine (NASEM) issued a report in October examining the medicolegal death investigation (MLDI) system across the country by focusing on in-custody deaths.

As highlighted in the December 2nd News Picks, the report's contents include what could be points for litigation. More broadly, the report sets out the need for standards, best practices, and oversight, creation of which is difficult in view of the lack of uniformity of MLDI county and state systems. The findings and recommendations "build on those" in Chapter 9 of the landmark National Academies report in 2009, *Strengthening Forensic Science in the United States: A Path Forward*. While focused on needed federal efforts, the report's summary says that "[s]tate and local governments have an essential role to play in advancing and ensuring the quality of forensic pathology practices in their jurisdictions."

An article entitled "Wade In: Words Can Trouble the Waters" on Substack about the NASEM report says it presents "a grim truth: people are dying in police and correctional custody at rates the government still cannot fully count." While pointing out that many white people die when incarcerated, the article says the NASEM report places Black deaths "within a continuum of state violence that stretches from plantation patrols to present-day jail cells." The article quotes a co-author of the NASEM report, Dr. Roger A. Mitchell, Jr., who called for "ordinary citizens" to act by contacting their elected representatives about needed changes, including inclusion of a checkbox on standard death certificates for "'death in custody.'"

Updated Report on NYPD's "Gang" Database Issued

The New York City Department of Investigation's Office of the Inspector General for the New York Police Department (OIG-NYPD) issued a follow-up report on the NYPD's Criminal Group Database (Gang Database) in October. The report was criticized for emphasizing "technical procedural changes" rather than addressing core issues—the harms that the database causes. Such criticisms can be found in the statement issued by the G.A.N.G.S. Coalition on October 16th. "[T]he database still overwhelmingly targets Black and Latino New Yorkers between 18 and 34 years old," the statement said, adding that "[y]oung people of color are therefore subjected to disproportionate

police surveillance resulting in an increased risk of criminal legal system involvement." Specific complaints included that "[t]he report revealed that the NYPD failed to notify any parents of minors added to the database, despite policies requiring notice within 60 days, continues to allow officers partial access to sealed arrest information, and has not established the required multilevel review process to verify entries or renewals."

The database has been explained by the Legal Defense Fund (LDF), a member of the Coalition. The OIG-NYPD issued its initial report in 2023. A coalition demand for an audit of the database had been made in 2020. Media coverage of a City Council hearing on the database in 2018 said that when the Chief of Detectives "read off the percentage of people of color on the NYPD's controversial - and until now - largely secretive gang database," gasps were heard; the number was 99%.

Registries of Several Types Exist

The "gang database" noted above is but one type of registry. As NYSDA noted in the July 1, 2024, News Picks, listing people in registries creates rather than solving problems. Mentioned there were existing lists such as the registry under the Sex Offender Registration Act and the Statewide Central Register of Child Abuse and Maltreatment and a local registry of people convicted of a drug sale crime, created by Rensselaer County.

Another type of registry, one relating to animal abuse, seems to be growing in use. The Saratoga County Board recently established an online registry of those convicted of animal abuse and neglect crimes, as reported on *CBS6Albany.com*. Suffolk County strengthened its registry's impact in May, establishing a Class A misdemeanor for people on the registry found to be owning pets, as *FoxNews.com* posted in early May. Other localities with registries include Onondaga County (Sheriff's Office), Nassau County, Fulton County, and Albany County.

Clients facing charges that could place them on a registry if convicted should be advised of such potential consequences. See, e.g. Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest, Office of Indigent Legal Services, Standard 8, and NYSDA's Client-Centered Representation Standards, Standards 16 and 17.

Immigration Developments Impact Public Defense, Client Communities, and Everyone

On November 17th, a federal judge dismissed the Administration's lawsuit that challenged New York's state law and two gubernatorial executive orders limiting civil arrests near local courts and state facilities. This is meant to prevent Immigration and Customs Enforcement (ICE) detention of people who are not U.S. citizens when they attend state legal proceedings. As noted on *CourthouseNews.com* on November 19th, the District Court ruling pointed to the legislative history of the Protect Our Courts Act (POCA), which "contains ample evidence of the serious impairments experienced by the state's judicial system from disruptive civil courthouse arrests that" POCA was designed to remedy. Among the possible effects of the decision is to ease defenders' concerns about advising noncitizen clients about court appearances; the April edition of the Western New York Regional Immigration Center (WNY RIAC) newsletter noted that telling a client to "not appear in court, or to otherwise avoid or leave a location when ICE may be there to detain them," could lead to federal criminal charges under the harboring provisions of federal law.

A number of immigration issues were covered in the September 4th, September 30th, October 29th, December 2nd, and December 24th editions of News Picks, including several topics discussed in WNY RIAC newsletters. Many of those articles, such as an update on grounds for removal due to sex offense convictions, highlighted the need for defenders to be in touch with their local RIAC about the case of any client who may not be a U.S. citizen. The item in the December issue calls attention to the dangers of having a noncitizen client participate in a treatment court.

The November WNY RIAC newsletter described a Board of Immigration Appeals decision, *Matter of Alessandro Cotrufo*, 29 I & N Dec. 264, which allowed consideration by an immigration court of an criminal presentence report "for purposes of release and when making discretionary decisions." This is of course just one example of how a presentence report may affect clients' lives.

New Immigration Enforcement Identification Apps Raise Concerns

The beginning of a November 4th *ArsTechnica.com* post reads: "US Customs and Border Protection (CBP) launched a face-scanning app for local law enforcement agencies that assist the federal government with immigration-enforcement operations. The Mobile Identify app was released on the Google Play store on October 30." A November 4th post on *BiometricUpdate.com* focused on a related facial recognition app, Mobile Fortify, being used by ICE.

Mobile Fortify has been criticized or questioned by a number of U.S. Senators, the ACLU, and others. According to a *FederalNewsNetwork.com* item, the lawmakers have said "ICE should answer questions about whether it's using the app to surveil protestors, and whether the agency is integrating commercial data into the technology." An outraged ACLU commentary on November 13th said this about Mobile Fortify. "The app, which was only made public through leaked emails and documents obtained by *404Media*, allows agents to point a phone at anyone in public, compare their faces against a variety of government databases containing 200 million images, and get instant access to their name, date of birth, and a potentially

deep well of intimate data contained within those databases." Problems with facial recognition generally, the claim that individuals cannot refuse to be scanned (see, for example the *404Media.co* post on November 10th, sign-in required), and the ever-widening technological surveillance net that these apps expand and reflect (see a November 8th broadcast on *NPR.org*) have been noted.

An opinion piece posted on November 16th by *Yahoo.news* said that "[i]n constitutional terms, DHS [Department of Homeland Security] and ICE have created what the founders decried as a 'general warrant': a roving license for agents to search anyone, anywhere, at any time." Fourth Amendment protections have eroded under the "reasonable expectation of privacy" test, the opinion says, a test that "tracks social norms," allowing the government to "expand surveillance and then point to that new normal to claim that the public's 'expectations of privacy' have 'diminished.'" Ultimately, the piece concluded, mass surveillance has become "its own constitutional permission slip."

ICE Use of Local Jails

Increased use of county jails as detention centers for people in the custody of Immigration and Customs Enforcement (ICE) is one way the national upsurge in ICE arrests and deportations has affected local institutions. The September 30th News Picks pointed to problems for noncitizen clients in overwhelmed jails, including lack of access to interpreters/translators and lack of access to rulebooks in the noncitizen's language. A month later, News Picks highlighted problems with communications between those detained and attorneys.

An October 15th podcast about people detained in the Orange County Jail included descriptions of problems with access to attorneys. It pointed out that many people arrested by ICE in New York City are brought to Orange County; the relative proximity makes it possible for some to receive family visits, but poor conditions as to food and temperature control during cold or hot weather create hardships. In addition to Orange County, jails in Allegany, Broome, Clinton, Montgomery, Nassau, and Niagara counties are providing holding facilities for ICE.

Back in July, Prison Policy Initiative posted an article about local jails' role nationally in ICE detention as well as in ICE arrests. An appendix set out the percentages of federal detentions taking place in local jails in each state. The data for ICE detentions in New York indicated that, as of April 2025, 24% were in local jails and 76% in federal facilities (New York has no private prisons, which are used by ICE in many other states). An article in the *Times Union* on November 15th delved into some New York State history relevant to the current use of county jails. Headlined "ICE detentions in county jails have surged. The roots stretch to New York's North Country," the article described some unearthed Port Henry jail ledgers that "include records of Chinese migrants detained during the early 1900s." The article said that use of jails for detaining immigrants "began along the northern border, where migrants have long crossed into the U.S.from Canada, and where local jails laid the foundation for the creation of the federal immigration detention infrastructure in use today."

Appellate Modification of Sentence Has Potential Immigration Consequences

In *People v Bezabeh* (summary p. 42), the Second Department modified consecutive sentences of 364 days each to concurrent sentences and otherwise affirmed. The decision noted that "[a]lthough the defendant has completed the imposed sentences, the question of whether the imposition of consecutive sentences was illegal is not academic, because the sentences imposed have potential immigration consequences …."

The maximum definite sentence for a Class A misdemeanor "was amended, effective April 12, 2019, to specify that the sentence shall not exceed '364 days' instead of 'one year.' L.2019, c. 55, Part OO, § 1." NY Penal Law 70.15 (McKinney) Practice Commentaries.

Resources Regarding Prosecutors' Ethics

That prosecutors face unique ethical challenges is reflected in the existence of a specific section of the Rules of Professional Conduct on the Special Responsibilities of Prosecutors and Other Government Lawyers (Rule 3.8). Furthermore, the District Attorneys Association of the State of New York (DAASNY) produces a publication, "The Right Thing": Ethical Guidelines for Prosecutors, listed in new resources (page 21). It was updated this year. As noted in the August 15th edition of News Picks, some changes in the guidelines related to prosecutorial duties regarding discovery in light of legislative changes. Another topic receiving attention was New York's Commission on Prosecutorial Conduct. NYSDA, on September 23rd, conducted a webinar about utilizing that Commission.

On October 17th, The *Christian Science Monitor* editorialized about "Reviving the integrity of prosecutors." While it began by noting that certain federal indictments have raised questions about "the possibility of prosecutorial misconduct, such as for vindictiveness," it quickly pivoted to prosecution at the state level where, it said, "much of the problem lies." That claim rested on the fact that "[i]n about a third of cases in which someone is exonerated, the reason is prosecutorial misconduct, yet only 4% of prosecutors who participated in a wrongful conviction have been disciplined, according to the National Registry of Exonerations." The editorial noted "The Right Thing," as well as New York's Commission and one in Georgia, but lamented that those two bodies are "not seen as bipartisan enough" and "are largely investigative or regulatory" rather than aimed at "assisting prosecutors in acting better …." The Editor of the State Bar Association NY *Criminal Justice Section Reporter* noted, in an article in the issue published in December, "the growing institutional recognition of the importance of ethical protections by members of the prosecution and defense bars…." He addressed the question of whether ethics questions were appropriate during job interviews.

Proactive efforts to address and improve prosecution culture include those of the Institute for Innovation in Prosecution (IIP) at John Jay College. Its Advisory Board includes not just prosecutors from across the country, including New York City, but others. Law professors include retired judge and former defender Nancy Gertner of Harvard and Angela J. Davis at American University Washington College of Law and former head of the Public Defender Service for the District of Columbia. The Deputy Executive Director of The Bronx Defenders, Wesley Caines, is also on the Advisory Board.

Another resource on prosecutorial misconduct, available in the Prison Legal News bookstore, is The Habeas Citebook: Prosecutorial Misconduct by Alissa Hull.

Seeking to guide prosecutors across in the world in navigating one difficult area, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Association of Prosecutors (IAP) launched Guidelines for Prosecutors on Digital Evidence Collection on August 18, 2025. The announcement said the guidelines "provide practical tools for prosecutors to navigate digital evidence while protecting privacy and freedom of expression—two rights increasingly challenged in the digital era."

Disabilities News Relevant to Defenders

Disabilities can affect every aspect of public defense. The term "disability" can encompass many human conditions. The federal Centers for Disease Control and Prevention (CDC) has defined a disability as "any condition of the body or mind (impairment) that makes it more difficult for the person with the condition to do certain activities (activity limitation) and interact with the world around them (participation restrictions)." The description of who qualifies for protection under the federal Americans with Disabilities Act (ADA) can be found on an ADA webpage.

Some disabilities may affect whether and how a client can comply with conditions of probation, parole, or family court orders. Changing terminology and evolving understanding about a given disability may affect not only use of language regarding disabilities in legal documents and conversations but also perceptions of whether and how a given disability affects some aspect of a case. A few developments in the latter part of 2025 and in cases summarized in this issue regarding certain disabilities are described below.

New Phrase, "Person Experiencing an Emotional Crisis," to be Used

On September 26, 2025, Governor Hochul signed a bill requiring state agencies, public authorities, and municipalities to use the term "person experiencing an emotional crisis" rather than "emotionally disturbed person." L 2025, ch 414. It becomes effective one year from that date. As noted in the October 29th News Picks, the now-replaced phrase often appears in media stories about law enforcement being summoned to a scene. As for legal documents and evidence, "emotionally disturbed person" has been used in, among other places, audit trails of video recordings to describe the category of police encounter involved, as in *People v Ballard* (82 Misc.3d 403 [2023]). The phase may indicate someone with a mental disability, but has also been used in in a situation where the described individual was drunk, as in *People v Perez* (2025 NY Slip Op 0328 [2025]). Whatever the situation, and whatever changes in attitude the new terminology may bring about or reflect, defenders will have to know the meaning and implications of both the old and new phrases when researching law, talking to clients, etc.

Discussions about Autism

Defenders may also encounter a variety of phrases regarding a client's (or other person's) diagnosis of autism. Whatever term is used, defenders need to understand the condition and how it may affect a case. One discussion published on *Science News Today* on September 10, 2025, is entitled "Autism Spectrum Disorder: Causes, Symptoms, Diagnosis, Treatment." An earlier podcast, "Neurodiversity on Trial: ASD & The Justice System," can be found on Justice Speaks from The Greenburger Center for Justice. That discussion includes reference to the book Autism, Sexuality, and the Law: What every parent and professional needs to know, which is also referenced in materials from a presentation at NYSDA's 2022 Annual Conference and in an article on The Marshall Project's website.

Use of the word "disorder" in an autism diagnosis is not without controversy. See the June-October 2022 issue of the *REPORT* discussing concerns that "disorder" is "'unnecessarily medicalised and reinforces negative discourses that autism is wrong or needs curing.'"

Disabilities May Impact Compliance with Legal Requirements

As noted above (p. 4), a client's mental health condition may be raised in family court cases as to a parent's judgment and parenting abilities. When a client's participation in mental health treatment is relevant, inability to find treatment due to the current shortage of treatment providers may become a legal issue. And that shortage may hit public defense clients particularly hard. A State Comptroller's August 2025 report on shortages of health care, including mental health care, in rural New York noted that "Sullivan County's mental health practitioner ratio (8.1) [per 10,000 people] is higher than the rural counties average (6.9), but for the Medicaid eligible population of the county, the shortage, based on the Mental Health Professional Shortage Area score (19), is among the worst in the state."

Clients with a variety of disabilities may struggle to meet certain requirements in family matters and in conditions of supervised release. Conditions involving housing or employment, for example, may pose difficulties.

"For people who use mobility devices, finding housing with even basic accessibility features (e.g. an entrance with no

(continued on page 62)

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.

Noem v Perdomo, No. 25-A169 (9/8/2025)
4TH AMENDMENT | REASONABLE SUSPICION | ICE ROVING PATROLS | STAY GRANTED | CONCURRENCE | DISSENT

ILSAPP[1]: After a Ninth Circuit denial, the federal government asked the Supreme Court (SCOTUS) to grant an interim stay of a temporary restraining order granted by the U.S. District Court for the Central District of California, pending appeal of the injunction. SCOTUS granted the interim stay in a 4-3 ruling, without a written opinion or any indication of whether it was based on standing, the merits, and/or the equities. The District Court's order had enjoined Immigration and Customs Enforcement (ICE) officers from carrying out investigative stops as part of the Trump administration's roving ICE patrols in the greater Los Angeles area when the stops were based on one or more of the following factors: "(i) presence in a particular location, such as bus stops, car washes, day laborer pickup sites, agricultural sites, and the like, (ii) the type of work one does; (iii) speaking Spanish or speaking English with an accent; and (iv) apparent race or ethnicity." Justice Kavanaugh concurred, opining that the plaintiffs—five Latinx individuals with U.S. citizenship or legal status, and four immigrant advocacy organizations—(1) lacked standing due to the low likelihood that they would personally be stopped again in the future based on these factors, and (2) were unlikely to succeed on the merits, since, according to Justice Kavanaugh, the four factors identified, "taken together[,] can constitute at least reasonable suspicion of illegal presence in the United States." Justice Kavanaugh also determined that the government's interest in enforcing immigration laws outweighs what he characterized as the "interests of individuals who are illegally in the country…in evading the law," despite all individual […] plaintiffs having legal status or citizenship. Kavanaugh stated—in stark contrast to the evidence presented to the District Court—that ICE stops of people legally present entail only brief questioning before they are allowed to go free. The dissent (Sotomayor, J., joined by Justices Kagan and Jackson), excoriated both the silence of the majority and the reasoning of the concurrence, citing ample SCOTUS precedent to conclude that "stops based on [the] four [identified] factors alone, even when taken together, [cannot] satisfy the Fourth Amendment's requirement of reasonable suspicion." The dissent highlighted numerous cases where reasonable suspicion was found lacking when a stop was based on facts that "describe[] a very large category of presumably innocent people," such as a "demographic profile" and merely "appeal to probability." Notably, "nearly 47% of the…population [of the area in question] identifies as Hispanic or Latino." In the dissenters' view, the concurrence improperly shifted the burden to citizens and legal residents to "carry documentation to prove that they deserve to walk freely," asserting that "[t]he Constitution does not permit the creation of such a second-class citizenship status." The dissent concluded: "After today," the protections of the Fourth Amendment against the right to be free from arbitrary government interference may "no longer be true for those who happen to look a certain way, speak a certain way, and appear to work a certain type of legitimate job that pays very little"; therefore, the ruling was "unconscionably irreconcilable with our Nation's constitutional guarantees." Next, the District Court will hold a hearing on the plaintiffs' motions for a preliminary injunction and class certification.

Crawford v Mississippi, No. 25A378 (10/15/2025)
APPEAL - Retroactivity Of Ruling
RIGHT TO COUNSEL

LASJRP[2]**:** Dissenting from the Supreme Court's denial of defendant's application for a stay of his death sentence and petition for a writ of certiorari, Justice Sotomayor, joined by Justice Kagan and Justice Jackson, asserts that had this case been on direct appeal, defendant, whose lawyers overrode his decision not to concede guilt and pursued an insanity defense, could have proved that his Sixth Amendment rights were violated under McCoy v Louisiana (584 U.S. 414). This case raises an important threshold issue that the Court has not

[1]Summaries marked with these initials, ILSAPP, are courtesy of the New York State Office of Indigent Legal Services, from the ILS appellate listserv.
[2]Summaries marked with these initials, LASJRP, are courtesy of The Legal Aid Society's Juvenile Rights Practice, from their weekly newsletter.

US Supreme Court *continued*

squarely resolved: does McCoy apply on collateral review because it merely applied existing law, or did it announce a nonretroactive "new" rule of constitutional law.

Clark v Sweeney, No. 25–52 (11/24/2025)

The Fourth Circuit "departed dramatically from the principle of party presentation" when it reversed the state conviction and ordered a new trial; that decision is reversed. At trial, a juror had gone to the scene of the shooting at issue, and in deliberations told the jury about that visit. The action was reported to the court and, after the parties conferred, it was agreed that the scene-visiting juror would be dismissed and the remaining jurors would proceed. After conviction and appeal, the defendant sought post-conviction relief, citing inter alia trial counsel's failure to seek "to voir dire the entire jury to ensure that no other juror was tainted by" the visit. Federal habeas relief was denied by the District Court, but the Court of Appeals ordered a new trial "not on the ineffective-assistance claim" as brought but on "a 'combination of extraordinary failures from juror to judge to attorney' that deprived Sweeney of his right to be confronted with the witnesses against him and his right to trial by an impartial jury." This violated the principle of "party presentation," which requires courts to be neutral arbiters of matters presented by the parties. The Fourt Circuit decision is reversed.

Pitts v Mississippi, No. 24–1159 (11/24/2025)
RIGHT OF CONFRONTATION - Testimonial Screen

LASJRP: At trial in this child sexual abuse prosecution, the State moved for permission to place a screen between the four-year-old child and defendant when the child took the witness stand. The State pointed to a Mississippi statute providing that child witnesses "shall have the … righ[t]" to "a properly constructed screen that would permit the judge and jury in the courtroom … to see the child but would obscure the child's view of the defendant." Defendant argued that the statute's mandatory terms had to give way to the Sixth Amendment's demands, and that the State had not met its burden of showing that screening was necessary in the particular circumstances of his case. The trial judge granted the State's motion, reasoning that the "statute … appears to be mandatory," and expressing "concerns about [his] ability to declare the statute unconstitutional and fail to follow it."

The United States Supreme Court reverses, concluding that the statute cannot control and that the Sixth Amendment tolerates screening in child abuse cases only if a court hears evidence and issues a case-specific finding of the requisite necessity. In response to the Mississippi Supreme Court's efforts to distinguish this Court's prior holdings, the Court notes, inter alia, that the Sixth Amendment right to confront one's accusers face to face does not apply only in cases where identity is at issue; and that it does not matter that in this case, everyone remained in the courtroom.

On remand the State remains free to argue, and the Mississippi Supreme Court remains free to consider, whether the error warrants a new trial under the harmless error standard.

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 Tapia, 2025 NY Slip Op 04940 (9/11/2025)
SUPPRESSION | PROBABLE CAUSE | INDICIA OF A DRUG TRANSACTION | MIXED QUESTION | AFFIRMED

ILSAPP: Appellant appealed from a First Department order affirming his convictions for third-degree CSCS and third-degree CPCS. The Court of Appeals affirmed. There was record support for the Appellate Division's determination that appellant's arrest was supported by probable cause, rendering the mixed question of law and fact beyond further review by the Court. Citing *People v Joseph*, 27 NY3d 1009 (2016), the Court rejected appellant's argument that "the absence of a 'telltale sign' of a drug transaction" was "fatal to a finding of probable cause" where there was testimony regarding '"indicia of a drug transaction'" from an officer experienced with narcotics investigations. Here, an officer with relevant training was stationed in an area known for drug-related activity, where he previously had made several drug arrests. The officer observed appellant make several furtive movements and twice observed appellant exchange an unidentified object with the same woman whose clenched fist and rapid departure indicated her desire to conceal the object.

People v Paulino, 2025 NY Slip Op 05012 (9/18/2025)
EXCESSIVE SENTENCE | STANDARD OF APPELLATE REVIEW | AFFIRMED

ILSAPP: Appellant appealed from a First Department order affirming a Bronx County Supreme Court judgment convicting him of second-degree murder and sentencing him to 8 years' incarceration and 5 years' PRS. The Court of Appeals affirmed. The First Department majority applied the correct legal standard to appellant's claim, finding that while it "'unquestionably' has the authority to reduce a sentence in the interest of justice 'even in the absence of a sentencing court's abuse of discretion or extraordinary circumstances,' exercising that authority was unwarranted because [appellant's] sentence 'is neither unduly harsh nor excessive.'"

People ex rel. Peter A. Barta v Molina, 2025 NY Slip Op 05736 (10/16/2025)
MOOTNESS | HABEAS | BAIL | 30.30 RELEASE | ELECTRONIC MONITORING | AFFIRMED

ILSAPP: Appellant appealed from a Second Department order dismissing a habeas petition challenging the imposition of

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electronic monitoring following a release application pursuant to CPL § 30.30(2)(a). The Court of Appeals affirmed. The Appellate Division did not abuse its discretion by dismissing the petition as moot to the extent that the petition sought immediate release, since appellant had been released, and the other relief sought (including release from electronic monitoring) was also moot, since appellant had been re-incarcerated at the time the case was heard. The Court declined to apply the mootness exception.

People v Callara, 2025 NY Slip Op 05739 (10/16/2025)
PROSECUTION APPEAL | APPOINTMENT OF SPECIAL PROSECUTOR | JURISDICTIONAL ERROR | AFFIRMED

ILSAPP: The prosecution appealed from a Fourth Department order affirming the dismissal of an Orleans County indictment where the charges were presented by a special prosecutor who did not satisfy County Law §701(1)(a)'s residency requirement. The Court of Appeals affirmed, finding that the court overstepped its authority in appointing the special prosecutor. The statute requires appointment of a lawyer to act as special district attorney who has an office in or resides in the county, or any adjoining county. It was undisputed that the special district attorney here did not satisfy these requirements. Although the defense received correspondence revealing that the special prosecutor's office was located in Erie County—which does not adjoin Orleans County—the defense did not challenge the appointment. Rather the issue was raised for the first time on appeal. Because of separation of powers concerns, an important purpose is served in adhering to the plain language of the statute and its "exceptional function of displacing an elected constitutional officer." To allow the court to violate the statute so long as the defense does not object would change the character of the statutory limitation that the legislature imposed on this "extraordinary" and "exceptional superseder authority." The Court distinguished its prior precedent finding the residency requirements not to be jurisdictional, as those cases involved the appointment of assistant district attorneys by the duly elected district attorney. Here, the special district attorney was appointed by the court after the elected district attorney was disqualified. While recognizing the difficulty created for rural counties by the statute's residency requirements, the remedy for such difficulties was legislative amendment, not disregard of the plain statutory text by the courts. Chad A. Davenport represented Callara.

People v Everson, 2025 NY Slip Op 05738 (10/16/2025)
SEVERANCE

LASJRP: The Court of Appeals concludes that the trial court did not abuse its discretion in denying defendant's request to sever his trial from that of his co-defendant, noting that defendant raised the specter of a potential irreconcilable conflict between the defenses prior to trial, but apart from comments made in summation, the defenses were remarkably consistent in their primary focus on discrediting the eyewitness.

The discord emerging between the defendants in summation did not rise to the level of an irreconcilable conflict, and the trial court instructed the jury that the attorneys' arguments should not be considered as evidence when they judged the facts. The Court need not address whether an argument raised in summation could ever create undue prejudice requiring severance.

People v Morgan, 2025 NY Slip Op 05740 (10/16/2025)
BATSON | RECORD SUPPORT FOR NO PRETEXT | IMPLICIT CREDIBILITY DETERMINATION | AFFIRMED

ILSAPP: Appellant appealed from a Third Department order affirming his conviction for first-degree manslaughter. The Court of Appeals affirmed. The record supported the trial judge's determination that the prosecutor's race-neutral reasons for exercising the peremptory challenges—that one prospective juror had not lived long in the community and the other harbored animus towards government officials due to negative experiences in the school district where she was employed—were not pretextual. The case came to the Court of Appeals on a leave grant from Justice Powers, who dissented in the Third Department joined by Justice McShan (*People v Morgan*, 230 AD3d 864 [3d Dept 2024]). The dissent below had determined that County Court "failed to conduct the required third step of the Batson inquiry" because the trial judge never made an explicit credibility determination regarding the prosecutor's proffered race-neutral reasons. The Third Department majority, by contrast, had held that it was enough that County Court had "implicitly concluded that the prosecutor's explanation was not pretextual" and the record supported this determination.

Matter of K.Y.Z., 2025 NY Slip Op 05781 (10/21/2025)
TPR | NO DILIGENT EFFORTS | REVERSED

ILSAPP: Father appealed from a New York County Family Court order finding that he permanently neglected the child and terminating his parental rights. The Court of Appeals, in a 4-3 vote, reversed and dismissed the petition. The foster care agency failed to prove through clear and convincing evidence that it made diligent efforts toward reunifying the family, a threshold requirement in a TPR alleging permanent neglect. Specifically, the agency failed to attend to the family's language needs by not providing interpretation services to the father, who primarily spoke Fuzhou, a Chinese dialect; as well as placing the young child in foster homes that did not speak the father's languages. The agency also failed to provide a service plan to the father that addressed the issues it claimed warranted continued family separation, including therapy to ensure he gained insight into the mother's mental health

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diagnosis. Finally, the agency provided little aid to the father to address his demanding out-of-state work schedule, though it likewise identified these demands as a barrier to family reunification. Because the agency failed to meet its burden to show it made diligent efforts to encourage and strengthen the parental relationship, the TPR was reversed and petition dismissed. Center for Family Representation (Emily S. Wall, of counsel) represented appellant father W.Z.

People ex rel. Kon v Maginley-Liddie, 2025 NY Slip Op 05785 (10/21/2025)
BAIL | INDIVIDUALIZED DETERMINATION | CONCURRENCE | REVERSED & REMANDED

ILSAPP: Appellant appealed from a Second Department order dismissing his habeas petition after he was remanded without bail in Supreme Court following the reversal of his criminal conviction. (The prosecution was granted leave to appeal to the Court of Appeals the order reversing the judgment, and that appeal remains pending.) The Court of Appeals reversed and remanded to the Second Department for issuance of a new securing order which complies with CPL § 510.10. The Supreme Court abused its discretion where its bail decision did not make an individualized flight-risk determination and explain the basis for its determination and choice of securing order. The Court could not discern the rationale for the bail decision due to the "cursory" statement made by the bail-setting court that it "considered" the statutory factors without stating which factors were relied upon, or which were rejected. The Court also could not discern whether the bail-setting court properly determined whether the accused was a flight risk. Judge Rivera concurred in the result but characterized the bail-setting court's actions as an error of law under CPLR § 7010(a) rather than an abuse of discretion under CPLR § 7010(b). The bail-setting court withheld its reasoning for its determination of flight and choice of securing order, and this explanation is a prerequisite to the exercise of discretion under CPL § 510.10. Appellate Advocates (Hannah Kon, of counsel) represented Guerra.

Matter of New York Civil Liberties Union v New York State Office of Court Administration, 2025 NY Slip Op 05784 (10/21/2025)
FREEDOM OF INFORMATION LAW

LASJRP: Addressing a New York Civil Liberties Union FOIL request for documents issued by the Office of Court Administration discussing the First Department's ruling in Crawford v Ally (197 A.D.3d 27) that due process requires an evidentiary hearing prior to issuance of certain temporary orders of protection, the Court of Appeals holds that OCA is not entitled to a blanket exemption, based on the attorney-client privilege.

OCA has not demonstrated an attorney-client relationship between Counsel's Office and all Unified Court System judges, and, without having identified or produced any documents for in camera review, OCA cannot assert a blanket privilege over the entire universe of potentially responsive documents. The case is remitted for an assessment of whether the documents fall within the asserted exemption, with in camera review as necessary.

Matter of Wagner v New York City Department of Education, 2025 NY Slip Op 05783 (10/21/2025)
FREEDOM OF INFORMATION LAW

LASJRP: To trigger a government agency's obligation to produce records under the Freedom of Information Law, the person seeking the records must submit to the agency a written request in which the records sought are "reasonably described." An agency, having received such a request for records maintained electronically, must retrieve the records if it has the ability to do so "with reasonable effort."

The Court of Appeals concludes that respondent New York City Department of Education, in denying petitioner's request, erroneously conflated those two requirements. The requirement that requested records be reasonably described exists to ensure that the agency has the ability to locate the records sought[.] Whether a requestor has reasonably described an electronic record does not turn on the degree of effort necessary to retrieve it, and the inability of an agency to retrieve a document with reasonable effort does not implicate whether the description in the request was sufficient to allow the agency to locate it.

People v Fuentes, 2025 NY Slip Op 05872 (10/23/2025)
DISCOVERY - Impeachment Material/Police Misconduct

LASJRP: The Court of Appeals concludes that even assuming that CPL § 245.20(1) requires disclosure of police misconduct allegations not arising from the facts underlying the instant prosecution, the People disclosed that information before filing their timely Certificates of Compliance.

The People alerted defendant to the misconduct allegations - which the Court assumes, without deciding, were relevant to the officer's credibility - by disclosing a docket number, complaint, amended complaint, and docket report, and notice of the federal lawsuit. Not disclosing the police Internal Affairs Bureau report before filing COCs did not render those COCs invalid. The misconduct allegations set forth in the IAB report were drawn exclusively from the federal complaint and related materials, and the plaintiffs were not interviewed as part of the IAB investigation. The IAB report laid out the officer's account of a purportedly lawful search and credited that account.

Defendant argues, and the dissent agrees, that the IAB report should have been turned over because it provides

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coadditional details about the incident with the plaintiffs beyond those in the amended complaint. But CPL § 245.20(1)(k)(iv) does not require production of a document just because it provides additional information not in other impeachment material. The question instead is whether the document "tends to impeach the credibility of a testifying prosecution witness." Here, the IAB report does not. Nothing in the report states that the plaintiffs ever identified the officer's involvement or indicates that she engaged in any of the conduct alleged in the amended complaint. The report describes the amended complaint as "alleging false arrest, unlawful search and seizure and abuse of power" and asserting that "police searched [John's] home without consent and ordered his wife to open their gun safe, but the People disclosed the source and full content of those allegations before filing timely COCs. Thus, the IAB report itself has no impeachment value.

People v Hernandez, 2025 NY Slip Op 05874 (10/23/2025)
DVSJA | LEGAL SENTENCE | PRS FOR A-1 FELONY RESENTENCING | VALID APPEAL WAIVER | AFFIRMED

ILSAPP: Appellant appealed from a First Department order affirming the legality of a 5-year PRS term under the Domestic Violence Survivors Justice Act (DVSJA) following her guilty plea to second-degree murder and declining to review her excessive sentence claim based on a finding that she had validly waived her right to appeal. The Court of Appeals affirmed. The sentence was not illegal because the sentencing court had statutory authority to impose 5 years' PRS on a conviction of a class A felony under the DVSJA. Penal Law § 60.12(1)—which lists the reduced sentences available under the DVSJA— does not preclude the imposition of PRS for class A felonies simply because the statute is silent on PRS for that class of convictions. Nor does the phrase "notwithstanding any other provision of law" in the prefatory clause of PL § 60.12 evince legislative intent for PL § 60.12 to preempt PL § 70.45, which requires that PRS be imposed for any determinate sentence. The Court rejected the defense argument that "Penal Law §§ 60.12 and 70.45 [] reflect a legislative intent to 'frontload' punishment through lengthier terms of incarceration and shorter terms of PRS for [people] sentenced under the DVSJA to the most severe crimes." The contention that PRS undermines successful reentry for criminalized survivors is a policy argument to be considered by the Legislature. The Court further found the appeal waiver to be valid. While the sentencing judge did not list all the rights outside the scope of a valid waiver, it was sufficient that the court indicated that "certain issues would survive the waiver, and counsel confirmed that they had reviewed those issues" with appellant. The written waiver also expressly stated that it encompassed an excessive sentence claim on appeal.

IntegrateNYC, Inc. v State of New York, 2025 NY Slip Op 05870 (10/23/2025)
EDUCATION LAW - Discrimination

LASJRP: Plaintiffs allege that the New York City public education system, through its admissions and screening policies, curriculum content, and lack of diversity among the teacher workforce, discriminates against and disproportionately affects Black and Latino students, leading to unequal educational opportunities and negative outcomes for those students. Plaintiffs also allege that these practices and policies deprive Black and Latino students of a sound basic education in contravention of the Education Article of the State Constitution, denies them equal protection of the laws, and denies them access to educational facilities in violation of the New York State Human Rights Law. Plaintiffs seek, inter alia, a declaratory judgment and an injunction requiring defendants to eliminate the "admissions screens currently in use" in all New York City public schools and prohibiting "future such screens to the extent that they operate in a racially discriminatory manner."

The Supreme Court dismissed the complaint, holding that it lacked jurisdiction to grant the requested relief because doing so would involve the court in matters of education policy better suited for the legislature. The Appellate Division modified, holding that the issues raised in the complaint are justiciable and that the complaint states viable causes of action under the Education Article, the Equal Protection Clause, and the New York State Human Rights Law. The Appellate Division granted defendants leave to appeal, certifying the question of whether its order was properly made.

The Court of Appeals answers that question in the negative, holding that plaintiffs' conclusory factual allegations do not provide the support necessary to survive a motion to dismiss under CPLR 3211(a)(7).

Dissenting, Judge Rivera asserts that plaintiffs should be allowed to proceed on their claim that "defendants' policies and practices deny these students access on the basis of race, ethnicity, and economic status to the facilities and training necessary to compete on a level playing field with their White peers for academic and employment opportunities," and that "the public education system does not prepare students of color to participate fully in contemporary society, as it denies them the opportunity to learn how to engage critically within their communities on political and social issues."

People v Licius, 2025 NY Slip Op 05873 (10/23/2025)
SPEEDY TRIAL - Statement Of Readiness/Filing Deadline

LASJRP: The Court of Appeals rejects defendant's contention that the misdemeanor charges against him must be dismissed because the People electronically filed their statement of readiness via the Electronic Document Delivery System on the due date at 5:03 p.m. instead of by 5:00 p.m.

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Electronic submission of a statement of readiness on or before the due date, regardless of time of day, satisfies the CPL § 30.30 deadline. General Construction Law § 19 specifies that "a calendar day includes the time from midnight to midnight."

Although defendant asserts that the clerk's office did not review and accept the SOR until the next morning, and relies on 22 NYCRR § 202.5-c(c)(3), which states that documents sent through EDDS "shall not be deemed filed until the clerk of such court or his or her designee shall have reviewed the documents and determined … that all other filing requirements have been satisfied," CPL § 30.30 regulates only the People's SOR submission, not the clerk's review of the SOR submission.

People v Robinson, 2025 NY Slip Op 05871 (10/23/25)
***MIRANDA* | CUSTODIAL INTERROGATION | HARMLESS ERROR | AFFIRMED**

ILSAPP: Appellant appealed from a First Department order affirming his conviction for third-degree robbery. The Court of Appeals affirmed. Appellant's statement to police should have been suppressed because he was improperly subjected to custodial interrogation. Police intervened when they observed appellant and another man fighting. After separating the men, police handcuffed appellant, and without administering *Miranda* warnings, questioned him about the fight, prompting appellant to admit that he punched the other man. Appellant was in custody for *Miranda* purposes because he was handcuffed while surrounded by numerous officers, restricting his freedom of movement, and given no reason to believe he would shortly be released. Further, appellant was subjected to interrogation because police asked him investigatory questions they should have known were likely to yield an incriminating response. The error was harmless, however, because the evidence at trial overwhelmingly established appellant's guilt and there is no reasonable possibility that the admission of the statement affected the outcome.

People v Wright, 2025 NY Slip Op 05869 (10/23/2025)
INDEPENDENT SOURCE | SENTENCING | PREDICATE ADJUDICATION IMPROPER | MODIFIED

ILSAPP: Appellant appealed from a First Department order affirming his New York County Supreme Court judgment convicting him of first-degree assault. The Court of Appeals modified and remitted the matter for resentencing. Appellant challenged the admission of in-court identification testimony by a witness who had seen appellant at the police precinct being escorted to the lineup room in handcuffs. The witness then failed to pick appellant out of the line-up, but the trial court ruled she had an independent source for her in-court identification. "[A]ssuming without deciding that the court erred in concluding there was an independent source to support the in-court identification," the Court of Appeals deemed the error harmless beyond a reasonable doubt because the evidence of guilt was "overwhelming." Several witnesses testified about the encounter, the events were captured on videotape, DNA on a zipper recovered from the scene matched appellant's, and cell sight evidence placed him in the vicinity of the crime, and at the home of witnesses who testified he had made inculpatory statements. Concerning appellant's sentencing challenge, the Court of Appeals ruled that the sentencing court erred in not following the proper procedure for determining appellant's second felony offender status, when it disregarded his personal protests that he was not a predicate felon after his attorney conceded the issue. CPL §400.15 requires a sentencing court to ask an individual awaiting sentence personally, if "they wish to controvert any allegations in the prosecution's [predicate felony] statement." It is the individual awaiting sentence who has knowledge of the facts regarding their convictions and prior terms of incarceration essential to challenging the predicate felony allegations. The Court did not consider appellant's *Erlinger* challenge, that he was constitutionally entitled to have a jury determine the tolling calculation, as appellant could raise that claim upon remittal. Center for Appellate Litigation (Matthew Bova, of counsel) represented appellant.

People v Berry, 2025 NY Slip Op 06358 (11/20/25)
SEARCH AND SEIZURE - Probable Cause/ Basis Of Knowledge

LASJRP: The Court of Appeals concludes that as a matter of law the evidence provided in support of the search warrant failed to satisfy the basis of knowledge requirement of the Aguilar-Spinelli test where the general allegation that the informant was "aware that narcotics are kept inside the location" provides no indication that the information was based upon personal observation, and the informant's statement that at some unidentified point in time the informant had conducted a narcotics transaction at that address did not describe defendant's activities with sufficient particularity to warrant an inference of personal knowledge.

People v Sargeant, 2025 NY Slip Op 06361 (11/20/25)
11-PERSON JURY TRIAL | FORFEITURE BY ENGAGING IN MISCONDUCT | AFFIRMED

ILSAPP: Appellant appealed from a Second Department order affirming his Queens County Supreme Court conviction of second-degree CPW and two counts of criminal possession of forgery devices, following an 11-person jury trial. The Court of Appeals affirmed. Addressing an issue of first impression, the Court of Appeals held that forfeiture through one's own misconduct applies to the constitutional right to trial by a jury of 12, and that appellant's own misconduct was "egregious" enough to forfeit this right. "Clear and convincing evidence"

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established appellant's "egregious conduct" of tampering with a juror. The "totality of the facts and circumstances" included a "deliberate" and "persistent course of conduct" comprised of feigning illness to obtain an adjournment, using public records to locate the jury foreperson's home address, and confronting that juror outside their home. Forfeiture "has been applied to many constitutional rights in the criminal procedure context," and permitting forfeiture in this context helps to promote "the integrity of the justice system and bar[] defendants from benefiting from their own misconduct." The Court emphasized that "[w]hat matters is the egregiousness of the conduct, not its frequency." Finding no abuse of discretion, the Court noted that "it is important that there were no alternate jurors available."

People v Johnson, 2025 NY Slip Op 06528 (11/24/25)
POSSESSION OF A WEAPON - Second Amendment
APPEAL - Waiver Of Right To Appeal

LASJRP: Defendant was convicted of attempted criminal possession of a weapon in the second degree. A firearm license would have provided a defense to that charge. Defendant contends that the Supreme Court's decision in New York State Rifle & Pistol Assn., Inc. v. Bruen (597 U.S. 1) renders the state's entire firearm licensing scheme facially unconstitutional.

The Court of Appeals affirms defendant's conviction. A four-judge majority first holds that defendant's facial constitutional challenge falls into the narrow class of non-waivable appellate claims and survives defendant's waiver of his right to appeal. In the rare circumstances where a facial challenge is successful, the law is invalid in toto and the State lacks authority to prosecute or punish anyone for the conduct at issue. In that key respect, a facial challenge goes squarely to the fairness in the process itself and transcends an individual defendant's concerns.

Because defendant was directly affected by his criminal prosecution and conviction, he has standing to raise his challenge even though he never applied for a license. However, defendant's claim fails on the merits. The licensing scheme's "proper cause" requirement, which was invalidated in Bruen, is severable from the rest of the licensing scheme - a much broader scheme that includes a variety of distinct requirements. Defendant has failed to show that there is no set of circumstances in which the licensing scheme would be constitutionally valid.

The three concurring judges assert that no public policy or societal interest justifies the majority's departure from well-established precedent and interference with legally valid and socially beneficial plea bargains.

People v Leighton R., 2025 NY Slip Op 06534 (11/25/2025)
SUPPRESSION | REASONABLE SUSPECIAION BASED ON ANONYMOUS TIP | AFFIRMED | DISSENT

ILSAPP: Appellant appealed from a First Department order affirming a judgment of Bronx Supreme Court convicting him [ ] of attempted second-degree CPW. On a leave grant from Judge Troutman, the Court of Appeals affirmed the denial of appellant's motion to suppress a gun, holding that the "totality of the circumstances" analysis is the proper test under the state constitution for assessing whether the police have reasonable suspicion to stop a vehicle based on an anonymous tip. Acknowledging that the Court has previously rejected a totality test under the state constitution to determine whether an anonymous tip establishes probable cause, in favor of the more protective *Aguilar-Spinelli* test, the majority adopted the Supreme Court's approach in *Alabama v White* (496 US 325 [1990]) for reasonable suspicion in anonymous tip cases. The Court emphasized that there still must be "'some minimum, reasonable showing' that the anonymous tip is reliable," that *Aguilar-Spinelli*'s basis-of-knowledge and veracity elements are still "highly relevant" in determining reliability, and that "corroboration of the tip's assertions of criminality," though not required, is also a relevant factor. Here, a person identifying himself only as "Brian" called 911 and reported being shot, gave his location, described the perpetrators as two Black males in a white Mercedes, and provided the address of one of the perpetrators. After an officer near that location responded that there were no shots fired, a different officer who heard the radio run relaying the tip saw a white Mercedes with two Black men inside, driving from the direction of the reported shooting. The officer stopped appellant's car based on that information. The majority held that the officer had reasonable suspicion to do so based on the totality of the circumstances. The majority further upheld the determination that a subsequent search of appellant's glove compartment, where a gun was recovered, was supported by probable cause. Appellant had consented to a "check" of his car and, even if he may "not have reasonably expected that his consent extended to the locked glove compartment," the search was proper under the Fourth Amendment and the automobile exception to the warrant requirement, since the officer testified that he saw the gun and smelled gun powder "through a gap" in the glove compartment. The dissent (Rivera, J., joined by Wilson, C.J.) would have reversed and suppressed, finding that *People v Argyris* (24 NY3d 1138 [2014]) already made clear that the *Aguilar-Spinelli* test applies to reasonable suspicion as well as probable cause in New York). The dissent criticized the majority for lowering privacy protections, adopting the weaker federal standard for reasonable suspicion in anonymous tip cases without sufficient explanation, and making the "corroboration of criminality a peripheral consideration" in assessing the reliability of an anonymous tip—"historically, the single most telling factor in the analysis." The dissent warned, "[a]t a time when the police are increasingly soliciting tips to assist with investigations, and the phrase 'if you see something, say something' has become ubiquitous, it is all the more critical that law enforcement and the courts remain vigilant against malicious anonymous tipsters and those relying on mere rumor and suspicion."

NY State Court of Appeals *continued*

Matter of Parker J. (Beth F.), 2025 NY Slip Op 06533 (11/25/2025)
TPR | IAC | FAILURE TO COMMUNICATE WITH CLIENT & SEEK ADJOURNMENT | REVERSED

ILSAPP: Parent appealed from a Fourth Department order affirming an Onondaga County Family Court order finding that she permanently neglected the child and terminating her parental rights. The Court of Appeals, in a 5-2 vote, reversed, holding for the first time that the right to assigned counsel in Family Court cases necessarily encompasses the effective assistance of counsel. Trial counsel, who had been assigned to the case for two months, did not speak with his client, who was in an inpatient alcohol treatment facility, until the TPR fact-finding hearing had already begun. He did not ask for an adjournment to speak to his client—who was appearing virtually—or otherwise prepare a defense. The record also indicates that he appeared unprepared for trial. Although the record was silent as to whether, counsel had made any unsuccessful attempts to contact his client, such evidence would not be dispositive. Once the hearing was about to commence, and counsel knew his client would not be surrendering her parental rights, the failure to request an adjournment "lack[ed] a strategic or legitimate explanation." The dissent (Cannataro, J., joined by Garcia, J.) expressed concern about the application of the criminal standard for IAC claims to the "unique challenges presented in the handling of Family Court cases," such as the absence of a CPL § 440 equivalent to evaluate matters occurring outside the record. Hiscock Legal Aid Society (Philip Rothschild, of counsel) represented appellant parent Beth F.

People v Wiggins, 2025 NY Slip Op 06539 (11/25/2025)
RIGHT TO JURY TRIAL

LASJRP: The Court of Appeals finds no error where the trial court denied defense counsel's request for a mistrial after the court inquired into a juror's allegations that racial bias had been displayed by other jurors.

The mere fact that race entered the jury's deliberations does not establish that racial bias infected their verdict. Jurors discussing identification evidence - particularly the difficulty of identifying individuals in nighttime, black and white video footage - may necessarily touch upon physical characteristics including race without harboring or expressing racial animus. Here, the record indicates that the discussion at issue arose in the specific context of evaluating the crime scene surveillance video and whether the grainy nighttime footage could support any identification beyond linking the shooter's distinctive clothing to defendant.

People v Williams, 2025 NY Slip Op 06535 (11/25/2025)
30.30(5-A) | COC/SOR ILLUSORY | FACIAL SUFFICIENCY | Proper Remedy | AFFIRMED | DISSENT

ILSAPP: Appellant appealed from an Appellate Term order affirming the denial of his motion to dismiss a misdemeanor information under CPL § 30.30 based on the § 30.30(5-a) certification requirement. On a leave grant by Judge Halligan, the Court of Appeals affirmed. Here, after the prosecution filed a statement of readiness (SOR), the defense sought dismissal of the entire information, because there were no facts alleged to support one of the charges, failure to obey a traffic signal. The Court held that where the required certification has been provided, but "representations made as to at least one count of the instrument are inaccurate or incorrect," the statute does not require invalidation of the SOR; rather, the proper remedy is dismissal of the defective count. While the statute requires certification that each count of the accusatory instrument is facially sufficient, it does not explicitly provide for any "readiness-related consequences" for a "mistaken or inaccurate" certification. The Court rejected appellant's invitation to extend the prerequisite of COC validity in the automatic discovery context to the 5-a certification requirement. This interpretation of the statute does not render the language of CPL § 30.30(5-a) meaningless, as that section was intended to end the practice of partial conversion, making "trial readiness a singular event for the entire accusatory instrument." As such, the prosecution is still required either to indicate its readiness and subject the entire instrument to facial sufficiency requirements or to elect not to declare ready on any counts. The dissent (Rivera, J., joined by Wilson, C.J.) would have dismissed the accusatory instrument in its entirety based on a finding that a single facially insufficient count rendered the SOR illusory, and dismissal of the instrument was the proper remedy under CPL § 30.30(5-a). The dissent accused the majority of relegating the certification requirement to a "meaningless formality." While the statute does not define certification, the meaning of the word is "well established and understood to mean attesting to the accuracy or truth of a statement or document." The majority "misrepresent[ed] basic criminal practice" by validating the remedy of dismissal of facially deficient counts, since the statute did not alter defense counsel's ability to seek dismissal of defective counts at any time. The dissent found the majority's interpretation contrary to both the plain text and legislative history of CPL § 30.30(5-a).

Resources for Defenders: 2025 Highlights and More

Recap of New Resources for Defenders from 2025

Throughout this year, generous individuals and programs shared helpful resources with NYSDA and the defender community. We have made many of those resources—our own and others'—more widely available through our publications and website. A recap of some new or updated resources—and some vital resources from prior years—follows. Links and locations are included. Other, older resources may be found in the Dec. 31, 2024, edition of News Picks for NYSDA Staff and on NYSDA's website under our Resources webpage. (Note: "DFS Unit" is NYSDA's Discovery and Forensic Support Unit.)

FOR CRIMINAL DEFENSE

- BWC Audit Trails Fall Within Automatic Discovery, by NYSDA DFS Unit (2025) (News Picks 12/2)
- Criminal Procedure Law Section 30.30(1) Manual (Fall 2025 Edition) by Drew R. DuBrin, Special Assistant Public Defender, Appeals Bureau, Monroe County Public Defender's Office (News Picks 9/30)
- Computer Buying Guide for Public Defense Attorneys by NYSDA DFS Unit (2025) (News Picks 9/30)
- "The Right Thing": Ethical Guidelines for Prosecutors, District Attorneys Association of the State of New York (2025 update) (News Picks 8/15)
- How to Get Funding for Experts, Investigators & Auxiliary Services (1-pager and step-by-step) by NYSDA DFS Unit (2025) (News Picks 8/15)
- Artificial Intelligence Starter Guide by NYSDA DFS Unit (2025) (News Picks 7/14)
- Police-Induced Confessions, 2.0: Risk Factors and Recommendations, by Saul M. Kassin (2024) (News Picks 3/11)

FOR FAMILY DEFENSE

- Computer Buying Guide for Public Defense Attorneys by NYSDA DFS Unit (2025) (News Picks 9/30)
- How to Get Funding for Experts, Investigators & Auxiliary Services (1-pager and step-by-step) by NYSDA DFS Unit (2025) (News Picks 8/15)

Resources of Continuing Value

TO CRIMINAL DEFENDERS

- Defending Against the New Scarlet Letter: A Defense Attorney's Guide to SORA Proceedings, 2nd Edition, by Alan Rosenthal (NYSDA's Criminal Defense Resources webpage)
- Intake & Case Assessment for DVSJA Resentencing (Domestic Violence Survivors Justice Act)
- CPL 245 "Discovery" – Issues and Advocacy, Sept. 2024 edition, The Legal Aid Society (NYSDA's Discovery Reform Implementation webpage)
- A Defense Attorney's Guide: Representing Adolescents [JO, AO, YO, Retroactive YO, SORA], by Alan Rosenthal, prepared in cooperation with the Broome County Assigned Counsel Program
- Multiple webpages under Criminal Defense Support on NYSDA's website, including
  - Forensic Resources webpage
  - New York Lesser Included Offenses (NYSDA)
  - Providing Criminal History Information at Arraignment, Division of Criminal Justice Services 2022 memo to the Office of Court Administration
- Veterans Defense Program webpage (NYSDA)
- Center for Appellate Litigation, Resources for the Legal Community

FOR FAMILY DEFENSE

- Multiple webpages under Family Defense Support on NYSDA's website, including
  - Family Defense Motion page
  - Forensic Resources webpage
  - Veterans Defense Program webpage (NYSDA)

Immigrant Defense Project

RESOURCES FOR DEFENSE COUNSEL

- Intake worksheet
- Family court intake worksheet
- Immigration status guide for assigned counsel
- Advising Immigrant Clients about Adjournment Contemplating Dismissal
- DOCCS resource for non-citizens
- Early Conditional Parole for Deportation Only
- Youthful Offender redetermination motions
- Know-Your-Rights with ICE materials
- Emergency preparedness for clients

First Department

In the online version of the *REPOR*T, 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.

Matter of Juan R.H.P. v Wendy B.R., 240 AD3d 410 (1st Dept 7/1/2025)
CUSTODY - Decision-Making Authority

LASJRP: The First Department upholds a joint custody order, but finds error where the court, which ordered that the parties engage and consult with a parent coordinator if they could not agree after good-faith consultation on major decisions for the child, made no determination regarding final decision-making.

Because a parenting coordinator lacks the authority to resolve issues affecting the best interest of the child, the order is amended to provide that, if the parties are unable to reach an agreement after consulting in good faith with each other and meeting with the parent coordinator, the father, who has primary physical custody and has been responsible for the child's academic and medical decisions for most of the child's life, shall have final decision-making authority. (Family Ct, New York Co)

Matter of K.J.L., 240 AD3d 409 (1st Dept 7/1/2025)
TERMINATION OF PARENTAL RIGHTS - Disposition

LASJRP: The First Department upholds an order terminating the mother's parental rights, and denies the attorney for the older child's request that the matter be remanded for a new dispositional hearing because the child wishes to return to the mother's care. Since the child is not yet fourteen years old, his consent to adoption is not required, and there has been no indication that there has been any change in circumstances in the foster home or otherwise that would warrant a new dispositional hearing.

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

People v D.B., 240 AD3d 445 (1st Dept 7/10/2025)
YO | FAILURE TO MAKE A DETERMINATION | MODIFIED & REMANDED

ILSAPP: Appellant appealed from a Bronx County Supreme Court judgment convicting him of fourth-degree promoting prostitution and related charges. The First Department modified by vacating the judgment and remanding the case for resentencing because the sentencing court failed to determine appellant's youthful offender status. Office of the Appellate Defender (Alexandra Ricks, of counsel) represented D.B. (Supreme Ct, Bronx Co)

Matter of R.A., 2025 NY Slip Op 04295 (1st Dept 7/24/2025)
NEGLECT | SUPERVISION ORDER OVER NONRESPONDENT PARENT IMPERMISSIBLE | REVERSED

ILSAPP: Appellant appealed from a New York County Family Court order placing her, as a nonrespondent parent in an Article 10 case, under the supervision of ACS. The First Department reversed. Invoking the exception to the mootness doctrine, the court adopted the Second Department's reasoning in *Matter of Sapphire W.* and concluded that Family Court may not place a nonrespondent parent under the supervision of a child protective agency where the child remains in the home with that parent. Family Justice Law Center (David Shalleck-Klein, of counsel) and the NYU Law Family Defense Clinic (Christine Gottlieb, of counsel) represented the appellant. (Family Ct, New York Co)

People v Acosta, 240 AD3d 458 (1st Dept 7/31/2025)
POSSESSION OF A WEAPON - Second Amendment/ Standing To Raise Claim
POSSESSION OF LARGE CAPACITY AMMUNITION FEEDING DEVICE

LASJRP: The First Department concludes that defendant lacks standing to assert a Second Amendment challenge to New York's gun-licensing regime because he did not apply for a license. Defendant's assertion that an application would have been futile because he did not meet the minimum age requirement under Penal Law § 400.00(1)(a) fails to constitute a substantial showing of futility sufficient to excuse the threshold requirement for standing since applicants may be exempted from the age restriction under certain conditions

Defendant has not established that the ban on large capacity ammunition feeding devices is unconstitutional. (Supreme Ct, Bronx Co)

People v Williams, 2025 NY Slip Op 04526 (1st Dept 7/31/2025)
SUPPRESSION | PROBABLE CAUSE | DHS ARREST | PROSECUTION PRESERVATION | REVERSED & DISMISSED

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting him of first-degree assault and attempted second-degree robbery. The First Department reversed the denial of suppression, vacated the plea, and dismissed the indictment. Appellant was arrested based on similarities in clothing to a person depicted in a surveillance video taken in the vicinity, shortly after the alleged crime. But the complainant described her assailant only as wearing a black nylon jacket with no specific mention of his wearing the distinctive pants the man in the video was wearing. Based on communications from the NYPD, including still photographs taken from the surveillance tape, the Department of Homeless Services (DHS) arrested appellant at the shelter where he was staying before any confirmatory identification process. DHS's

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handcuffing appellant to a bench at the shelter for 30-45 minutes was an arrest requiring probable cause. At the suppression hearing, the prosecution presented no evidence about the circumstances of the initial DHS arrest. They were foreclosed from arguing on appeal that it was based on probable cause where they had argued at the hearing only that the police had lawfully taken appellant into custody upon an officer's confirmatory viewing at the DHS office. The prosecution was also foreclosed from arguing that the police identification created intervening probable cause, another theory not previously raised. Remand for further suppression proceedings was not warranted as the prosecution had a full and fair opportunity to present their claims. Because DHS officers arrested appellant without probable cause, all evidence flowing from the arrest—statements and the contents of a shoe box—had to be suppressed. The remaining evidence—the surveillance video and the officer's confirmation ID—was insufficient to support a conviction, requiring dismissal of the indictment. The Legal Aid Society of NYC (J.M. Boselli, of counsel) represented Williams. (Supreme Ct, New York Co)

Matter of Jasmine M. v Albert M., 241 AD3d 417
(1st Dept 8/14/2025)
CUSTODY - Relocation
- Child's Wishes

LASJRP: In a 3-2 decision, the First Department upholds an order granting the mother primary physical custody of the child (nine years old at the time of the hearing) and permission to relocate to Florida with the child.

The mother's home in Florida is safer than her previous home in the Bronx, is approximately 25 minutes from the school the child would attend in Florida with his stepsiblings, and provides the child with more advantages and opportunities for social engagement with his peers than he had while living with the father in Brooklyn. Even if the mother's move to Florida was motivated mainly by her desire to be with her new husband, this conclusion would not outweigh the fact that Florida provides the better home and social environment for the child. The child's needs would be served by spending the school year in a two-parent home with stepsiblings, where he would have additional adult guidance and relationships with stepsiblings that would foster his social and emotional development.

The mother is committed to ensuring that the father and the child would continue to spend meaningful time together and continue their close relationship, and the father will have more time, and more extended time, with the child than he was permitted under the prior consent custody order.

Even if the Court were to consider the child's change of preference (to the father) since the time of the hearing, his preference would not be dispositive, particularly where, as here, the child's attorney described the child's reasons for his change of position as "questionable." "The reasons listed by the attorney for the child included not being able to play video games of his choice or watch whatever he wanted on television, that he didn't like to do chores or go to church, as his mother required, and that his stepbrother is 'annoying.' Counsel also noted that the child stated that he had made new friends in Florida but hadn't known them as long as he had known his friends in New York." (Family Ct, Bronx Co)

Matter of Kaius A., 2025 NY Slip Op 04692
(1st Dept 8/14/2025)
ABUSE/NEGLECT - Leaving Children With Other Caretaker
- Petition/Amendment
- Removal/Jurisdiction

LASJRP: Having previously filed a petition naming the father as a respondent, ACS filed an amended petition adding the mother as a respondent, alleging, inter alia, that the mother had neglected the subject children when she had an unidentified person leave them at the home of their paternal grandmother, M.H., without prior notice, without supplies and provisions for the children, and without any means of contacting her. The petition further alleged that the mother claimed to have left the children with their father and paternal uncle despite being aware of a temporary order of protection (TOP) issued against the father for herself and the children. Upon a combined FCA § 1028/fact-finding hearing, the Family Court made a finding of neglect.

The First Department reverses. While the parties do not raise the issue of subject matter jurisdiction, a court's lack of subject matter jurisdiction is not waivable, and the Court elects to address it. After the Family Court remanded the children into ACS custody, ACS did not file the amended petition against the mother until over a month later. By failing to timely file the amended petition within three court days of the removal order, ACS wrongfully detained the children (see FCA §§ 1021, 1022), and, once the filing window had elapsed, the Family Court lacked subject matter jurisdiction allowing it to continue the children's temporary removal from the mother's care and placement with M.H. The mother also was deprived of her due process rights to a timely hearing following the children's removal.

The Court then concludes that ACS failed to prove neglect, noting, inter alia, that ACS failed to rebut the mother's defense that she had made arrangements with the father in advance for the children to stay with him (he was living with M.H.) while she was hospitalized; that ACS did not establish that the mother was ever served with the TOP they accuse her of violating; that ACS's allegation that there was imminent risk of harm is belied by the fact that ACS did not file against the mother for at least fifty days after the children came to M.H.'s home; and that the mother provided uncontroverted testimony asserting that she sent the children with clothing and diapers, provided the father with a copy of her food stamp card, and arranged for supplies to be obtained for the children from the deli across the street from M.H.'s home.

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The Family Court also credited contradictory accounts of how the children came to be in M.H.'s care, which depart from the allegations set forth in the amended petition. While the Family Court is empowered sua sponte to conform the pleadings to the proof, as it arguably did here via its restatement of the allegations in its written decision, FCA § 1051(b) requires that the respondent be given reasonable time to prepare to answer the amended allegations, which was not done here.

The JRP appeals attorney was Andrew Ford, and the trial attorney was Holly Graham. (Family Ct, Bronx Co)

People v Andrus, 241 AD3d 447 (1st Dept 8/28/2025)
SENTENCE - Probation/Conditions

LASJRP: Defendant was convicted of operating a motor vehicle while under the influence of alcohol and sentenced to three years of probation under a conditional plea agreement. One probation condition, which was not discussed at sentencing and not requested by the Department of Probation, required defendant to "consent to a search by a Probation Officer ... of his/her person, vehicle and place of abode ... and the seizure of any illegal drugs, drug paraphernalia, gun/firearm or other weapon or contraband found." After noting that defendant's challenge is exempted from the preservation requirement because it involves the essential nature of the right to be sentenced as provided by law, the First Department, in a 3-2 decision, strikes the consent-search condition.

Defendant was not armed with a weapon when he committed the charged crime, has no history of violence or use of weapons and has never been convicted of an offense involving weapons. He has never been convicted of an offense involving illegal substances. While his presentence report states that he had experimented with marijuana, PCP, crack and heroin in the past "to take the pain away," the record does not demonstrate, as the dissent suggests, that defendant has a history of abusing illegal drugs, and indicates that he had been drug-free for one to five years prior to committing the charged offense.

Although defendant was driving while under the influence of alcohol, had twice been convicted of driving while intoxicated, and admitted to Probation that he began to consume alcohol when he was 10 years old, the consent-search condition reaches extensively into areas of defendant's life where he may legally possess and consume alcohol, and defendant will still be "checked up on" pursuant to the condition permitting unannounced visits from a probation officer at his residence or elsewhere. (Supreme Ct, New York Co)

People v Messina, 241 AD3d 1095 (1st Dept 9/11/2025)
ADOLESCENT OFFENDERS - Removal

LASJRP: The First Department upholds determinations not to remove adolescent offender cases to family court, noting that in one case, the People established by a preponderance of the evidence that defendant "caused" significant physical injury to the victim through his involvement in this gang assault even though the People did not establish that he was the specific participant who stabbed the victim; and that in another case, in light of defendant's rearrest while receiving services and his flagrant violation of the terms of supervision, the court did not err in finding that extraordinary circumstances existed. (Supreme Ct, New York Co)

Matter of C.C., 2025 NY Slip Op 05017 (1st Dept 9/18/2025)
TERMINATION OF PARENTAL RIGHTS - Unwed Fathers
ADOPTION - Consent/Unwed Fathers

LASJRP: Subject to certain criteria, an amendment to Domestic Relations Law § 111 (effective December 30, 2022) requires consent for adoption by any nonmarital parent who has executed an unrevoked acknowledgement of parentage or filed an unrevoked notice of intent to claim parentage of a child. The amendment did away with the necessity for some parents with children in foster care to establish that they made payments to the foster care agency caring for the child.

The Family Court determined in July 2019 that respondent father was entitled only to notice that the agency was seeking to terminate parental rights to free the child for adoption, but the DRL amendment took effect before the May 2023 dispositional order was issued. Respondent argues that the Family Court erred in not applying the amended version of DRL § 111 while the fact-finding and disposition were still being litigated.

The First Department agrees that the statute should be applied retroactively, as the express purpose of the amendment was to correct how the law applied to nonmarital parents, and the amendment was "effective immediately." Thus, respondent's failure to provide financial support after the child entered foster care is not grounds for finding that he is a notice-only father who is precluded from being heard on the permanent neglect petition as it pertains to him. The provisions of the Family Court's order terminating his parental rights should be vacated and this matter remanded to Family Court for further proceedings.

The JRP appeals attorney was Claire Merkine, and the trial attorney was Demetra Frazier. (Family Ct, New York Co)

Matter of Sandy G.G.D. v Luis R.B.G., 241 AD3d 1100 (1st Dept 9/18/2025)
SIJS | ATTORNEY FOR CHILD MAY CONSENT TO GUARDIANSHIP | REVERSED

ILSAPP: Mother appealed from a New York County Family Court order dismissing her guardianship petition and motion for an order of special findings enabling the child to petition for Special Immigrant Juvenile Status (SIJS). The First Department

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reversed and granted the petition and motion *nunc pro tunc*. The child was 20 years old at the time of the filing and nonverbal. Mother and son fled Venezuela in 2017 to enable her to seek better care for him. While the child's profound disabilities rendered him unable to knowingly consent to the guardianship, the court held that his attorney had authorization, as his appointed legal representative, to consent to the guardianship via substituted judgment. The court then used its independent fact-finding power to determine that guardianship was in the child's best interest and to make the required special findings for SIJS. Law Office of Lewis S. Calderon, Jamaica (Lewis S. Calderon of counsel) represented mother Sandy G.G.D. (Family Ct, New York Co)

People v Williams, 241 AD3d 1106 (1st Dept 9/18/2025)
RIGHT TO COUNSEL - Effective Assistance

LASJRP: Addressing the denial of defendant's motion to vacate the judgment of conviction, a three-judge First Department majority rejects defendant's contention that defense counsel was ineffective where counsel failed to bring a motion to renew his prior motion to dismiss the indictment after receiving the witness's grand jury testimony.

Although the grand jury minutes were not available to counsel at the time the motion to dismiss was filed, the court conducted a review of the complete grand jury minutes and then denied dismissal of the indictment. Consequently, there were no additional material facts upon which counsel could have based a motion to renew.

The dissenting judges would remand for a hearing on this claim and assert that defendant has demonstrated that the evidence presented to the grand jury was legally insufficient to indict defendant on either of the homicide charges. Accordingly, he has shown that a renewal motion had some likelihood of success and that he was likely prejudiced by counsel's failure to renew the motion to dismiss the homicide charges. (Supreme Ct, Bronx Co)

Matter of Leah W., 2025 NY Slip Op 05041
(1st Dept 9/23/2025)
ABUSE/NEGLECT - Evidence/
Sealed Records Of Criminal Action

LASJRP: On October 10, 2023, the father was arrested and charged with first-degree sex abuse and endangering the welfare of a child. On October 11, 2023, ACS commenced an Article Ten proceeding alleging that the father sexually abused both of his daughters. On July 15, 2024, the criminal charges were dismissed due to a lack of witness cooperation.

The First Department holds that the CPL sealing statute does not preclude ACS from introducing videotapes of interviews of the children conducted at Safe Horizon's Child Advocacy Center during a child protective investigation. Safe Horizon is an independent victims' assistance agency tasked with gathering information about the children's safety. CPL § 160.50 defines the records subject to sealing as being on file with the "division of criminal justice services, any court, police agency, or prosecutor's office." Neither ACS nor Safe Horizon are included in this list.

The videos are not "official records and papers" related to the father's arrest or prosecution despite the existence of a multidisciplinary task force involving law enforcement and non-law enforcement actors. Indeed, sealing the videotaped interviews would undermine the CAC and multidisciplinary model.

This Court has held that 911 calls, which are handled by the NYPD, are not official records within the meaning of § 160.50, as the 911 system serves a broader purpose that goes beyond criminal arrest and prosecution. Similarly, a forensic interview at the CAC is an initial information-gathering process, not inherently tied to any arrest or prosecution that may follow. The recorded interviews did not contain any information about the father's arrest or discontinued prosecution. (Supreme Ct, New York Co)

People v Lombard, 241 AD3d 1126 (1st Dept 9/23/2025)
ILLEGAL SENTENCE | CRIME VICTIM ASSISTANCE FEE | MODIFIED

ILSAPP: Appellant appealed from a Bronx County Supreme Court judgment convicting him of criminal possession of a firearm. The First Department modified the sentence by reducing the crime victim assistance fee from $75 to $25 because the amount imposed exceeded the amount authorized by statute. The claim survived a valid appeal waiver, and the prosecution consented to the relief. Center for Appellate Litigation (David J. Klem, of counsel) represented appellant. (Supreme Ct, Bronx Co)

Matter of P.J.B. v T.E.B., 241 AD3d 1116
(1st Dept 9/23/2025)
CUSTODY - Joint Custody

LASJRP: The First Department affirms an order which granted petitioner mother sole legal and physical custody of the children, noting, inter alia, that the mother testified that she and the father were no longer capable of successfully navigating a joint legal custodial arrangement, as the father rarely responded to emails and did not respond to texts. (Family Ct, New York Co)

People v Xicay, 241 AD3d 1129 (1st Dept 9/23/2025)
People v Rivera, 241 AD3d 1168 (1st Dept 9/25/2025)
SENTENCING | MANDATORY SURCHARGE & FEES | MODIFIED

ILSAPP: Appellants Xicay and Rivera appealed from New York County Supreme Court judgments convicting them of second-degree attempted murder (Xicay) and third-degree grand larceny (Rivera). The First Department modified the judgments by vacating the mandatory surcharges and fees. The prosecu-

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tion did not oppose the requested relief. The Legal Aid Society of NYC (Harold Ferguson, of counsel) represented Xicay; (Sylvia Lara Altreuter, of counsel) represented Rivera. (Supreme Ct, New York Co)

De Luca v De Luca, 241 AD3d 1146 (1st Dept 9/25/2025)
DIVORCE | ADVOCATE-WITNESS RULE | REVERSED

ILSAPP: Husband appealed from a New York County Supreme Court order disqualifying his attorney from representing him on the ground that the attorney would need to be called as a witness at trial. The First Department reversed. Although the attorney made allegations about the wife's actions, leading the trial court to determine *sua sponte* that he would need to be called as a witness at trial, most of those allegations were not based on the attorney's personal knowledge. And the allegation that was based on personal knowledge was not necessary to resolve the pending financial issues in the divorce action. The First Department, however, held that the disqualification application was subject to renewal upon a showing that the attorney's testimony was necessary. Robert G. Smith, PLLC (Robert G. Smith, of counsel) represented appellant husband. (Supreme Ct, New York Co)

Mitchell v City Of New York, 241 AD3d 1165
(1st Dept 9/25/2025)
SEARCH AND SEIZURE - Probable Cause

LASJRP: The First Department modifies a ruling denying defendants' motion for summary judgment dismissing plaintiff's federal and state law causes of action for false arrest and malicious prosecution to dismiss the federal causes of action for false arrest and malicious prosecution, but otherwise affirms.

The record presents issues of fact regarding whether defendants established probable cause for plaintiff's arrest. The eyewitness who identified plaintiff at a photo array and lineup as the perpetrator of the shooting gave deposition testimony concerning exchanges between him and the detective who administered the photo array and lineup that raised questions as to the witness's level of certainty with respect to the identification and whether the detective made statements that reinforced the witness's equivocal identification. The ADA assigned to plaintiff's case testified at her deposition that had the detective told her of the witness's uncertainty, she would have handled the matter differently and would not have presented the case, which depended largely on the eyewitness identification, to a grand jury before conducting further investigation. (Supreme Ct, Bronx Co)

People v Moore, 241 AD3d 1172 (1st Dept 9/25/2025)
***BRADY* | DELAYED DISCLOSURE | SANCTIONS | AFFIRMED**

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting him of 13 counts of second- and third-degree burglary, and a separate order denying his CPL § 440.10 motion. The First Department affirmed. Although the prosecution belatedly disclosed *Brady* material—exculpatory DNA evidence--appellant received a meaningful opportunity to use the material. A stipulation by the parties fully presented the exculpatory nature of the DNA evidence, excluding appellant as a contributor to a mixture recovered from one burglary scene, and the court dismissed the count of the indictment relating to that burglary. The stipulation worked to appellant's advantage by presenting the exculpatory evidence without giving the prosecution the chance to explain it. There was no chance that evidence relating to the dismissed burglary count would have influenced the guilty verdicts on the remaining 13 burglary counts stemming from different dates and locations. (Supreme Ct, New York Co)

People v Prieto, 241 AD3d 1178 (1st Dept 9/25/2025)
EXCESSIVE SENTENCE | ROBBERY AFTER TRIAL | MODIFIED

ILSAPP: Appellant appealed from a New York County Supreme Court judgment, following a jury trial, convicting him of second-degree robbery as a second violent felony offender and sentencing him to 12 years' imprisonment. The First Department reduced the sentence in the interest of justice to 9 years. The Legal Aid Society of NYC (Elizabeth (Liza) Batkin, of counsel) represented appellant. (Supreme Ct, New York Co)

Matter of S.M.W. (J.R.M.), 241 AD3d 1189
(1st Dept 9/25/2025)
NEGLECT | MENTAL ILLNESS | REVERSED IN PART

ILSAPP: Parent appealed from a Bronx County Family Court order finding he neglected his children. The First Department reversed in part, vacating the finding of neglect based on mental illness but affirming a finding of educational neglect. ACS failed to prove that the parent's mental illness interfered with his judgment or parenting abilities or placed the children at risk of harm. On the contrary, he testified that he was engaged in treatment for his depression, including therapy and medication. Steven N. Feinman represented appellant parent J.R.M. (Family Ct, Bronx Co)

People v Stewart, 241 AD3d 1179
(1st Dept 9/25/2025)HEARSAY - Excited Utterance
EVIDENCE - Video Recording

LASJRP: The First Department finds no error in the admission of a "compilation video" that was comprised of videos that had already been admitted and authenticated or had been admitted subject to connection and subsequently authenticated.

The Court finds error, albeit harmless, in the admission of a statement by the victim's girlfriend to the victim's mother where, during the few minutes following the shooting, the

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girlfriend spoke to officers and called the mother; the girlfriend told officers that she did not know the shooter and only described his clothing; and, in the call with the mother, she specifically identified defendant as the shooter. In view of this discrepancy, the girlfriend's statement from the call was improperly admitted as an excited utterance. (Supreme Ct, New York Co)

Matter of T.C., 241 AD3d 1145 (1st Dept 9/25/2025)
ABUSE/NEGLECT - Domestic Violence
- Corroboration
- Creating Risk Of Physical Harm

LASJRP: The First Department upholds a finding of neglect where the father, during an altercation with the children present, brought his pit bull and taser gun outside to intimidate the mother's boyfriend, which placed the children at imminent risk of physical and emotional harm.

One child's out-of-court statement to the caseworker that the father appeared to have a black handgun in his hand during the altercation was corroborated by the father's admission that he had, in fact, brought a taser gun outside during the altercation. The child's out-of-court statement to the caseworker that the father hit him with a closed fist just before the incident was corroborated by the father's own testimony that he previously had hit the child.

The father neglected another child by forcing her to walk six blocks home to the mother's apartment while the child was wearing only socks on her feet. (Family Ct, Bronx Co)

People v Johnson, 241 AD3d 1206 (1st Dept 9/30/2025)
SORA | BURGLARY AS SEXUALLY MOTIVATED FELONY NOT REGISTERABLE OFFENSE | MODIFIED

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting him of second-degree rape, second-degree burglary as a sexually motivated felony, and second-degree bail jumping, and certifying him as a sex offender based on his rape and burglary convictions. The First Department modified the judgment by vacating the portion certifying appellant a sex offender based on the burglary conviction and vacating the surcharges and fees imposed on that count and otherwise affirmed. As the prosecution conceded, second-degree burglary as a sexually motivated felony is not a registerable offense under SORA. Center for Appellate Litigation (Bryan Furst, of counsel) represented appellant.

People v Martin, 241 AD3d 1211 (1st Dept 9/30/2025)
POSSESSION OF A WEAPON

LASJRP: The First Department rejects defendant's contention that the Supreme Court's decision in New York State Rifle & Pistol Assn., Inc. v Bruen (597 U.S. 1) invalidates the permissive presumption [see CPL § 265.15(4)] of defendant's unlawful intent from his unlicensed possession of a gun. (Supreme Ct, New York Co)

People v Vasquetelles, 241 AD3d 1208 (1st Dept 9/30/2025)
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." There is no evidence that defendant's actions were connected to gang activity or that he had a history of gang membership.

The Court rejects defendant's challenge to the condition requiring him to "[a]void injurious or vicious habits; refrain from frequenting unlawful or disreputable places; and ... not consort with disreputable people" where he committed his crime while acting in concert with an accomplice, admitted to the Department of Probation that he used marijuana daily, and was recommended for drug counseling services by the Probation Department. (Supreme Ct, Bronx Co)

People v Carrasquillo, 2025 NY Slip Op 05318 (1st Dept 10/2/2025)
SENTENCE - Probation/Conditions

LASJRP: The First Department concludes that the probation condition requiring defendant to "avoid injurious or vicious habits; refrain from frequenting unlawful or disreputable places; and not consort with disreputable people" was reasonably related to his rehabilitation in light of, among other circumstances, his admissions to the Department of Probation of ongoing heroin abuse and daily marijuana use.

The Court rejects defendant's constitutional challenges to this condition under the First Amendment and the due process/vagueness doctrine. (Supreme Ct, Bronx Co)

Matter of Damien W.C. v Melissa S., 2025 NY Slip Op 05295 (1st Dept 10/2/2025)
VISITATION - Denial Of Overnight Visits/Housing Issues

LASJRP: The First Department upholds a determination granting the father expanded day visitation with the children, but not overnight visitation.

The paternal grandmother's two-bedroom apartment where the father was living was small, and he had commissioned custom bunk beds (as standard sized children's bunkbeds would be too large for the bedroom) so that the two children could sleep in his bedroom, while he would sleep on his bedroom floor when they visited. The older child, who has special needs, began regressing when the overnights with the father had previously occurred, became depressed and angry and did not want to communicate at home, and showed a lack of interest in school. The mother testified that she was worried that her daughter, the younger child, would not have enough privacy.

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The father's housing arrangement was not suitable to accommodate overnight visitation with the children. (Family Ct, Bronx Co)

People v Jachero, 2025 NY Slip Op 05311
(1st Dept 10/2/2025)
APPEAL - Dismissal/Fugitive Disentitlement Doctrine

LASJRP: The First Department declines to dismiss defendant's appeal under the fugitive disentitlement doctrine even though he absconded and has not been contactable for more than two years. Because disposition of the weight of the evidence issue would result in affirmance or dismissal, neither outcome would require defendant's continued legal participation. (Supreme Ct, New York Co)

People v JeanBaptiste, 2025 NY Slip Op 05313
(1st Dept 10/2/2025)
RIGHT TO COUNSEL - Effective Assistance

LASJRP: The First Department holds that defendant was deprived of his right to the effective assistance of counsel where defense counsel created an actual conflict.

During an ex parte and off-the-record conference with the court, after the People concluded their presentation of evidence, counsel revealed certain confidential admissions that defendant had made to him while alerting the court that defendant would have to testify in narrative form if he elected to take the witness stand. However, defendant had elected to absent himself from trial prior to the ex parte discussion, after the court had warned him that he would forfeit his right to testify if he did so. Thus, counsel's disclosures were premature, particularly because counsel sought to ascertain whether defendant still intended to testify. Moreover, prior to the ex parte conference, counsel informed the court that he had made certain strategic trial decisions that involved his duty of candor and ethical obligations and satisfied his responsibility to the courts and our truth-seeking system of justice, and the court could have easily inferred the need for defendant to testify in narrative form.

Counsel's disclosures cannot be viewed as simply addressing allegations of ineffectiveness at the court's request where the court had already repeatedly denied defendant's application for substitute counsel before counsel volunteered to make an ex parte record. (Supreme Ct, New York Co)

People v Andino, 2025 NY Slip Op 05478
(1st Dept 10/7/2025)
SEARCH AND SEIZURE - Search Warrants - Description Of Search Area/Search Of Occupant

LASJRP: The First Department upholds the denial of defendant's motion to controvert the search warrant and suppress the evidence seized, noting that the warrant did not have to specify the part of the apartment to be searched; and the denial of defendant's motion to suppress evidence seized from his person, noting that although defendant was not named in the warrant, the common sense inferences to be drawn from his occupancy of a place of drug trafficking provided probable cause to believe that defendant was a participant in the drug operation conducted out of the apartment. (Supreme Ct, New York Co)

People v Luis, 2025 NY Slip Op 05475 (1st Dept 10/7/2025)
SEARCH AND SEIZURE - Arrest/Use Of Handcuffs - Stop/Officer Safety-Based Detention

LASJRP: The First Department concludes that the police were entitled to detain defendant because their investigation, prompted by several 911 calls reporting a shooting and crime scene bystanders who directed police to an abandoned house where defendant was detained with two other men, was a rapidly developing and dangerous situation presenting an imminent threat to the officers' well-being. To ensure their safety, the police were entitled to detain defendant even without particularized suspicion, and they did not make an arrest by handcuffing defendant, patting him down, and asking him to sit on the floor with the two other men. (Supreme Ct, Bronx Co)

People v Zorrilla, 2025 NY Slip Op 05582
(1st Dept 10/9/2025)
JURISDICTION - Geographical
HEARSAY - Statements Not Offered For Truth

LASJRP: Defendant was charged with predatory sexual assault against a child (Penal Law § 130.96), under the theory that he committed first-degree course of sexual conduct against a child, which requires proof of two or more acts of sexual conduct. As the offense is a continuing offense, jurisdiction may be established by proof that the defendant committed at least one of the underlying sexual acts in New York. The First Department upholds defendant's conviction, noting that one of the sexual assaults occurred in New York, as part of a continuing course of conduct initiated in New Jersey.

The trial court did not err permitting several witnesses to provide brief, limited testimony about how the victim revealed the abuse several years after it occurred, for the relevant, non-hearsay purpose of explaining the investigative process and completing the narrative of events leading to defendant's arrest. Testimony recounting their observations of the victim's demeanor was permissible to aid the court in assessing her credibility. (Supreme Ct, New York Co)

People v Correa, 2025 NY Slip Op 05648
(1st Dept 10/14/2025)
OOP | DURATION AND SCOPE EXCEEDED STATUTE | AFFIRMED & OOP MODIFIED

ILSAPP: Appellant appealed from a Bronx County Supreme Court judgment convicting him of fifth-degree CPSP. The First

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Department affirmed but vacated one order of protection where it was not issued on behalf of a "victim of, nor a witness to, the crimes." Additionally, the expiration of a separate OOP exceeded the statutory duration for a class A misdemeanor.

The Legal Aid Society of NYC (Frank Xiao, of counsel) represented appellant. (Supreme Ct, Bronx Co)

People v Sastre, 2025 NY Slip Op 05646
(1st Dept 10/14/2025)
SORA | IMPROPER POINTS: MULTIPLE OCCASIONS OF MISCONDUCT | AFFIRMED

ILSAPP: Appellant appealed from a Bronx County Supreme Court order designating him a level three offender under SORA. The First Department affirmed but found that the SORA court had improperly assessed 20 points under factor 4 because, as the prosecution conceded, there was not clear and convincing evidence establishing that the multiple occasions of sexual misconduct had occurred at separate intervals in order to qualify as a continuing course of sexual conduct. However, the court properly applied a presumptive override based on a prior sex crime conviction and properly denied appellant's request for a downward departure. As a result, appellant's level-three designation was affirmed. (Supreme Ct, Bronx Co)

People v Thompson, 2025 NY Slip Op 05645
(1st Dept 10/14/2025)
IDENTIFICATION - Photos/Suggestiveness
RIGHT TO JURY TRIAL - Jury Selection/ COVID-19 Safety Protocols

LASJRP: The First Department concludes that photo array procedures were not unduly suggestive where defendant's darker skin tone did not cause her image to stand out unfairly, and the backgrounds of the photos were varying shades of grey and the background of defendant's photo was lighter than that of the others, but the color difference did not highlight defendant's photo.

The court's COVID-19 safety protocols, which permitted jurors to wear masks covering the nose and mouth during the jury selection process and lower their masks while being questioned by the attorneys, did not deprive defendant of the ability to meaningfully participate in jury selection. (Supreme Ct, New York Co)

People v Calderon, 2025 NY Slip Op 05755
(1st Dept 10/16/2025)
IAC | RELIANCE ON ERRONEOUS LEGAL THEORY | REVERSED

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting him of second-degree assault. The First Department reversed and ordered a new trial. The record on direct appeal established that appellant was denied the right to the effective assistance of counsel where his attorney pursued a flawed defense, believing that appellant could not be convicted if he did not intend to strike a correction officer. A person is guilty under Penal Law §120.05(7) where they have been charged or convicted of a crime and while confined in a correctional facility "with intent to cause physical injury to another person…cause() such injury to such person or to a third person." Counsel's reliance on an erroneous theory compromised appellant's right to a fair trial. Nor was counsel's argument aimed at appealing to the jury's sympathy or nullification. Counsel argued those same irrelevant facts to the court, outside the jury's presence, demonstrating a failure to understand the applicable law. Center for Appellate Litigation (Molly Booth, of counsel) represented appellant. (Supreme Ct, New York Co)

People v Holley, 2025 NY Slip Op 05747
(1st Dept 10/16/2025)
SPEEDY TRIAL - Constitutional Right

LASJRP: The First Department finds no violation of defendant's constitutional right to a speedy trial where defendant was incarcerated for nearly four years between the date of his arraignment and the date that he pleaded guilty, but that time period was satisfactorily explained and little of it was attributable to the People; a substantial portion of the delay was caused by the impact of the COVID-19 pandemic on the judicial system; much of the delay resulted from adjournments requested by the defense to respond to motions, for new counsel to review the voluminous discovery materials, and for preparation of an expert report, or adjournments for possible disposition or other reasons not attributable to the People; and defendant has not made an adequate showing of specific prejudice. (Supreme Ct, New York Co)

People v Young, 2025 NY Slip Op 05748
(1st Dept 10/16/2025)
INVALID APPEAL WAIVER | SURCHARGES & FEES VACATED | AFFIRMED

ILSAPP: Appellant appealed from a Bronx County Supreme Court judgment (Lewis J.,) convicting him of second-degree assault. The First Department affirmed but vacated the surcharge and fees imposed, without opposition from the prosecution, based on appellant being under 21 at the time of the offense. Appellant's waiver of the right to appeal was invalid. The plea court failed to clarify that the right to appeal is separate and distinct from the rights waived as part of a guilty plea. The court did not inquire whether appellant had read and understood the written appeal waiver, and the written waiver did not cure the defects in the court's oral explanation because there was a conflict concerning which appellate issues survived the waiver of appeal, creating confusion as to the waiver's

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effect. Center for Appellate Litigation (Emilia King-Musza, of counsel) represented appellant. (Supreme Ct, Bronx Co)

Matter of Flores-Grgas v New York State Office of Children and Family Services, 2025 NY Slip Op 05764
(1st Dept 10/21/2025)
ABUSE/NEGLECT - Central Register/Article 78 Proceedings

LASJRP: In this CPLR Article 78 proceeding challenging a determination by the New York State Office of Children and Family Services declining to amend and seal indicated reports, the First Department concludes that the proceeding was properly dismissed where petitioner failed to timely serve the petition within fifteen days of the expiration of the four-month statute of limitations (see CPLR 306-b).

Though petitioner's initial petition was timely, it was dismissed for improper service. Petitioner cannot revive those claims in her subsequent petition and seek an extension of time to effect service where the statute of limitations has since expired. (Supreme Ct, New York Co)

Matter of I.G., 2025 NY Slip Op 05766 (1st Dept 10/21/2025)
ABUSE/NEGLECT - Excessive Corporal Punishment
- Mental Illness

LASJRP: The First Department reverses findings of neglect. The record suggests that the mother, who had been diagnosed with major depressive disorder, cannabis use disorder, adjustment disorder, and post-traumatic stress disorder, may have been non-compliant with her mental health treatment, but the only evidence linking the mother's mental health was the fourteen-year-old child's statements to the caseworker that he feared being with the mother outside of the home because she believed they were being watched, and that she once took a photograph of a man on the subway platform whom she believed was following them.

Although the mother slapped the fourteen-year-old child with an open hand when he refused to provide her with the passcode to his cell phone, he was rude and disrespectful, and he told her he wished she were dead, the mother testified that she demanded to see the child's cell phone after the school called her to express concern over a change in the child's behavior and his cell phone usage. The child did not report that the slapping caused him pain, nor were there any marks or bruising on his face or body. A parent has a common-law privilege to use reasonable physical force to discipline a child.

The JRP appeals attorney was Amy Hausknecht, and the trial attorney was Celia Goble. (Family Ct, Bronx Co)

People v Johnson, 2025 NY Slip Op 05775
(1st Dept 10/21/2025)
POSSESSION OF WEAPON - Second Amendment

LASJRP: The First Department finds no merit in defendant's unpreserved challenge to the constitutionality of Penal Law § 265.02(8), which prohibits the possession of large-capacity ammunition feeding devices. (Supreme Ct, Bronx Co)

Matter of M.A.F., 2025 NY Slip Op 05772
(1st Dept 10/21/2025)
TERMINATION OF PARENTAL RIGHTS - Suspended Judgment/Violations

LASJRP: The First Department upholds an order which terminated the father's parental rights upon a fact-finding determination that he violated the conditions of a suspended judgment, noting, inter alia, that when asked at the hearing why he missed approximately six visits with the child, the father responded that the missed visits were "probably because of [his] work schedule" or because the foster parent canceled the visits. These explanations are insufficient given that the father failed to testify as to what steps he took so that he could attend the visits.

The JRP appeals attorney was Andrew Ford, and the trial attorney was Cynthia Rivera. (Family Ct, New York Co)

People v Marte, 2025 NY Slip Op 05776
(1st Dept 10/21/2025)
SEARCH AND SEIZURE - Stop/Reasonable Suspicion

LASJRP: The First Department upholds the denial of suppression of a gun defendant discarded while being chased by police officers, noting that the officers' directives for defendant to "stop" and to "come back" did not amount to a seizure, and that when defendant then turned and ran while apparently holding something close to his waistband or pocket with his right hand, the officers possessed at least reasonable suspicion. (Supreme Ct, New York Co)

Owen v Johnson, 2025 NY Slip Op 05774
(1st Dept 10/21/2025)
RIGHT TO COUNSEL - Child

LASJRP: In this matrimonial proceeding in which the wife seeks modification of the parties' stipulation of settlement, the First Department concludes that given the short length of time between the wife's successive modification motions, the court did not err in declining to reappoint the attorney for the children.

The court had already appointed an AFC in connection with the wife's initial modification request. Although the wife implies that the children's positions have changed since that time, any change should be viewed with skepticism in light of her ongoing and aggressive litigation campaign. Additionally, given the children's young age, any shift in their stated preferences would not be entitled to significant weight. (Supreme Ct, New York Co)

Matter of M.M., 2025 NY Slip Op 05887
(1st Dept 10/23/2025)
ABUSE/NEGLECT - Removal/Imminent Risk

LASJRP: In this excessive corporal punishment case, the First Department reverses an order granting respondent mother's

First Department *continued*

FCA § 1028 application, noting that the court erred in determining that the risk of harm could be mitigated by the conditions it imposed on the mother; that nothing in the mother's testimony indicated that she understood the emotional harm she caused the child or expressed any genuine remorse; that first the mother tried to attribute the child's injuries to an unrelated incident that took place several months earlier, and then claimed to be unaware of how the injuries occurred and ultimately opted to "plead the fifth"; that the mother's lack of understanding undercuts the Family Court's conclusion that services would be sufficient to mitigate the risk of harm and that the mother would comply with the service plan; and that although the mother took steps to enroll in services, the mere enrollment is insufficient to overcome the substantial evidence indicating that returning the child to her care would pose a risk to the child's health and safety.

The JRP appeals attorney was Daniel Abdul-Malik, and the trial attorney was Demetra Frazier.

People v Smith, 2025 NY Slip Op 05902
(1st Dept 10/23/2025)
SCI | WAIVER OF INDICTMENT IMPROPER | REVERSED & PLEAS VACATED

ILSAPP: Appellant appealed from two Bronx County Supreme Court judgments convicting him, following guilty pleas, of first-degree and third-degree robbery and petit larceny. The First Department reversed the judgments, vacated the pleas, and remanded for further proceedings. Appellant's waiver of indictment was invalid because the record failed to establish compliance with CPL § 195.20. There was no evidence that appellant signed the indictment waiver in open court when the plea was entered because the waiver was not dated the same day as the plea. The court did not confirm on the record that appellant signed the waiver and made no reference to the waiver. The failure to comply with the statutory provisions is a jurisdictional defect that required reversal and dismissal of the SCI. Appellant was also entitled to vacatur of his subsequent plea since it was induced by the promise of concurrent time with the sentence imposed under the invalid SCI plea. The Legal Aid Society of NYC (Isabel Patkowski, of counsel) represented Smith. (Supreme Ct, Bronx Co)

People v E.R., 2025 NY Slip Op 05927 (1st Dept 10/28/2025)
HARSH & EXCESSIVE SENTENCE | VOP | INVALID APPEAL WAIVER | MODIFIED

ILSAPP: Appellant appealed from a Bronx County Supreme Court judgment (Bruce, J.), convicting him of a violation of probation, revoking his probation, and resentencing him to 1 to 3 years in prison. The First Department reduced the sentence to a determinate sentence of 1 year, finding that the record did not establish a valid appeal waiver. Center for Appellate Litigation (Benjamin Wiener, of counsel) represented E.R. (Supreme Ct, Bronx Co)

People v Gee, 2025 NY Slip Op 05924 (1st Dept 10/28/2025)
PLEAS - Allocution/Elements Of Crime
BURGLARY - Intent To Commit Crime

LASJRP: During the plea allocution the court asked defendant if he knowingly entered and remained unlawfully at the premises, which is a dwelling, and attempted to commit a crime inside. Defendant responded, "That wasn't my intent, but I did remain unlawfully." Defense counsel then stated, "Yes, there was a protective order which he violated." The court then asked defendant, "That was with the intent to violate the order of protection, is that right"? Defendant responded, "Yes."

The First Department vacates defendant's guilty plea, noting that the violation of a stay-away provision in an order of protection cannot, without more, be used to establish the requisite state of mind to elevate criminal trespass to burglary. Once defendant denied his intent to commit a crime within the premises, the court was required to inquire further to ensure that defendant's guilty plea was, in fact, knowing and voluntary. (Supreme Ct, New York Co)

Matter of Alisa H. v Ayanna B., 2025 NY Slip Op 06021
(1st Dept 10/30/2025)
ADVOCATE-WITNESS RULE - Statements By Attorney For The Child
CUSTODY/VISITATION - Right To Counsel/Child

LASJRP: In this grandparent visitation proceeding, the First Department upholds an order dismissing the petition, noting, inter alia, that while the better practice would have been to have in camera interviews with the children, the Referee properly considered the representation of the attorney for the children that the children oppose visitation with the grandmother. (Family Ct, New York Co)

People v Elvin, 2025 NY Slip Op 06031
(1st Dept 10/30/2025)
SENTENCE - Probation/Conditions

LASJRP: In a case in which defendant entered a plea of guilty to attempted robbery in the second degree, the First Department concludes that a special probation condition permitting warrantless searches of defendant's home, person, and vehicle was not reasonably related to defendant's rehabilitation. (Supreme Ct, Bronx Co)

Medina v Medina, 2025 NY Slip Op 06027
(1st Dept 10/30/2025)
DIVORCE | INSUFFICIENT EVIDENCE OF LACK OF ENGLISH PROFICIENCY | REVERSED & REMITTED

ILSAPP: Appellant appealed from a Bronx County Supreme

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Court order denying his motion to vacate the parties' separation agreement. The First Department reversed and remitted for reconsideration of the motion. The motion court improperly disregarded the affirmations attached to the motion on the basis that the appellant did not speak or understand English. While counsel for the opposing party made that claim, that assertion was not based on personal knowledge and lacked record support. The court thus remitted for further proceedings on the motion. Juan P. Luciano represented appellant. (Supreme Ct, Bronx Co)

Matter of T.M.S. v K.R.G., 2025 NY Slip Op 06040
(1st Dept 10/30/2025)
FAMILY OFFENSE | INSUFFICIENT PROOF | INCIDENT NOT IN PETITION AS BASIS FOR OFFENSE | MODIFIED

ILSAPP: Respondent appealed from a New York County Family Court order finding that he committed the family offenses of second-degree harassment and second-degree aggravated harassment and entering an order of protection against him. The First Department modified the family offense findings and otherwise affirmed. Petitioner failed to meet her prima facie burden to prove second-degree harassment because she failed to testify to what false allegations respondent made against her, the substance of text messages or the voicemail he purportedly sent her, or that she ever told him to stop contacting her before filing the underlying family offense petition. The court also modified the aggravated harassment finding to one based on a different incident. While the original finding could not stand based on similarly-insufficient testimony, the court found that a different incident in which respondent posted a video to the internet, claiming that he had a gun and would shoot petitioner's husband, met the elements of aggravated harassment. While the original petition did not mention this incident, this omission did not prevent the incident from forming the basis of the finding that respondent committed a family offense since the trial court made findings of fact regarding it. Jay A. Maller represented appellant K.R.G. (Family Ct, New York Co)

People v Tracy, 2025 NY Slip Op 06029
(1st Dept 10/30/2025)
HEARSAY - Prior Consistent Statement

LASJRP: During cross-examination, the prosecutor confronted defendant with three prior inconsistent statements from defendant's video statement to police shortly after his arrest.

The First Department finds no error in the court's refusal to admit the videotaped statement. The limited cross-examination did not imply that defendant's self-defense claim was a recent fabrication, and, throughout the trial, the People adduced evidence indicating that defendant began asserting his justification defense immediately after the incident. Thus, the videotaped statement was not made prior to the time when a motive to falsify would have arisen. (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.

People v Howard, 240 AD3d 513 (2nd Dept 7/2/2025)
APPEAL - Waiver Of Right To Appeal

LASJRP: The Second Department, with one judge dissenting, concludes that defendant knowingly, voluntarily, and intelligently waived his right to appeal. Although it would have been better practice for the court to discuss the waiver with defendant before obtaining admissions, the court mentioned that the appeal waivers were a condition of the plea agreements prior to defendant's pleas of guilty and admissions of guilt. In addition, the court directed defendant's attorneys to discuss the waivers with him and then, after a pause in the proceeding, proceeded with the allocutions.

The dissenting judge asserts that although some decisions have determined that a failure to discuss the waiver with the defendant before obtaining an admission of guilt did not invalidate the waiver where the defendant was aware of the People's demand for a waiver before agreeing to plead guilty, in this case the court made only a cursory statement prior to the plea allocutions that defendant was "being asked to ... waive his right to any appeal that he may have," without any explanation of the nature of the right to appeal or the consequences of an appeal waiver. It cannot be presumed that defendant was "aware" he was waiving his right to appeal by entering the plea agreement. (Supreme Ct, Richmond Co)

People v Patierno, 240 AD3d 516 (2nd Dept 7/2/2025)
HEARSAY - Adoptive Admissions
EVIDENCE/LAY OPINION - Complainant's State Of Mind/Appearance

LASJRP: In this sexual abuse prosecution, the Second Department rejects defendant's contention that the court erred in admitting a co-worker's testimony that the complainant was uncomfortable reporting the crimes because she was undocumented. This testimony was relevant to the complainant's state of mind.

The complainant's mother was properly permitted to testify with respect to the complainant's appearance and demeanor after the abuse.

The Court finds no error in the admission of defendant's statements on recordings and in text messages when defendant was confronted with allegations of wrongdoing by the com-

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plainant and the co-worker. These were adoptive admissions. (Supreme Ct, Westchester Co)

People v Patterson, 240 AD3d 521 (2nd Dept 7/2/2025)
IDENTIFICATION - Courtroom Showups

LASJRP: The Second Department concludes that defendant was not deprived of a fair trial where one of the complainants made a first-time, in-court identification of defendant.

There were independent assurances of the reliability of the identification, and reliable evidence at trial that corroborated the identification, including defendant's DNA found on the gun used during the robbery and the complainants' property found on defendant's person. (Supreme Ct, Kings Co)

Matter of Raymond E., 2025 NY Slip Op 04006 (2nd Dept 7/2/2025)
MENTAL HYGIENE LAW - Involuntary Commitment

LASJRP: The Second Department holds that, at a hearing held pursuant to Mental Hygiene Law §§ 9.31 and 9.33 to retain an involuntary patient, the petitioner is not required to furnish the testimony of a licensed physician rather than a nurse practitioner.

As a nurse practitioner can diagnose, treat, and prescribe medication, a nurse practitioner is also competent to testify in a proceeding pursuant to Mental Hygiene Law § 9.33 that a patient is mentally ill and in need of further care and treatment, and that the patient poses a substantial threat of physical harm to himself or herself or others, so as to establish a prima facie case for involuntary commitment. It reasonably can be argued that requiring the testimony of a physician, who may have comparably less knowledge of a specific patient's mental condition compared to an experienced nurse practitioner who interacts extensively with that patient, would be a disservice to the court and the parties. (Family Ct, Richmond Co)

People v Charles, 240 AD3d 612 (2nd Dept 7/9/2025)
PROBATION | IMPROPER CONDITION: CONSENT TO SEARCH FOR DRUGS/WEAPONS | MODIFIED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him of third-degree assault, following his guilty plea, and sentencing him to a term of probation. The Second Department modified by deleting the probation condition requiring appellant 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," and otherwise affirmed. The condition was improperly imposed because it was not individually tailored to the offense, and thus was not reasonably related to appellant's rehabilitation or necessary to ensure that he would lead a law-abiding life. Appellant was a first-time offender, was not armed with an illegal weapon at the time of the offense (he had a boxcutter and pepper spray), and did not need alcohol or substance abuse treatment. The Legal Aid Society of NYC (Noah Breslau, of counsel) represented Charles. (Supreme Ct, Kings Co)

Matter of Jose M., 240 AD3d 594 (2nd Dept 7/9/2025)
ABUSE/NEGLECT - Domestic Violence

LASJRP: The Second Department finds insufficient evidence of neglect of one child, and derivative neglect of a newborn child, where the father struck his girlfriend in the mouth while the older child was in her nearby bedroom down the hallway, but she did not see the incident or any resulting injuries, did not hear the girlfriend's plea for the father to stop hitting her, and was otherwise unaware that a domestic violence incident, as opposed to a mere verbal argument, was occurring. When recounting the events in an interview, the child presented a calm demeanor, interacted normally and comfortably with the father, and reportedly felt safe with the father. (Family Ct, Kings Co)

People v Robertson, 240 AD3d 617 (2nd Dept 7/9/2025)
HEARSAY - Prompt Outcry
SEX CRIMES - Credibility Of Child/Delay In Reporting

LASJRP: The Second Department finds no error in the admission of the complainant's first outcries to her sister and her mother approximately 4 1/2 years after the subject incident, given the circumstances, including the complainant's young age, the ongoing and quasi-familial relationship between the complainant and defendant, defendant's statement to the complainant as she fled, and the complainant's fear of making the complaint sooner.

Certain testimony about the effects that the allegations of abuse had on the complainant's family members was relevant to explain the complainant's delay in disclosing the abuse. (Supreme Ct, Kings Co)

People v Rodas, 240 AD3d 625 (2nd Dept 7/9/2025)
SORA | UPWARD DEPARTURE IMPROPER | HARMLESS ERROR | AFFIRMED

ILSAPP: Appellant appealed from a Kings County Supreme Court order adjudicating him a level two sex offender under SORA. The Second Department affirmed. The SORA court erred by considering aggravating factors that were not raised by the prosecution or the Board of Examiners of Sex Offenders. However, the error was harmless where the prosecution did prove, by clear and convincing evidence, another aggravating factor—the complainant's physical disabilities—which was not adequately taken into account by the risk assessment instrument. (Supreme Ct, Kings Co)

Matter of Syiah C.M., 240 AD3d 596 (2nd Dept 7/9/2025)
TERMINATION OF PARENTAL RIGHTS - Diligent Efforts

LASJRP: The Second Department reverses a finding of perma-

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nent neglect where the evidence failed to establish that petitioner assisted the single, working mother with obtaining childcare services, followed up with her therapy progress for six months, or built a rapport with her in order to engage in cooperative dialogue.

The JRP appeals attorney was Hannah Kaplan, and the trial attorney was Jill Wade. (Family Ct, King Co)

People v Bentivegna, 240 AD3d 706 (2nd Dept 7/16/2025)
***ANDERS* BRIEF | DEFICIENT | | NONFRIVOLOUS APPELLATE ISSUES | NEW COUNSEL ASSIGNED**

ILSAPP: Appellant appealed from two Nassau County Court judgments convicting him of criminal obstruction of breathing or blood circulation and related charges, following his guilty pleas. Assigned counsel filed an *Anders* brief to withdraw. The Second Department found counsel's brief deficient, granted leave to withdraw, and assigned new appellate counsel. Counsel did not advocate on his client's behalf but acted as "a mere advisor to the court, opining on the merits of the appeal." Independent appellate review of the record showed that nonfrivolous appellate issues did exist that were "arguable on their merits." "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." As conceded by the prosecution, these arguable issues included whether appellant's post-plea assertions of innocence required inquiry and whether appellant's guilty pleas were made voluntarily, knowingly, and intelligently. (County Ct, Nassau Co)

People v Franklin, 240 AD3d 712 (2nd Dept 7/16/2025)
EVIDENTIARY ERROR | ARREST PHOTO | HARMLESS ERROR | EXCESSIVE SENTENCE | MODIFIED

ILSAPP: Appellant appealed from a Queens County Supreme Court judgment convicting him of second-degree CPW, upon a jury verdict, and sentencing him to a determinate term of 4 years' imprisonment and 2 1/2 years' PRS. Upon remittitur from the Court of Appeals that reversed an earlier Second Department decision reversing the judgment and ordering a new trial, the Second Department now modified, in the interest of justice, by reducing the incarceratory portion of the sentence to 3 1/2 years, and otherwise affirmed. The Second Department determined that the trial court erred in admitting appellant's arrest photo where identification was not at issue, and there was no other relevant purpose. However, the error was harmless, since the photo was admitted to show appellant's change in appearance, not—as the defense contended—to present him as a "scowling, mean person." The sentence imposed was excessive "based upon a review of the relevant circumstances." Appellate Advocates (Hannah Kon, of counsel) represented Franklin. (Supreme Ct, Queens Co)

Matter of Joseph D.L., 2025 NY Slip Op 04178 (2nd Dept 7/16/2025)
TPR | CHILD'S PLACEMENT IN QRTP | AVAILABILITY OF LESS RESTRICTIVE PLACEMENT | REVERSED

ILSAPP: The child appealed from a Queens County Family Court order approving placement in a Qualified Residential Treatment Program (QRTP). The Second Department reversed, addressing for the first time the factors a court must consider in approving a child's QRTP placement under Family Court Act § 1055-c. The appellate court found that the record did not support Family Court finding that there was no alternative setting available that could meet the child's needs in a less restrictive environment. Family Court was required to consider the availability of foster family homes in making its determination. In this case, testimony failed to establish that those homes were not available. Rather, the child lived in a foster family home from 2019 until January 2024, during which time his needs consistently had been met, suggesting that a less restrictive option was potentially available. The Legal Aid Society (Dawne A. Mitchell and Judith Stern, of counsel) represented the child. (Family Ct, Queens Co)

Matter of Kaileigh-Kouture A.M., 240 AD3d 694 (2nd Dept 7/16/2025)
APPELLATE PROCEDURE | DEFAULT ORDER | AFFIRMED

ILSAPP: Appellant mother appealed from a Richmond County Family Court order finding that she permanently neglected the child and terminating her parental rights. The Second Department affirmed the finding of permanent neglect but did not reach the merits of the dispositional order or whether Family Court's failure to adjourn the dispositional hearing was proper. The mother, who represented herself, failed to appear in court for the second day of the dispositional hearing. Family Court then issued its order upon her default. Since no appeal lies from a default under CPLR 5511, the Second Department limited its review to the "matters which were the subject of contest" in Family Court—here, only the fact-finding order, which the court affirmed. Note: The Second Department issued an identical decision in a companion case *Matter of Kalebh-Xavier X.O. (Jessica-Marie M.)*. (Family Ct, Richmond Co)

People v White, 240 AD3d 715 (2nd Dept 7/16/2025)
RIGHT TO PUBLIC TRIAL

LASJRP: After the first day of testimony had concluded and jurors had been dismissed for the day, the trial court excluded a spectator from the courtroom for sleeping, which the court noted was "disrespectful" and "distracting to the jurors." The court told the spectator, who was apparently a friend of defendant, that he was "excluded from this courtroom for the rest of this trial" and was "not to return" to the courtroom. The spectator then asked the court, "I can't come back," and the

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court ordered the spectator to immediately leave the courtroom. Defense counsel objected and noted that he had not heard any disturbance from the spectator and that the court had failed to provide the spectator with a warning before excluding him for the rest of the trial. The court indicated that it would not reconsider or entertain further argument.

The Second Department finds reversible error. The court did not sufficiently consider whether less drastic measures could have addressed the spectator's behavior, such as warning the spectator or requesting that the spectator alter his demeanor in the courtroom. The court's statement the next day that the spectator was no longer excluded from the courtroom was insufficient to remedy the court's error; the spectator was not present and had no reason to believe that he could return to the courtroom. (Supreme Ct, Queens Co)

Matter of Ziyoda S., 240 AD3d 705 (2nd Dept 7/16/2025)
NEGLECT | AGENCY APPEAL | CHILD STATEMENTS INSUFFICIENTLY CORROBORATED | AFFIRMED

ILSAPP: ACS appealed from a Kings County Family Court order dismissing a neglect petition against a parent after a hearing. The Second Department affirmed. Family Court properly found that the child's out-of-court statements regarding excessive corporal punishment were not sufficiently corroborated by nonhearsay, relevant evidence tending to support the reliability of the statements. (Family Ct, Kings Co)

Matter of Pierce v Joyner, 240 AD3d 786 (2nd Dept 7/23/2025)
PARENTAL ACCESS | IMPERMISSIBLE DELEGATION OF AUTHORITY | MODIFIED AND REMITTED

ILSAPP: Mother appealed from a Queens County Family Court order awarding sole legal and physical custody to the child's foster parent and providing that the mother "shall have parental access with the child supervised by an adult mutually agreed upon between the parties." The Second Department modified and remitted for Family Court to issue an order (1) establishing an appropriate parenting time supervisor, and (2) specifying the mother's parenting time schedule. While the foster parent had standing to seek custody as a "suitable person" under Family Court Act § 1055-b, Family Court's order impermissibly delegated its authority to determine parental access to the parties. The record showed that their relationship had "deteriorated" and included an incident where the foster parent prevented the mother from accessing the child during a scheduled visit. Christian P. Myrill represented Joyner. (Family Ct, Queens Co)

Pillco v 160 Dikeman Street, LLC, 2025 NY Slip Op 04495 (2nd Dept 7/30/2025)
HEARSAY - Medical Records/Statements Relevant To Diagnosis Or Treatment

LASJRP: The Second Department holds that a statement by plaintiff appearing in plaintiff's medical records - indicating that plaintiff's shoulder and back were injured as he was picking up a heavy object and "felt a pull" - was properly considered under the business records exception to the hearsay rule to defeat plaintiff's motion for summary judgment. The statement that plaintiff "felt a pull" indicates the sensation plaintiff felt as the injury allegedly occurred, and the medical records themselves indicate that how the accident occurred was relevant to diagnosis or treatment.

The medical records indicate that plaintiff was the source of the challenged statement. The Court rejects plaintiff's contention that testimony or an affidavit from the medical provider who recorded the statement was required to identify plaintiff as the source. When there is no evidence in the medical record indicating that the patient was the source, or when there are ambiguities which could indicate that someone else, such as someone accompanying the patient, may have provided the information, the medical record alone is insufficient. To the extent that the First Department has held that testimony from the medical provider who recorded the statement is always necessary, this Court disagrees. (Supreme Ct, Kings Co)

Poltorak v Clarke, 2025 NY Slip Op 04496 (2nd Dept 7/30/2025)
STATE HABEAS | CPLR § 7003 FORFEITURE PROVISION UNCONSTITUTIONAL | MODIFIED

ILSAPP: Plaintiff-mother appealed from a Kings County Supreme Court order and judgment denying her motion for summary judgment pursuant to CPLR § 7003(c) and granting the defendant judge's cross-motion to dismiss the amended complaint. The Second Department modified by adding a provision declaring that CPLR § 7003(c) is unconstitutional and otherwise affirmed. In a case of first impression, the Second Department held that the "forfeiture provision" of CPLR § 7003(c), mandating that a judge forfeit $1,000 to a petitioner if the judge refuses to issue a writ of habeas corpus when one should have been issued, is unconstitutional because it violates both the Compensation Clause of the New York State Constitution, as well as the separation of powers doctrine. In this case, the plaintiff sought the return of her child via a petition to the defendant Family Court judge for a writ of habeas corpus, but her request was denied. The plaintiff then sought to compel the judge to pay the $1,000 forfeiture under the "forfeiture provision" of CPLR § 7003(c). Reaching the merits of a petition for a writ of habeas corpus is not a mere ministerial act. Therefore, requiring a judge to pay the forfeiture from their own personal funds for exercising judicial authority both violates the separation of powers doctrine by interfering with the judiciary's independence and runs afoul of the Compensation Clause through its "indirect diminution of judicial compensation." (Supreme Ct, Kings Co)

Second Department *continued*

People v Steele, 2025 NY Slip Op 04494
(2nd Dept 7/30/2025)
CPL § 440.20 | FAILURE TO MAKE YO DETERMINATION | REVERSED & REMITTED FOR RESENTENCING

ILSAPP: Appellant appealed from a Queens County Supreme Court order denying, without a hearing, his CPL § 440.20 motion to set aside his sentence, upon his conviction of first-degree robbery. The Second Department reversed the order, granted the motion, vacated the sentence, and remitted for resentencing after a determination as to whether appellant should be afforded youthful offender (YO) treatment. An eligible youth who fails to take a direct appeal from a judgment of conviction and sentence may, in the first instance, seek to set aside their sentence under CPL § 440.20, where the trial court failed to make a YO determination. The prosecution incorrectly argued that CPL § 440.20 is not the proper vehicle for setting aside the sentence under these circumstances. The order setting aside the sentence "does not affect the validity or status of the underlying conviction" where the eligible youth may only be resentenced after the motion court vacates the sentence. A YO determination, pursuant to CPL § 720.20, is required "in every case where the defendant is eligible, even where the defendant fails to request it, or agrees to forgo it as part of a plea bargain." Here, where appellant was an eligible youth, as conceded by the prosecution, the trial court's failure to make a YO determination made the sentence "invalid as a matter of law." The Second Department expressed no opinion as to whether the court should grant YO. Eric Nelson represented Steele. (Supreme Ct, Queens Co)

Matter of Cutaia v Cutaia, 241 AD3d 546
(2nd Dept 8/6/2025)
CHILD SUPPORT | DISABILITY INSUFFICIENT FOR DOWNWARD MODIFICATION | REVERSED

ILSAPP: Mother appealed from a Dutchess County Family Court order granting the father's petition for a downward modification of his child support obligation. The Second Department reversed. Family Court should not have granted the father's request for a downward modification. Although he submitted evidence that he was granted a disability pension from his employer after the initial child support order was made, he failed to submit proof that he made a good faith effort to obtain some other employment commensurate with his disability or that he was completely unable to work. Appellant mother represented herself. (Family Ct, Dutchess Co)

Matter of Langenhahn v Langenhahn, 241 AD3d 551
(2nd Dept 8/6/2025)
CHILD SUPPORT | IMPROVIDENT EXERCISE OF DISCRETION | MODIFIED

ILSAPP: Mother appealed from a Suffolk County Family Court order denying her objections to a Support Magistrate's upward modification of child support order. The Second Department modified, in the interest of justice, by reducing the mother's basic child support obligation for the parties' two younger children from $1,720 per month to $815 per month and otherwise affirmed. The Support Magistrate improvidently exercised its discretion in calculating the mother's child support obligation based on the combined parental income, in excess of the statutory cap, without proper justification. Although the court has discretion to apply the statutory formula to income above the cap, it must articulate an explanation for doing so, considering such factors as the "significant disparity between the parties' income and resources." Montefusco Law Group (Robert H. Montefusco, of counsel) represented the mother. (Family Ct, Suffolk Co)

People v Lloyd F., 2025 NY Slip Op 04583
(2nd Dept 8/6/2025)
RAISE THE AGE | PRIOR YO ADJUDICATION | NO EXTRAORDINARY CIRCUMSTANCES | REVERSED

ILSAPP: Appellant appealed from a Richmond County Supreme Court judgment convicting him of second-degree attempted CPW, following a guilty plea entered after Supreme Court granted the prosecution's motion to prevent transfer to Family Court, based on a showing of "extraordinary circumstances." The Second Department reversed the judgment, denied the prosecution's motion pursuant to CPL § 722.23, and remitted for an order of removal to Family Court. Interpreting the term "extraordinary circumstances" in the "Raise the Age" statute, the Second Department found that Supreme Court abused its discretion. Following a detailed analysis of the statute's legislative history, policy considerations, semantics, and the brain science of adolescent development, the Court concluded that "extraordinary circumstances" must be reserved for only the most "exceptional" and "uncommon of cases," such as those involving "aggravating factors that demonstrate a degree of cruelty, heinousness, or recidivism suggesting that an adolescent offender's conduct is not simply the result of youthful impulsivity or an inability to control their environment." Here, appellant was 16 years old, living in a high crime area, and charged with weapon possession–facts that did not "reasonably support" the "very high threshold" of establishing the "extraordinary circumstances." Nor did evidence that appellant had posted a social media livestream where he appeared to be smoking marijuana and pointing a firearm at the camera meet this very high threshold: no one was harmed, and there were no allegations that appellant "intended to use the firearm to commit or further another crime at the time of his arrest." Appellant's "limited criminal history," a prior youthful

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offender adjudication for first-degree assault when he was 14 years old, and the allegation that appellant did not benefit from prior services were not "significant aggravating factors," especially given the record proof that he meaningfully engaged with rehabilitative services by cultivating relationships with service providers in "several programs." "A second arrest for a victimless act of adolescent bravado does not convert otherwise ordinary circumstances into extraordinary ones." Appellate Advocates (Steven C. Kuza, of counsel) represented Lloyd F. (Supreme Ct, Richmond Co)

Wallach v Rothschild, 241 AD3d 600 (2nd Dept 8/6/2025)
DIVORCE | RECUSAL | APPEARANCE OF IMPARTIALITY | REVERSED

ILSAPP: Appellant appealed from a Rockland County Supreme Court order denying their motion for recusal in a divorce action based on the principal law clerk's marriage to a named partner of the law firm representing the respondent. The Second Department exercised its discretion and reversed, with costs, and granted appellant's motion. Under the circumstances, it would have been "better practice" for the judge to recuse herself "in a special effort to maintain the appearance of impartiality." Although the judge is the sole arbiter of recusal in the absence of any legal disqualification, the duties and responsibilities of the law clerk are "intimately connected" with that of the judge. Given their relationship, the fact that the judge would be tasked with deciding an award of attorney's fees to the firm of the law clerk's spouse compromised the appearance of judicial impartiality and warranted recusal. Rabin Schumann and Partners LLP (Bonnie E. Rabin and Emery Celli Brinckerhoff Abady Ward & Maazel, LLP [Richard D. Emery and Laura S. Kokotailo], of counsel) represented Rothschild. (Supreme Ct, Rockland Co)

People v Yahmir T. D., 241 AD3d 576 (2nd Dept 8/6/2025)
RAISE THE AGE | CPW | NO EXTRAORDINARY CIRCUMSTANCES | REVERSED

ILSAPP: Appellant appealed from a Rockland County Court judgment convicting him of second-degree CPW, following a guilty plea. Citing *People v Lloyd F.*, the Second Department reversed the judgment, granted appellant's motion to transfer the case from Youth Part to Family Court, denied the prosecution's motion pursuant to CPL § 722.23 to prevent removal, and remitted for an order of removal. Appellant was 17 years old at the time of the offense, and there were no "extraordinary circumstances" demonstrated by the prosecution that prevented the case from being transferred to Family Court. James D. Licata represented T. D. (County Ct, Rockland Co)

Laura W. v John U., 241 AD3d 754 (2nd Dept 8/13/2025)
CONSOLIDATED DIVORCE & FAMILY OFFENSE | CHILD AS PROTECTED PARTY UNDER OOP | MODIFIED

ILSAPP: Father and child separately appealed from a Westchester County Supreme Court order issuing a 5-year OOP against the father in favor of the child, among other orders issued as part of a consolidated divorce and family offense proceeding. The Second Department modified by denying the mother's motion for the OOP for the child and otherwise affirmed. The evidence did not support including the child as a protected party under the OOP, as doing so was not "necessary to further the purposes of protection." Although the father's alleged conduct against the mother constituted a family offense, the evidence did not show that any of those actions occurred in the child's presence or endangered the child. Therefore, Supreme Court should have denied the mother's motion. Abrams Fensterman, LLP (Robert A. Spolzino, Lisa Colosi Florio, and Steven Still, of counsel) represented John U. (Supreme Ct, Westchester Co)

Matter of Lopez v Estrella, 241 AD3d 687 (2nd Dept 8/13/2025)
VISITATION - Virtual Appearance - Dismissal/Failure To Prosecute

LASJRP: In this proceeding brought by the father pursuant to Family Court Act Article Six seeking parental access with the child, the court advised the father, who lives in Florida, that he would no longer be permitted to appear virtually, citing the father's disruptions during his virtual appearances. Prior to the next scheduled court appearance, the father made multiple requests for permission to appear virtually but the court denied his requests. While the father was not present at the next scheduled court appearance, his attorney was present. The court dismissed the petition without prejudice for failure to prosecute.

The Second Department reverses. A petition should not be dismissed for failure to prosecute where there is no indication of intentional default or willful abandonment. Here, since the father made several appearances virtually and appeared through counsel during the latest court appearance, the record does not reflect that the father willfully abandoned his parental access petition. (Family Ct, Rockland Co)

Matter of Myers v Denning, 241 AD3d 688 (2nd Dept 8/13/2025)
MODIFICATION OF CUSTODY & PARENTAL ACCESS | RECORD INSUFFICIENT TO DETERMINE BEST INTERESTS | REVERSED & REMITTED

ILSAPP: Mother appealed from a Dutchess County Family Court order granting, after a hearing, the father's modification petition to award him primary residential custody of the parties' child and restricting the mother's partner from being present during

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her parental access. The Second Department reversed and remitted for a new determination as to the best interests of the child. New developments since the October 2023 order appealed from, including the child's concerns that the restriction on the mother's partner was negatively impacting the child's relationship with the mother and younger siblings, rendered the existing record insufficient to determine the child's best interests and required a new hearing (see *Matter of Michael B.*, 80 NY2d 299 [1992]). The Second Department did not express any opinion as to the appropriate determination. Yasmin Daley Duncan represented Denning. (Family Ct, Dutchess Co)

People v Archibald, 241 AD3d 837 (2nd Dept 8/20/2025)
SENTENCE - Probation/Conditions

LASJRP: The Second Department finds no error in the imposition of a probation condition requiring defendant to support his dependents where defendant has a child or children for whom he is obligated to provide support. (Supreme Ct, Kings Co)

Matter of Fraser v Miller, 241 AD3d 826
(2nd Dept 8/20/2025)
CUSTODY - Hearsay Evidence/Forensic Report

LASJRP: In this custody proceeding, the Second Department finds error, albeit harmless, where the Family Court admitted a forensic report into evidence at the hearing, since it was unsworn, inadmissible hearsay. (Family Ct, Orange Co)

People v Knight, 241 AD3d 840 (2nd Dept 8/20/2025)
SEARCH AND SEIZURE - Standing/Auto Search

LASJRP: The Second Department concludes that defendant lacked standing to challenge the search of a vehicle in which he was a passenger where, during the initial stop of the vehicle, the detective observed defendant reach between his legs and place something under his seat, and, after defendant had been removed from the vehicle, the detective looked through the windshield and saw the front of the barrel of a gun underneath the front passenger seat in the area where he had seen defendant place something. The People were not relying on the statutory presumption of possession. (Supreme Ct, Queens Co)

People v Edwards, 2025 NY Slip Op 04922
(2nd Dept 9/10/2025)
SORA | DUE PROCESS | FOREIGN REGISTRATION CLAUSE | SVO | OUT-OF-STATE CONVICTION | MODIFIED

ILSAPP: Appellant appealed from a Suffolk County Court order designating him a level one sexually violent offender (SVO) under SORA based on out-of-state criminal conduct that would not have resulted in a SVO designation if the same conduct had occurred within New York. The Second Department modified by striking the SVO designation. Addressing an issue of first impression before the Second Department, the Court agreed with the Fourth Department in *People v Malloy*, 228 AD3d 1284 (4th Dept 2024), and held that the foreign registration clause (FCR) under Correction Law § 168-a(3)(b) was unconstitutional as applied to appellant because his SVO designation was based solely on his Florida felony conviction for conduct that would have been a misdemeanor and not a sexually violent offense in New York. Application of the law violated appellant's State and federal substantive due process rights, as it was "not rationally related to a legitimate government interest," such as protecting the public. Further, labeling appellant with such an "overinclusive" designation without regard for the nature of the specific offense committed had the potential to "mislead[] the public" as to appellant's actual level of risk. The Second Department rejected appellant's facial due process challenge and did not reach his Equal Protection claim, which was unpreserved. Suffolk County Legal Aid Society (Mark J. Ermmarino, of counsel) represented Edwards. (County Ct, Suffolk Co)

People v Elijah C., 2025 NY Slip Op 04917
(2nd Dept 9/10/2025)
YO | INVALID APPEAL WAIVER | PROBATION CONDITION NOT INDIVIDUALLY TAILORED | MODIFIED

ILSAPP: Appellant appealed from three Queens County Supreme Court judgments (DiBiase, J.) adjudicating him a youthful offender upon his guilty pleas to first-degree robbery on three separate indictments and sentencing him on each judgment to a term of probation with conditions. The Second Department modified the judgments by deleting the probation condition requiring appellant to "support dependents and meet other family responsibilities" and otherwise affirmed. The condition was improperly imposed because it was not "individually 'tailored to suit the probationer,'" who had no dependents. The appeal waiver was also deemed invalid. The court's oral colloquy mischaracterized the nature of the appeal by suggesting it was an absolute bar to all appeals and did not cure the defective written waiver, which misstated the law by declaring that appellant had waived his rights to poor person relief and post-adjudication remedies in State and federal courts. However, appellant's sentence was not excessive. Appellate Advocates (Yvonne Shivers and Martin Sawyer, of counsel) represented Elijah C. (Supreme Ct, Queens Co)

People v Mayers, 241 AD3d 1365 (2nd Dept 9/10/2025)
APPELLATE JURISDICTION | APPEALABILITY OF MRTA VACATUR | DISMISSED

ILSAPP: Appellant appealed from a Nassau County Court order that granted his Marijuana Regulation and Taxation Act (MRTA) motion under CPL § 440.46-a(2)(a), vacated his conviction for second-degree criminal possession of marijuana, and replaced it with a conviction for second-degree criminal possession of cannabis. After sua sponte ordering the parties to show cause

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on whether the order was appealable as of right or by permission, the Second Department dismissed appellant's appeal. Addressing an issue of first impression before the Second Department, the Court held that the order was not appealable as of right pursuant to CPL § 450.10(1). The Court reasoned that appellant's substituted conviction for a lesser offense did not constitute a new "judgment" of conviction within the meaning of CPL § 1.20, because the procedure set forth in CPL § 440.46-a(2)(b)(ii) did "not involve 'the entry of a plea of guilty to, or a verdict of guilty upon, an accusatory instrument.'" Noting the absence of a statutory provision allowing for appeals, the Second Department implored the legislature to amend the statute if it had intended for CPL § 440.46-a to provide for such appeals. (County Ct, Nassau Co)

People v Scott, 241 AD3d 1368 (2nd Dept 9/10/2025)
DVSJA | ABUSE NOT A SIGNIFICANT CONTRIBUTING FACTOR | DEFICIENT EXPERT EVIDENCE | AFFIRMED

ILSAPP: Appellant appealed from a Westchester County Court order denying her resentencing application under the Domestic Violence Survivors Justice Act (DVSJA), after a hearing. The Second Department affirmed. County Court had determined, and the prosecution conceded, that appellant's diagnosis of post-traumatic stress disorder (PTSD) due to extensive prior experiences of domestic violence established that she was a victim of domestic violence at the time of the offense. However, the Second Department agreed with County Court that appellant had not proved that her PTSD was a significant contributing factor to the homicide. Appellant was convicted after a jury trial of first-degree manslaughter for driving over the decedent, a woman with whom appellant shared a romantic partner, after the complainant threatened appellant, who was pregnant with small children in the car. While the defense expert had testified that appellant's domestic violence-related PTSD significantly contributed to the offense because she was triggered by the decedent's menacing behavior, the Second Department criticized the expert's failure to address the relevance of appellant's history of confrontations with romantic rivals, including recent incidents with the decedent. Because the denial was affirmed based on the second prong, the court did not address the third prong: whether the 25-to-life sentence was unduly harsh under all the circumstances. (County Ct, Westchester Co)

People v Stokes, 2025 NY Slip Op 04921 (2nd Dept 9/10/2025)
SECOND VIOLENT FELONY OFFENDER | ERRONEOUS ADJUDICATION | MODIFIED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him of third-degree CPW, upon a jury verdict, and sentencing him as a second violent felony offender (SVFO). The Second Department modified by vacating appellant's erroneous adjudication and substituting it with a second felony offender adjudication but otherwise affirmed. While the prosecution conceded that the SVFO adjudication was improper because appellant's instant conviction under PL § 265.02(1) is not a violent felony, the Second Department determined that remittal for resentencing was not required because appellant was sentenced as a second felony offender under the terms promised at the time of his guilty plea. Appellate Advocates (Steven C. Kuza, of counsel) represented Stokes. (Supreme Ct, Kings Co)

Matter of Gabriella E., 241 AD3d 1462 (2nd Dept 9/17/2025)
ABUSE/NEGLECT - Derivative Abuse

LASJRP: The Second Department upholds findings of abuse and derivative abuse, noting that while finding of sexual abuse of one child does not, by itself, establish that other children in the household have been derivatively abused, in this case the mother's abuse of Gabriella E. evinced impaired parental judgment sufficient to support the finding of derivative abuse of Gabriel E. even though, at the time of the abuse, Gabriel E. had not yet been born.

The JRP appeals attorney was Polixene Petrakopoulos, and the trial attorney was Alexander Turbin. (Family Ct, Queens Co)

Matter of Bell v Bell, 241 AD3d 1556 (2nd Dept 9/24/2025)
GRANDPARENT VISITATION | STANDING BASED ON EQUITABLE CIRCUMSTANCES | BEST INTERESTS HEARING REQUIRED | REVERSED

ILSAPP: Grandmother appealed from a Richmond County Family Court order dismissing her visitation petitions for lack of standing after a hearing. The Second Department reversed, reinstated the petitions, and remitted for a hearing to determine if visitation is in the best interests of the children. Family Court erroneously applied the "extraordinary circumstances" standard in determining that grandmother lacked standing to petition for visitation with her grandchildren, and its determination was not supported by a sound or substantial basis in the record. Upon examination of all the relevant facts, including that grandmother "had developed a relationship with the children early on in their lives and thereafter made repeated efforts to continue the relationship," the Second Department held that grandmother had established standing to seek visitation under the less stringent "equitable circumstances" provision pursuant to DRL § 72(1). The matter was remitted for a hearing to determine if visitation was in the children's best interest, as required under the second prong of DRL § 72(1). Kenneth M. Tuccillo represented appellant grandmother. (Family Ct, Richmond Co)

People v Evans, 241 AD3d 1584 (2nd Dept 9/24/2025)
EXCESSIVE SENTENCE | DRUG POSSESSION | CONSECUTIVE TO CONCURRENT | MODIFIED
JUVENILE OFFENDER | JURISDICTIONAL DEFECT | REVERSED & COUNT DISMISSED

ILSAPP: Appellant appealed from a Richmond County Supreme Court judgment convicting him of second-degree CPW (simple possession under PL § 265.03[3]), following his guilty plea.

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The Second Department reversed the judgment, vacated appellant's guilty plea, dismissed the count of second-degree CPW, and remitted for further proceedings on the remaining counts. The prosecution conceded that the count charging 15-year-old appellant with second-degree CPW was jurisdictionally defective because it "failed to allege that [appellant] possessed the subject weapon 'on school grounds,'" a necessary element for charging juveniles with CPW (see PL § 30.00[2] and CPL § 190.71[a][ii]). The defect was not cured by referencing PL § 265.03(3) in the indictment, nor by "the prosecutor's statement at the plea proceeding that the possession occurred within 1,000 feet of school grounds," or by appellant's "admission to the same." Appellate Advocates (Anna Kou, of counsel) represented Evans. (Supreme Ct, Richmond Co)

Matter of Vicente v Diaz, 241 AD3d 1571 (2nd Dept 9/24/2025)
CUSTODY MODIFICATION | PARENTAL ACCESS | IMPERMISSIBLE DELEGATION OF AUTHORITY | MODIFIED & REMITTED

ILSAPP: Father appealed from a Queens County Family Court order granting mother's modification petition to reduce his parenting time and requiring supervision and scheduling of the parenting time by a mental health professional chosen by the parties. The Second Department modified by vacating the provisions reducing father's parenting time and delegating judicial responsibilities to the parties and a mental health professional, and remitted to select a mental health professional for supervision and for a determination as to a parenting time schedule, but otherwise affirmed. Although the requisite change in circumstances to modify the consent order was established, the reduction in father's parenting time lacked a sound and substantial basis in the record. The Court held that "Family Court should have designated a mental health professional for the father's supervised parental access and set forth a schedule, rather than, in effect, delegating the resolution of those issues to the parties and the mental health professional, respectively." Warren S. Hecht represented Diaz. (Family Ct, Queens Co)

People v Madison, 241 AD3d 1589 (2nd Dept 9/24/2025)
SENTENCING | MANDATORY SURCHARGE & FEES | MODIFIED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him of two counts of second-degree CPW, following his guilty plea. The Second Department vacated, on consent of the prosecution and in the interest of justice, the imposition of mandatory surcharges and fees, but otherwise affirmed. 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 (Joshua M. Levine, of counsel) represented Madison. (Supreme Ct, Kings Co)

Matter of Mathias B., 241 AD3d 1554 (2nd Dept 9/24/2025)
ABUSE/NEGLECT - Disposition/Modification

LASJRP: The petition alleged that the mother placed her five-year-old child, unattended, in an Uber at 1:00 a.m. and sent him to the home of an adult who was unaware the child was coming and was unreachable for several days thereafter. The mother consented to a neglect finding without admission, and, at disposition, the court released the child to the mother with various conditions. Subsequently, upon ACS's motion pursuant to FCA § 1061 and a hearing, the court placed the child in the custody of the non-respondent father.

Upon the mother's appeal, the Second Department affirms, citing evidence that the mother left the child with a neighbor she had known for two weeks without telling the neighbor or the child that she was leaving or providing the neighbor with her contact information, necessitating police involvement.

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

People v Mercado, 2025 NY Slip Op 05104 (2nd Dept 9/24/2025)
SEARCH AND SEIZURE - Search Warrants/Time Of Execution - Choice Of Law

LASJRP: The Second Department holds that the court properly applied state law rather than federal law in determining the proper timing of an execution of a federal search warrant. Allowing the evidence recovered from the execution of the warrant to be used against the defendants in violation of CPL § 690.30(1) would deny them the benefit of New York's search and seizure protections. (Supreme Ct, Queens Co)

People v Reaves, 2025 NY Slip Op 05107 (2nd Dept 9/24/2025)
EXPERT TESTIMONY - Rap Lyrics
UNCHARGED CRIMES EVIDENCE

LASJRP: In this murder prosecution in which defendant was found guilty only of criminal facilitation in the second degree, the Second Department concludes that defendant was deprived of a fair trial when the court admitted into evidence a rap song, which defendant had performed over a recorded telephone call during his pretrial incarceration, through the testimony of an investigator employed by the Kings County District Attorney's Office whom the court qualified as an expert in slang.

The investigator was not qualified to offer expert opinion testimony regarding the meaning of the rap lyrics. Also, the investigator's ultimate proffered opinions "precisely and remarkably mirrored the People's exact factual theory of the case" - that defendant had prior knowledge of the shooter's intentions and even supplied the gun - and the investigator's interpretations of the lyrics also implied that defendant had committed prior bad acts and crimes that were not charged in the indictment and was offered without the court applying the required Molineux balancing test. (Supreme Ct, Kings Co)

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People v Lloyd, 2025 NY Slip Op 05256
(2nd Dept 10/1/2025)
PROBATION | IMPROPER CONDITION: SUPPORT OBLIGATIONS | MODIFIED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him of criminal possession of a firearm, 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. As conceded by the prosecution, the probation condition "should not have been imposed" because it violated PL § 65.10(1), which requires that conditions of probation must be "reasonably necessary to insure that the [individual] will lead a law-abiding life or to assist [them] to do so." Appellate Advocates (Alexa Askari, of counsel) represented Lloyd. (Supreme Ct, Kings Co)

People v Luna Perez, 2025 NY Slip Op 05258
(2nd Dept 10/1/2025)
DWI | PREDICATE CONVICTION AS ELEMENT OF AGGRAVATED CHARGE | REDUCED TO MISDEMEANOR

ILSAPP: Appellant appealed from a Nassau County Supreme Court judgment convicting him of felony DWI, upon his guilty plea. The Second Department modified by reducing appellant's conviction from felony to misdemeanor DWI, vacated the sentence, and, as modified, affirmed and remitted for resentencing on the reduced charge. As conceded by the prosecution, the Appellate Term's reversal of appellant's predicate DWI conviction from Suffolk County negated an essential element of the felony DWI charge, requiring reduction to a misdemeanor. Matthew W. Brissenden represented Luna Perez. (Supreme Ct, Nassau Co)

Matter of Misha W., 2025 NY Slip Op 05244
(2nd Dept 10/1/2025)
ABUSE/NEGLECT - Drug Misuse/Allowing Neglect

LASJRP: In this case involving drug abuse by both parents, the Second Department holds, inter alia, that petitioner demonstrated that the father knew, or should have known, of the mother's heroin use and failed to exercise a minimum degree of care to ensure that the mother did not abuse drugs during her pregnancy. (Family Ct, Westchester Co)

Matter of Rivera v Vergara, 2025 NY Slip Op 05241
(2nd Dept 10/1/2025)
VISITATION - Hearing Requirement
- Dismissal/Failure To Comply With Court Order

LASJRP: The Second Department affirms an order dismissing without prejudice the father's petition to enforce visitation provisions of a custody order where the father failed to comply with court directives requiring him to cooperate with a court-ordered ACS investigation, including a home inspection, and to pay for supervised parental access.

While parental access determinations are ordinarily made only after a full and plenary hearing and inquiry, the court did not purport to determine contested factual issues material to the best interest analysis or make a final determination on the merits of the father's petition. (Supreme Ct, Kings Co)

People v Santiago, 2025 NY Slip Op 05260
(2nd Dept 10/1/2025)
ERRONEOUS SENTENCE & COMMITMENT FORM | AFFIRMED & REMITTED FOR AMENDED USC

ILSAPP: Appellant appealed from two Dutchess County Court judgments convicting him, respectively, of third-degree CPCS and third-degree robbery, upon his guilty pleas. The Second Department remitted for an amended uniform sentence and commitment form (USC) to reflect appellant's actual sentences and otherwise affirmed the convictions. As conceded by the prosecution, the USC erroneously reflected a determinate term of 5 years' imprisonment instead of 7 years' imprisonment on the third-degree CPCS count, and a determinate term of 7 years' imprisonment with 5 years PRS instead of an indeterminate term of 2 1/3 years to 7 years' imprisonment on the third-degree robbery count. Carol Kahn represented Santiago. (County Ct, Dutchess Co)

People v Terryl E., 2025 NY Slip Op 05251
(2nd Dept 10/1/2025)
MOOTNESS DOCTRINE INAPPLICABLE | YO | SENTENCE NOT EXCESSIVE | AFFIRMED

ILSAPP: Appellant appealed from a Queens County Supreme Court judgment adjudicating him a youthful offender upon his guilty plea to first-degree robbery. The Second Department affirmed, but held that, contrary to the prosecution's argument, appellant's excessive sentence claim was not moot. The prosecution's contention that appellant had been discharged from probation based on a new conviction, and not that appellant had completed his term of probation, necessitated reliance on documents outside the record that could not properly be considered on this appeal. However, appellant's sentence was not excessive. (Supreme Ct, Queens Co)

People v Ward, 2025 NY Slip Op 05264
(2nd Dept 10/1/2025)
IDENTIFICATION - Surveillance Video

LASJRP: The Second Department rejects defendant's contention that the court improperly permitted two individuals, who were not eyewitnesses to the shooting, to give lay opinion testimony identifying defendant in surveillance video footage and still photographs from that video where the People est-

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ablished that the witnesses had sufficient contact and familiarity with defendant to aid the jury in making an independent assessment regarding whether the person in the surveillance video, who was wearing a mask covering part of his face, was defendant.

The Court also rejects defendant's contention that one of those witnesses - the victim's mother - was allowed to make a first-time, in-court identification of defendant in violation of People v Perdue (41 N.Y.3d 245). Unlike Perdue, this case involved opinion testimony that an individual seen on surveillance video was defendant. (County Ct, Suffolk Co)

People v Fasoli, 2025 NY Slip Op 05528
(2nd Dept 10/8/2025)
SEARCH AND SEIZURE - Probable Cause/Drug Possession

LASJRP: The Second Department, rejecting the Third Department majority's holding in People v Martin (2025 NY Slip Op 03842), holds that Penal Law § 222.05(3), which provides that the odor of marijuana or possession of marijuana in legally authorized amounts can no longer be the basis for a police search, does not apply to a post-enactment suppression hearing concerning a pre-enactment search. The operative date for determining whether Penal Law § 222.05(3) applies is when the search was performed, not when the suppression hearing was held. (Supreme Ct, Queens Co)

People v Jackson, 2025 NY Slip Op 05530
(2nd Dept 10/8/2025)
OOP | DURATION EXCEEDED STATUTORY MAXIMUM | AFFIRMED & OOP MODIFIED

ILSAPP: Appellant appealed from a Richmond County Supreme Court judgment convicting him of second-degree assault, upon his guilty plea. The Second Department affirmed but modified the 9-year OOP by reducing the durational provision to 8 years. As conceded by the prosecution, the duration of the OOP exceeded the maximum time limit pursuant to CPL § 530.13(4)(A). Appellate Advocates (Angad Singh, of counsel) represented Jackson. (Supreme Ct, Richmond Co)

M.W. v Nassau County, 2025 NY Slip Op 05550
(2nd Dept 10/8/2025)
FOSTER CARE - Negligent Supervision

LASJRP: In this action commenced pursuant to the Child Victims Act (see CPLR 214-g), plaintiff alleged that defendant Nassau County negligently failed to prevent sexual abuse allegedly perpetrated upon her by her foster father in the late 1970s. The cause of action against the County alleged negligent placement and supervision of plaintiff in the foster home. The Supreme Court granted the County's motion for summary judgment dismissing the complaint on the ground that it was entitled to governmental function immunity.

The Second Department reverses. The governmental function immunity defense cannot attach unless the municipal defendant establishes that the discretion possessed by its employees was in fact exercised in relation to the alleged conduct. Here, the County failed to establish, prima facie, that the relevant acts of its employees relating to the alleged negligent supervision were discretionary. Even if the acts at issue could potentially be considered discretionary, the County failed to demonstrate that discretion was in fact exercised.

The County is not entitled to qualified immunity pursuant to Social Services Law § 419, as qualified immunity does not bar recovery for the negligent supervision of children in foster care. (County Ct, Nassau Co)

People v Velasquez, 2025 NY Slip Op 05540
(2nd Dept 10/8/2025)
***ANDERS* BRIEFS | DEFICIENT | NEW COUNSEL ASSIGNED**

ILSAPP: Appellant appealed from two Nassau County Court judgments convicting him of second-degree CPW, upon his guilty pleas. Assigned counsel filed two separate *Anders* briefs to withdraw. The Second Department found that both of counsel's briefs were deficient, granted leave to withdraw, and assigned new counsel. The briefs failed "to analyze potential appellate issues or highlight facts in the record that might arguably support the appeal[s]." (County Ct, Nassau Co)

People v Bezabeh, 2025 NY Slip Op 05697
(2nd Dept 10/15/2025)
CONSECUTIVE SENTENCES ILLEGAL | MOOTNESS | IMMIGRATION CONSEQUENCES | MODIFIED

ILSAPP: Appellant appealed from a Queens County Supreme Court judgment convicting him of two counts of petit larceny, upon his guilty plea, and imposing consecutive sentences of 364 days on each count. The Second Department modified by running the two sentences concurrently and, as modified, affirmed. Consecutive sentences for the two counts of petit larceny violated Penal Law § 70.25. There were no allegations made in the indictment nor set forth during the plea allocution to "establish separate acts of larceny" that could establish the legality of consecutive sentencing. Although appellant has completed his sentences, the issue of legality is not moot where the sentences imposed have potential immigration consequences. Appellate Advocates (Victoria L. Benton, of counsel) represented Bezabeh. (Supreme Ct, Queens Co)

People v Contrera, 2025 NY Slip Op 05698
(2nd Dept 10/15/2025)
EXCESSIVE SENTENCE | RAPE | MODIFIED

ILSAPP: Appellant appealed from a Suffolk County Court judgment convicting him of first-degree rape and related charges, following a jury verdict, and sentencing him to a determinate term of 20 years' imprisonment with 15 years'

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PRS, to run concurrently with the lower sentences on related charges. The Second Department reduced the sentence on the first-degree rape charge, in the interest of justice, to a determinate term of 15 years' imprisonment with 15 years' PRS and otherwise affirmed. Although the Second Department rejected appellant's weight of the evidence claim and other appellate issues, the sentence imposed was excessive. Helig Branigan, LLP (Michael J. Miller, of counsel) represented Contrera. (County Ct, Suffolk Co)

People v Keisy A., 2025 NY Slip Op 05695
(2nd Dept 10/15/2025)
YO | PROBATION | IMPROPER CONDITION: SUPPORT OBLIGATIONS | MODIFIED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment adjudicating her a youthful offender upon her guilty plea to second-degree attempted assault and sentencing her to a term of probation. 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 reasonably related to [appellant's] rehabilitation or necessary to insure [sic] that she would lead a law-abiding life." A challenge to the conditions of probation is not precluded by a valid appeal waiver and, "for the most part," does not require preservation. Appellate Advocates (Robert C. Langdon, of counsel) represented Keisy A. (Supreme Ct, Kings Co)

Matter of Kelsey v Machado, 2025 NY Slip Op 05683
(2nd Dept 10/15/2025)
SENTENCE - Parole Supervision

LASJRP: The Second Department rejects an Equal Protection challenge to a policy which requires that all parolees who have committed sexual offenses be placed in Tier 1 parole supervision.

Parolees who are sex offenders do not constitute a suspect class. Given the nature of sexual offenses and the possibility of recidivism, and the compelling governmental interest in the protection of children from the dangers of sexual predators, there is a rational basis for the classification. (Supreme Ct, Dutchess Co)

People v Phillip, 2025 NY Slip Op 05699
(2nd Dept 10/15/2025)
SEARCH AND SEIZURE - Auto Stop And Search

LASJRP: The arresting officer and his partner were in plainclothes and driving in an unmarked police car with their shields hanging from chains around their necks. A livery cab slowly approached them with its driver's side windows all the way down on a chilly November night. As the cab drove past, its driver turned to look at the officers with his eyes wide open while rolling his eyes to the back of his head. The officers agreed that the driver was signaling for assistance and turned their car around to stop the cab. On approaching the cab, the officers detected the "strong," "overwhelming" smell of unburnt marihuana coming from the vehicle. Upon a protective frisk of defendant, who was a passenger, the arresting officer recovered multiple bags of marihuana. The officer saw an additional bag of marihuana on top of a laptop bag in the backseat of the cab and, upon a search of the bag, uncovered more bags of marihuana, a firearm, and ammunition.

The Second Department upholds the denial of suppression, noting that the cab driver's facial expression signaling a need for assistance provided a reasonable basis for the stop; and that at the time of the stop in 2017, the odor of marihuana provided probable cause for a search of the laptop bag, the vehicle and its occupants. (Supreme Ct, Kings Co)

Refellia R. v Nathaniel A., 2025 NY Slip Op 05687
(2nd Dept 10/15/2025)
PATERNITY - Genetic Testing/Adverse Inference From Failure To Appear

LASJRP: The Second Department concludes that respondent's paternity was established by clear and convincing evidence, noting, inter alia, that his failure to appear for a court-ordered genetic marker test permitted the court to draw the strongest inference against him that the opposing evidence in the record permitted. (Family Ct, Queens Co)

People v Uddin, 2025 NY Slip Op 05701
(2nd Dept 10/15/2025)
EXPERT TESTIMONY | DELAYED OUTCRY BASED ON SPECIFIC CULTURAL FACTORS | AFFIRMED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him of first-degree criminal sexual act and related charges, following a jury verdict. The Second Department affirmed. Expert testimony "on the impact of sexual abuse on Southeast Asian persons and/or practitioners of the Islamic faith" was admissible because the expert was qualified to give their opinion on "the delay in outcry common to domestic violence victims, including victims of sexual assault, as well as the impact of culture on outcry." Further, a *Frye* hearing was not required because the expert's testimony "did not concern a novel scientific theory, technique, or procedure." Evidence of appellant's and complainant's shared religion and culture did not violate the Free Exercise Clause of the State and Federal Constitutions because it was used to provide "context" for appellant's and complainant's conduct, did not use appellant's faith to "vilify" him, and the jury instructions cured "any possible prejudice or bias." (Supreme Ct, Kings Co)

People v Hanlon, 2025 NY Slip Op 05818
(2nd Dept 10/22/2025)
APPEAL WAIVER | AFFIRMED | DISSENT

ILSAPP: Appellant appealed from a Putman County Court judgment (Molé, J.) convicting him of first-degree attempted assault, following his guilty plea. The Second Department affirmed, holding that the appeal waiver was valid, but noting that "it would have been a better practice for the County Court

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to engage in a fuller colloquy." Justice Wooten, dissenting in part, agreed that the sentence was not excessive and did not constitute cruel and unusual punishment but disagreed that the appeal waiver was valid. The court's "terse" and "woefully inadequate" colloquy failed to advise appellant "either that he would ordinarily retain the right to appeal even after pleading guilty or that a waiver of the right to appeal is separate and distinct from the waiver of a trial and other rights by a plea of guilty." Also, the oral colloquy mischaracterized the waiver by stating that the conviction "would be final," portraying the waiver as an absolute bar to taking an appeal, and by failing to advise appellant that the waiver did not encompass the loss of attendant rights to counsel and poor person relief. Further, the court did not advise appellant that if he still wished to appeal, he could do so by filing a notice of appeal. The written waiver was insufficient to cure the deficient colloquy. (County Ct, Putman Co)

People v Hough, 2025 NY Slip Op 05822
(2nd Dept 10/22/2025)
***ANDERS* BRIEF | DEFICIENT | NEW COUNSEL ASSIGNED**

ILSAPP: Appellant appealed from a Nassau County Court judgment convicting him of third-degree attempted CSCS and third-degree assault, 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 exist, including the validity of the appeal waiver and whether the period of PRS 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)

People v Lewis, 2025 NY Slip Op 05823
(2nd Dept 10/22/2025)
SUPPRESSION | REARGUMENT GRANTED | ADHERENCE TO PRIOR DETERMINATION

ILSAPP: The Second Department granted appellant's motion for leave to reargue the appeal from the judgment, convicting him of second-degree robbery and numerous robbery-related counts, as well as resisting arrest and numerous flight-related counts, following a nonjury trial (see *People v Lewis*, 208 AD3d 595 [2d Dept 2022]). The Second Department, however, entirely adhered to its prior determination of granting appellant's suppression motion, modifying the judgment by vacating and ordering a new trial on the robbery-related counts, and affirming the flight-related misdemeanors and VTL violations [...]. "The error in failing to suppress the wallet and its contents was harmless with respect to the convictions on the flight-related counts, none of which depended upon [appellant's] identity as the perpetrator of the robbery." Appellate Advocates (Sarah B. Cohen, of counsel) represented Lewis.

[*Ed. Note:* *The decision vacated and replaced by this one was summarized in the November-December 2022 issue of the* REPORT.**]**

People v Williams, 2025 NY Slip Op 05830
(2nd Dept 10/22/2025)
INVALID APPEAL WAIVER | BRUEN | AFFIRMED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment (Leo, J.) convicting him of criminal possession of a firearm, following his guilty plea. The Second Department affirmed. The appeal waiver was invalid under the "totality of the circumstances," including appellant's "limited contact with the criminal justice system." However, appellant's argument that PL § 265.01-b(1) is unconstitutional in light of *Bruen* was without merit. The Legal Aid Society of NYC (Ji Hyun Rhim, of counsel) represented Williams. (Supreme Ct, Kings Co)

People v Blount, 2025 NY Slip Op 05972
(2nd Dept 10/29/2025)
SORA | RIGHT TO BE PRESENT AT HEARING | INVALID WAIVER | REVERSED & REMITTED

ILSAPP: Appellant appealed from a Kings County Supreme Court order designating him a level two sex offender under SORA. The Second Department reversed and remitted for a new risk level assessment hearing. The court erroneously proceeded with the hearing in appellant's absence, over defense counsel's objection that appellant was not waiving his right to be present and had "expressed an interest in being present," but counsel had been "unable to reach him by telephone." The record fails to establish that appellant "voluntarily waived his right to be present" where there is no evidence that his absence was "deliberate" or that he "was made aware of the consequences of failing to appear for the SORA hearing." The Legal Aid Society of NYC (Lorraine Maddalo and Stephen Chu, of counsel) represented Blount. (Supreme Ct, Kings Co)

Marcigliano v Coulianidis, 2025 NY Slip Op 05945
(2nd Dept 10/29/2025)
DEFAMATION | ABSOLUTE PRIVILEGE OF STATEMENTS IN FAMILY COURT PETITION | AFFIRMED

ILSAPP: Plaintiff grandparent appealed from a Suffolk County Supreme Court order granting defendant parent's motion to dismiss plaintiff's defamation lawsuit. The Second Department affirmed. Parent filed a custody modification petition in Family Court alleging, among other things, that the grandparent's home was dangerous and that the grandparent had engaged in verbal and physical abuse in the subject child's presence. The grandparent's defamation complaint was properly dismissed pursuant to CPLR § 3211(a)(7). The allegedly defamatory

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statements made within the custody modification petition were absolutely privileged because they "were made in the course of a judicial proceeding and were material and pertinent to the questions involved in the proceeding." (Supreme Ct, Suffolk Co)

People v McDonald, 2025 NY Slip Op 05964
(2nd Dept 10/29/2025)
OOP | DURATION EXCEEDED STATUTORY MAXIMUM | AFFIRMED | OOP VACATED & REMITTED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him of second-degree burglary, following his guilty plea. The Second Department affirmed but vacated the durational portion of the OOP and remitted for a new determination as to duration. As conceded by the prosecution, the OOP exceeded the maximum time limit pursuant to CPL § 530.13(4)(A). Appellate Advocates (Denise A. Corsi, of counsel) represented McDonald. (Supreme Ct, Kings Co)

Matter of Sgaramella v Summers, 2025 NY Slip Op 05953
(2nd Dept 10/29/2025)
CHILD SUPPORT | TIMELINESS OF OBJECTIONS | REVERSED & REMITTED

ILSAPP: Mother appealed from a Dutchess County Family Court order denying her objections to a child support court order as untimely. The Second Department reversed and remitted for a new determination as to the timeliness of the filing and, if timely, the merits of her objections. Family Court erroneously calculated mother's statutory time limit for filing objections to the child support order by using the date of the Support Magistrate's order instead of the date the order was mailed, despite the mailing date of the order not being discernable from the record. (Family Ct, Dutchess 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 Butler, 239 AD3d 62 (3rd Dept 7/3/2025)
SEARCH AND SEIZURE - Canine Sniff Of Body

LASJRP: The Third Department holds that given the serious intrusion on personal privacy, security, and dignity that accompanies a canine sniff of the body, such a search can be justified only when there is probable cause to believe that the target of the sniff search has committed a crime. (County Ct, Broome Co)

Matter of David JJ. v Tara KK., 240 AD3d 984
(3rd Dept 7/3/2025)
EVIDENCE - Video Recordings/Best Evidence Rule

LASJRP: In this custody proceeding, the Third Department finds error, albeit harmless, where the Family Court allowed the caseworker to testify regarding what was depicted in video recordings that were not introduced into evidence. This violated the best evidence rule since the contents were in dispute and the unavailability of the recordings was not explained. (Family Ct, Broome Co)

Matter of Janaye D. v Zachary C., 240 AD3d 961
(3rd Dept 7/3/2025)
CUSTODY - Relocation

LASJRP: The Third Department upholds an order that, inter alia, permitted the mother to move with the child from her current residence in Fulton County to the Town of Clifton Park in Saratoga County.

The Court notes that the mother and her fiancé, with whom she shares a child, have built a home in a locale advantageous to their respective employments as well as to the child's education; that the mother strongly considered the child when deciding to move and the location to which she was to move; that the new home is in relatively close proximity to the mother's extended family and closer to her fiance's extended family and the move does not result in a significant increase to the distance away from the father's home; and that the mother intends to keep the child's healthcare providers the same and have the child participate in many of the same activities he now participates in and did not ask to alter the designated location of the exchange of the child. (Family Ct, Fulton Co)

Matter of Ruoyao P., 240 AD3d 993 (3rd Dept 7/3/2025)
CONTEMPT

LASJRP: In this neglect proceeding, the Third Department concludes that the Family Court lacked personal jurisdiction over the father as to the finding of criminal contempt, noting that the Family Court initially sought to summarily hold the father in contempt but the only direct evidence of his possession of a prohibited recording device was discovered outside of the courtroom by court officers who declined to testify without a subpoena; and that there is no proof of personal service of the court's notice of motion. (Family Ct, Albany Co)

People v Akins, 240 AD3d 1003 (3rd Dept 7/10/2025)
LESSER INCLUDED OFFENSE | KIDNAPPING/UNLAWFUL IMPRISONMENT | REVERSED & REMITTED

ILSAPP: Appellant appealed from a Fulton County Court judgment convicting him of first-degree kidnapping, first-degree assault, and third-degree aggravated sexual abuse. The Third Department modified by reversing his kidnapping conviction and remitting to County Court for a new trial on that count. The lower court erred when it refused to submit to the jury the charge of second-degree unlawful imprisonment as a lesser included offense of first-degree kidnapping. A reasonable view of the evidence could lead the jury to find that appellant com-

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mitted the lesser offense by restraining complainant, but not for more than 12 hours, as required to commit the greater offense. Rural Law Center of New York, Inc., (Keith F. Schockmel, of counsel) represented Akins. (County Ct, Fulton Co)

Matter of Mark JJ. v Stephanie JJ., 240 AD3d 1025 (3rd Dept 7/10/2025)
CUSTODY - Relocation

LASJRP: After the father and the mother divorced in 2017, an order was entered on consent granting sole legal and primary physical custody to the mother. Subsequently, the father moved closer to the mother to help care for the children. In November 2021, the mother informed the father that she desired to move to North Carolina to provide a better and safer environment for the children, and the father supported the idea and began planning to move there as well. Ultimately, by November 2022, the father had quit his job, started a new position in Greensboro and entered a contract to purchase a home there. However, after the father closed on his house in January 2023, the mother informed him that it was not financially feasible for her to buy a home in Greensboro and she would not be moving.

In May 2023, the father filed a custody modification petition seeking joint legal and primary physical custody of the children, and permission for the children to relocate to North Carolina. The court granted joint legal custody to the parties and primary physical custody to the father.

The Third Department affirms, noting, inter alia, that the father, at the mother's urging, had undertaken herculean efforts to uproot his life and move several states away in order to remain close with the children, only for the mother to change her mind and decide to stay in New York after the father had already relocated; that the court deemed the mother's reasons for doing so to be disingenuous; and that the children have adjusted well to life in Greensboro - taking advanced classes, participating in activities that were unavailable in Monticello and making new friends. (Family Ct, Sullivan Co)

People v Terry, 240 AD3d 1128 (3rd Dept 7/31/2025)
RIGHT TO PUBLIC TRIAL

LASJRP: The Third Department finds no violation of defendant's right to a public trial where the court closed the courtroom to defendant's family members during a store clerk's testimony.

The clerk stated that he would not testify with members of defendant's family in the courtroom, out of fear of how they would react. According to the clerk, two weeks before defendant's alleged crimes occurred, defendant and his brother got into a fight at the convenience store that caused $20,000 in damage. Then, about two months before trial, defendant's mother and the same brother came to the convenience store, where the mother accused everyone present in the store of "snitching" and putting her son in jail. (County Ct, Albany Co)

People v Goberdhan, 241 AD3d 992 (3rd Dept 8/7/2025)
ANONYMOUS JURY | NOT MODE OF PROCEEDINGS | AFFIRMED | DISSENT

ILSAPP: Appellant appealed from a Schenectady County Court judgment convicting him of second-degree murder and leaving the scene of an incident without reporting and sentencing him to 25 years-to-life on the murder and a consecutive sentence of 2⅓ to 7 years for leaving the scene. The Third Department affirmed. Appellant's challenge to the utilization of an anonymous jury, concededly unpreserved, does not constitute a mode of proceedings error, since the act of reading prospective juror's full names into the record, although statutorily required (see CPL § 270.15[1][a]) is a ministerial act. Further, there were indications in the record that defense counsel received a list of the jurors' names. The dissent (McShan, J., and Gary, P.J.) would have reversed in the interest of justice, since at the time of trial—before statutory amendments permitting withholding of jurors' names if there is "good cause to believe that a threat to the safety or integrity of the jury exists"—"there was no statutory authority for concealing the names of jurors." The dissent analyzed various definitions of what constitutes an "anonymous jury" from New York and other jurisdictions, concluding that the plain text of CPL § 270.14(1)(a) requires that the names be "call[ed]," not simply that the defense have a list of juror names. The dissent also rejected the prosecution's attempt to invoke harmless error analysis, stating that an appellate court is not in the position to "adjudge the causal effect that the error in empaneling an anonymous jury might have had on the jury's verdict." Alternatively, the dissent would have reduced the sentence by running the sentences concurrently: appellant had no criminal history and his actions were spurred by the victim stealing his wallet containing $1,500 and personal papers. (County Ct, Schenectady Co)

People v Reinfurt, 241 AD3d 1015 (3rd Dept 8/7/2025)
HEARSAY - Prior Consistent Statement

LASJRP: The Third Department finds error, albeit harmless, where, in response to defendant's inquiry as to whether the victim had reported defendant's sexual advances to law enforcement on the night in question, the People introduced excerpts of the victim's grand jury testimony.

Although the People contend that the purpose of defendant's initial line of questioning was to suggest that the victim was making these allegations for the first time at trial - thereby misleading the jury and opening the door to the introduction of a prior consistent statement for the purpose of rehabilitating the victim's credibility - the People have failed to show that the victim's grand jury testimony predated any supposed motive to falsify. (Supreme Ct, Schenectady Co)

Third Department *continued*

Matter of Ricky SS. v Christine SS., 241 AD3d 1009 (3rd Dept 8/7/2025)
DIVORCE | PANDEMIC STIMULUS CHECK NOT MARITAL PROPERTY | MODIFIED

ILSAPP: Father appealed from a Broome County Supreme Court order modifying a prior custody order and granting a judgment of divorce. The Third Department vacated the portion of the order directing the father to turn over a pandemic stimulus check to the mother and otherwise affirmed. Because the father received the stimulus check well after the commencement of the matrimonial action, it was not marital property, nor could the court have directed it paid to the mother as child support, because it was not paid for the benefit of the children. Ricky SS. represented himself. (Supreme Ct, Broome Co)

People v Hughes, 2025 NY Slip Op 04942 (3rd Dept 9/11/2025)
APPEAL WAIVER | WAIVER DOES NOT ENCOMPASS VOP | MOOTNESS | SENTENCE NOT EXCESSIVE | AFFIRMED

ILSAPP: Appellant appealed from an Otsego County Court judgment convicting him of second-degree assault. The Third Department affirmed. Appellant's waiver of appeal did not preclude him from challenging the severity of the resentence because the waiver, made in connection with his guilty plea, did not encompass potential probation violations, and he did not separately waive his right to appeal in that context. Further, even though appellant had reached the maximum expiration (ME) date of his prison sentence, his challenge to the severity of the sentence was not moot, because he had not reached the ME date of his PRS. However, the sentence was not excessive. Rural Law Center of New York, Inc. (Kristin A. Bluvas, of counsel) represented Hughes. (County Ct, Otsego Co)

Matter of K.H., 241 AD3d 1640 (3rd Dept 9/11/2025)
ABUSE/NEGLECT - Right To Counsel/Effective Assistance - Corroboration Of Child's Statements

LASJRP: Following a fact-finding hearing, the Family Court found that K.H. was neglected, abused and severely abused as a result of the father repeatedly raping and sexually assaulting her, and that the other three children were derivatively neglected, abused and severely abused. By the time of disposition, K.H. had turned eighteen and was no longer subject to the court's jurisdiction for custody purposes, and the court released A.H. and R.H. to the custody of their great-grandmother and H.H. to her mother's custody. The father was ordered to have no contact with the three younger children other than through supervised visitation. After a subsequent permanency hearing, the court issued an order continuing the placement of A.H. and R.H.

Upon the father's appeal from these orders, the Third Department affirms. During the fact-finding hearing, petitioner submitted hearsay evidence in the form of videotaped forensic interviews of K.H. The father contends that his attorney improperly elicited testimony supplying the necessary corroboration through his cross-examination of petitioner's caseworker. The father alleges that his attorney brought out for the first time evidence that K.H. had undergone a medical examination, during which the absence of a hymen was noted, and elicited testimony that, in connection with that examination, K.H. reported to medical personnel that she had experienced bleeding and pain after the father raped her.

However, counsel was pursuing a strategy of undermining the credibility of K.H.'s accusations by showing that the medical examination did not reveal any indication of trauma or abuse and did not verify K.H.'s complaints of bleeding and pain. To the extent that the lack of a hymen was mentioned, counsel sought to establish that this was possibly caused by sex toys, which K.H. had admitted using.

Although the father also argues that his counsel was ineffective for failing to review K.H.'s videotaped statements prior to the commencement of the hearing, counsel did view the videos before the second day of the hearing, which was prior to his first opportunity to cross-examine any witnesses.

The medical and other corroborative evidence was sufficient. The Family Court observed that K.H.'s demeanor changed while reporting the abuse in the videotaped interviews when she became visibly upset, held her head down, cried and asked for tissues to wipe her eyes. The court also noted that, in multiple interviews, K.H. had provided consistent accounts of the abuse she suffered. (Family Ct, Ulster Co)

People v Aaron VV., 2025 NY Slip Op 05018 (3rd Dept 9/18/2025)
ADOLESCENT OFFENDERS - Removal

LASJRP: Defendant was charged as an adolescent offender with criminal possession of a weapon and burglary based upon allegations that defendant entered the dwelling of a family member without authorization and, together with the co-defendant (defendant's brother), stole loaded firearms as well as a certain amount of cash. The court granted the People's motion to prevent removal to Family Court.

The Third Department first concludes that because the removal provisions in CPL §§ 722.22 and 722.23 divest the Youth Part of jurisdiction and transfer jurisdiction to Family Court in those proceedings which meet specified criteria, defendant's waiver of the right to appeal does not impact his challenge to the court's failure to order removal.

The Court also notes that the People improperly submitted proof related to defendant's juvenile delinquency history in support of the motion (see FCA § 381.2).

The Court reverses, finding no "extraordinary circumstances" under CPL § 722.23(1)(d). The relative was not home at the

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time of the entry and defendants did not forcibly enter the home. Rather, defendant's brother utilized the garage door code he had been entrusted with and they entered the home together, without causing damage to or destruction of property. Neither defendant nor another person used the firearms in the commission of some other crime. Instead, the firearms were sold and then located by law enforcement not long after the sales.

These facts do not present one of the "extremely rare and exceptional cases" contemplated by the Legislature. (County Ct, Rensselaer Co)

People v Robinson, 241 AD3d 1673 (3rd Dept 9/25/2025)
GUILTY PLEA | UNFULFILLED PROMISE | CASAT | PLEA VACATED

ILSAPP: Appellant appealed from a Tioga County Court judgment convicting him of second-degree robbery, second-degree criminal use of a firearm, and fourth-degree grand larceny and from an order of the same court summarily denying his pro se CPL § 440.10 motion. The Third Department reversed, granted the 440 motion, and vacated appellant's guilty plea. As part of appellant's plea agreement, County Court promised he would be enrolled in Comprehensive Alcohol and Substance Abuse Treatment (CASAT), a promise that could not be fulfilled because under PL § 60.04(6) CASAT is only available to individuals convicted of drug-related offenses. Because this unfulfilled promise was "part and parcel" of appellant's plea agreement, he was entitled to have his guilty plea vacated. Aaron A. Louridas represented Robinson. (County Ct, Tioga Co)

People v Tenace, 2025 NY Slip Op 05552
(3rd Dept 10/9/2025)
DVSJA AT INITIAL SENTENCING | BURDEN ON COUNSEL TO REQUEST DVSJA HEARING | AFFIRMED

ILSAPP: Appellant appealed from a Schenectady County Court judgment convicting him of second-degree burglary and petit larceny, upon his guilty plea. The Second Department affirmed. Appellant's argument that County Court should have conducted a hearing pursuant to the Domestic Violence Survivors Justice Act (DVSJA) was unpreserved, as counsel did not explicitly request a hearing. This was true despite appellant's "extensive pro se remarks" at sentencing asking the court to consider "whether he qualified under the DVSJA." The client's statements were the "first mention of alternate sentencing," and counsel made no request for a hearing. The Third Department held that a sentencing court has no affirmative duty to consider DVSJA sentencing based on either a pro se request or references to childhood abuse in the defense pre-sentence memorandum. The onus is on counsel to request the hearing. (County Ct, Schenectady Co)

Matter of Cody X. (Eugene X.), 2025 NY Slip Op 05728
(3rd Dept 10/16/2025)
TPR | CHILD NOT CONSENTING TO ADOPTION | REVERSED

ILSAPP: Father appealed from a St. Lawrence County Family Court order finding the child had been abandoned and terminating his parental rights. The Third Department affirmed the abandonment finding but reversed the order terminating the father's rights. The child, who turned 18 during the pendency of the appeal, changed his position and no longer consented to adoption. As such, the court recognized that "no useful purpose was served by the termination of the father's parental rights." Since the child was now over 18, there was no need to remit to Family Court for further proceedings. Rural Law Center of New York (Kristin A. Bluvas, of counsel) represented Eugene X. (Family Ct, St. Lawrence Co)

Matter of Gina P., 2025 NY Slip Op 05726
(3rd Dept 10/16/2025)
TERMINATION OF PARENTAL RIGHTS - Evidence/Case Records
- Right Of Confrontation/Due Process

LASJRP: The Third Department upholds an order terminating the father's parental rights based upon permanent neglect, concluding that petitioner's reliance on documentary evidence to establish diligent efforts, without corresponding testimony from a caseworker, did not violate the father's Sixth Amendment right of confrontation or due process rights, notwithstanding the voluminous nature of the documentary evidence submitted by petitioner.

The father had the chance to review the records prior to the fact-finding hearing, was represented by counsel, and had the opportunity, but failed, to call his own witnesses and present his own proof. (Family Ct, Delaware Co)

People v Grandoit, 2025 NY Slip Op 05720
(3rd Dept 10/16/2025)
SUPPRESSION | INVALID INVENTORY SEARCH | REVERSED AND SUPPRESSION GRANTED

ILSAPP: Appellant appealed from a Columbia County Court judgment convicting him of second-degree CPW, upon his guilty plea. The Third Department reversed, vacated the plea, and granted suppression of the handgun. Deputies stopped appellant for erratic driving and towed his car after learning he was unlicensed and offering him an opportunity to coordinate moving the vehicle from the scene. A deputy entered the vehicle—purportedly to prepare it for towing—and discovered a handgun under the driver's seat. Suppression was required because the gun was not found pursuant to a valid inventory search. The deputy did not adhere to the requirements of the relevant inventory policy. He did not obtain supervisory approval to begin the inventory procedure, and he did not complete a contemporaneous inventory report. Further, the

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vehicle was never lawfully impounded as required for an inventory search. Columbia County Public Defender (Bryan Bergeron, of counsel) represented Grandoit. (County Ct, Albany Co)

Matter of Joenathan E. v Jennifer F., 2025 NY Slip Op 05730
(3rd Dept 10/16/2025)
CUSTODY/VISITATION - Child Witnesses

LASJRP: The Third Department upholds a determination denying the father prison visits and limiting his contact with the children to written communications, noting, inter alia, that the father attempted to call the children as witnesses during the fact-finding hearing and was adamant about doing so even when confronted by the fact that they were only nine and twelve years old at the time, evincing a "striking" lack of concern for their emotional well-being. Calling a child to testify in a Family Court Act Article Six proceeding is generally neither necessary nor appropriate. (Family Ct, Schenectady Co)

Matter of N'Thai N., 2025 NY Slip Op 05723
(3rd Dept 10/16/2025)
ABUSE/NEGLECT - Drug Sales In Home
- Venue

LASJRP: The Third Department upholds a finding of neglect where respondent argues that the police executing a search warrant that terrified the adults and children in the home should not be a basis for a finding. The police were at the home executing the search warrant based upon respondent's behavior in conducting drug sales. Several witnesses testified that they had significant concerns about the children's safety and welfare given the notorious history of drug abuse among the adults living with respondent and those who were involved in the children's lives.

The Court rejects an attorney for the child's argument regarding whether venue was proper in Albany County rather than Schenectady County. Venue was not challenged in the Family Court, and thus the argument has been waived. (Family Ct, Albany Co)

People v Rasul, 2025 NY Slip Op 05722
(3rd Dept 10/16/2025)
RIGHT TO COUNSEL - Effective Assistance/Conflict Of Interest
ETHICS

LASJRP: The Third Department concludes that the court abused its discretion when it denied defendant's motion to vacate the judgment of conviction without a hearing.

Defendant submitted an affidavit from his sister, who averred that she met with defendant's trial counsel in a law office that was shared with the co-defendant's trial counsel, and that both attorneys represented they were a part of the same law firm and worked "closely together," which would be beneficial in representing the co-defendant. In his affidavit, defendant averred that although they were arrested together and charged with various drug offenses, he was indicted but the co-defendant was not, and that his trial counsel ultimately advised him to waive suppression hearings and accept a guilty plea because, if he did, the co-defendant would be released on a misdemeanor charge, which did occur. The co-defendant - who has a familial relationship to defendant that is unclear from the record - provided an affidavit averring that he waived his speedy trial challenge to wait for defendant to accept a plea and be sentenced and was released from jail.

The People's contention that defendant's trial counsel confirmed that she was not in the same law firm with the co-defendant's trial counsel does not address a potential conflict of interest which may arise from an ongoing business relationship. Defendant received 12 years of incarceration with 5 years of post-release supervision, while the co-defendant allegedly received time served. This gives rise to questions of fact about whether the relationship between the attorneys may have operated on the defense by impairing the best strategy for defendant. (County Ct, Albany Co)

People v Siciliano, 2025 NY Slip Op 05721
(3rd Dept 10/16/2025)
***MOLINEUX* | INTERROGATION PLAYED FOR JURY WITHOUT LIMITING INSTRUCTIONS | REVERSED**

ILSAPP: Appellant appealed from a Warren County Court judgment convicting him of three counts of second-degree unlawful surveillance, upon a jury verdict. The Third Department reversed and remitted the matter to County Court for a new trial. The trial court erred when it allowed the prosecution to play appellant's entire recorded custodial interrogation for the jury without limiting instructions. Appellant was accused of secretly photographing a woman showering at a campground. In his interview with police, he admitted to taking similar photographs of his wife—a statement that the officer described as showing a "pattern." Although the evidence was relevant to prove intent and to rebut the possibility of mistake or accident, law enforcement's "gratuitous" remarks regarding a pattern "substantially tipped the scale," and County Court abused its discretion by not redacting that portion of the interview. The error was compounded by the lack of limiting instructions during the trial and was not remedied by the court's belated and confusing instructions during deliberations. Because the prosecution's case was less than overwhelming and hinged on competing narratives from appellant and the complainant's boyfriend, the error was not harmless. O'Connell and Aronowitz (Stephen R. Coffey, of counsel) represented Siciliano. (County Ct, Warren Co)

Matter of Thomas K. v Shauna L., 2025 NY Slip Op 05729
(3rd Dept 10/16/2025)
CUSTODY - Relocation

LASJRP: The Third Department upholds an order that awarded

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the parties joint legal custody, with primary physical custody to the mother, permission for her to remain in Minnesota and generous parenting time for the father.

The Court notes, inter alia, that the mother has always been the children's primary caregiver; that the mother's job requires her to attend meetings with her clients in midwestern and western cities a few times a month, but she is able to avoid overnight trips for the most part, particularly considering that she lives close to her airline's hub in Minnesota and can take advantage of frequent daily flights; that the mother unilaterally decided to relocate to Minnesota without the father's knowledge, and a parent's resort to self-help in removing the child from the other parent is a factor that can militate strongly against that parent, but it not singularly dispositive; that the mother chose to withhold information about her move from the father because she feared his reaction to her ending their relationship, in light of his history of retaliating against people whom he felt had wronged him and his threats to "bury" the mother and turn the children against her if she ever left him; and that the mother has a network of family and friends to support her and the children in Minnesota, but has no such ties in New York. (Family Ct, Essex Co)

People v Bohn, 2025 NY Slip Op 05846
(3rd Dept 10/23/2025)
MURDER - Depraved Indifference
UNCHARGED CRIMES EVIDENCE

LASJRP: Defendant called 911 and reported that the two-year-old daughter of his girlfriend had fallen off the top bunk of a bunk bed and did not appear to be breathing. Despite significant efforts by first responders to resuscitate the victim, she succumbed to her injuries. First responders observed what appeared to be fresh bruises on several areas of the victim's body and an autopsy revealed that she died from a depressed skull fracture that caused catastrophic cerebral hemorrhaging. The autopsy report also listed "[f]resh hemorrhage[s]" in the mesentery of the small intestine and in the ano-rectal region that were "consistent with blunt trauma," and confirmed the existence of over 50 bruises on her body.

The Third Department finds legally sufficient evidence of depraved indifference murder, noting, inter alia, that this evidence of a brutal assault, combined with defendant's nonchalant text message exchange with the mother after informing her that the victim was injured and his delay in seeking medical care for over an hour after he became aware that the victim was having trouble breathing, was sufficient to allow a jury to conclude that defendant evinced a wanton and uncaring state of mind; that the extensive injuries do not in themselves require the conclusion that defendant intended to cause serious physical injury or death, and may have been explicable in light of the child's tender age; that although defendant contends that there was no evidence of a brutal and prolonged course of conduct, the jury could conclude that even if the victim sustained her injuries during an assault that was brief in duration, defendant also delayed seeking medical care for her for nearly two hours despite knowing that she was injured and having trouble breathing, thereby turning a brutal assault into a brutal and prolonged course of conduct against a vulnerable victim.

However, defendant was deprived of a fair trial by certain evidentiary rulings. The court allowed testimony pertaining to defendant's prior acts of domestic violence and aggression toward the mother, and his 2011 conviction of aggravated driving while intoxicated with a minor in the car. One incident did not involve physical violence and was not probative of any issue in this case. Even assuming that another incident was relevant to establish lack of accident, the probative value of the evidence was outweighed by the risk of undue prejudice. The evidence pertaining to the DWI conviction did not fit within any recognized Molineux exception and was unduly prejudicial since it involved a different child and tended to suggest to the jury that defendant was previously reckless with a minor in his care while consuming alcohol. Since defendant was not charged with a sex crime and the results from a rape kit did not support a finding that the victim was sexually assaulted, the People should not have been allowed to elicit evidence related to a possible sexual assault. Testimony and documents indicating that the death was due to a "homicide" also were improperly admitted. (County Ct, Cortland Co)

People v Brenda WW, 2025 NY Slip Op 05848
(3rd Dept 10/23/2025)
DVSJA | TIME IN PRISON NOT CREDITED AGAINST PRS FOR DVSJA RESENTENCING | MODIFIED

ILSAPP: Appellant sought a reduction in PRS from the Third Department, following remittal from the Court of Appeals, and the Third Department reduced appellant's PRS term from 5 to 3 years. The procedural history is complex but important: The Third Department's prior order had reversed an order from Madison County Court denying resentencing under the DVSJA, granted resentencing, and ordered that appellant be resentenced to 8 years' imprisonment and 5 years' PRS (*People v Brenda WW.*, 222 AD3d 1188 [3d Dept 2023]). On a leave grant to the prosecution, the Court of Appeals affirmed the Third Department's decision on the merits, finding that the DVSJA grant was supported by the record. But the majority (Wilson, J.) disagreed with the Appellate Division's statement that appellant's time served in prison in excess of the new 8-year sentence should be credited against the 5-year PRS term (*People v Brenda WW.*, -- NY3d –, 2025 WL 1688473 [2025]). The case was remitted to the Third Department for reconsideration of the PRS term, based on the majority's reasoning that the Appellate Division might have issued a lower

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PRS term without the time credit. Here, upon remittal, applying the Court of Appeals' ruling and following submissions by the parties, the Third Department reduced appellant's PRS term to 3 years. Veronica Reed represented appellant.

Matter of Caleb A., 2025 NY Slip Op 05855
(3rd Dept 10/23/2025)
PERMANENCY HEARINGS
MOTION TO TERMINATE PLACEMENT

LASJRP: The Third Department agrees with respondent, who is not a biological parent to the children and was in a same-sex relationship with the mother, that the Family Court erroneously required respondent to establish parentage as a condition of participating in the permanency proceedings. By statute, respondent was a party to the permanency proceedings as a person legally responsible for the children's care. However, respondent was in fact allowed to participate. Although the Family Court did not allow respondent to be present on one date, respondent's counsel was present, made an argument in support of respondent having additional video chats with the children, and did not object when the court switched the permanency goal to placement with a fit and willing relative.

After respondent consented to the Family Court's conversion of a custody petition into a petition under FCA § 1062 to terminate placement, the better course would have been to hear testimony relative to that petition jointly with the permanency proceedings. However, a joint hearing is not mandated and the Family Court held a full evidentiary hearing on the § 1062 petition. (Family Ct, Schenectady Co)

People v Flanigan, 2025 NY Slip Op 05850
(3rd Dept 10/23/2025)
MULTIPLICITY | LESSER INCLUDED OFFENSE | MODIFIED

ILSAPP: Appellant appealed from a Tompkins County Court judgment convicting him of second-degree assault and second-degree reckless endangerment. The Third Department modified by vacating the reckless endangerment conviction and otherwise affirmed. As the prosecution conceded, the reckless endangerment charge was a lesser included count of the assault charge and was based upon the same incident. Because a verdict of guilt upon the greatest count submitted is deemed a dismissal of every lesser count submitted, the court dismissed the lesser count. Jerome Mayersak represented Flanigan. (County Ct, Tompkins Co)

People v Mazelie, 2025 NY Slip Op 05849
(3rd Dept 10/23/2025)
DISCOVERY - Witness Names/Contact Information

LASJRP: The Third Department agrees with defendant that the People's October 2020 certificate of compliance and statement of readiness were illusory where the People failed to include in discovery a video of the victim's interview at a child advocacy center.

The People intentionally withheld discovery, based upon an internal policy decision, when it had to be turned over to defendant pursuant to CPL § 245.20. Even if the Court were to apply the 2020 statutory amendment which added, among others, victims of sex crimes to the list of individuals whose "names and adequate contact information" did not have to be disclosed, the People failed to comply with the requirement that they give defendant notice that the CAC video was being withheld so as not to disclose any identifying information regarding the victim. (County Ct, Columbia Co)

People v Mower, 2025 NY Slip Op 05851
(3rd Dept 10/23/2025)
440.10 | IAC | INVOLUNTARY PLEA | | PRIOR ATTORNEY AFFIRMATION | REMITTED

ILSAPP: Appellant appealed from an Otsego County Court order denying, without a hearing, his CPL § 440.10 motion to vacate his first-degree murder conviction. The Third Department reversed the order in the interest of justice and remitted for an evidentiary hearing. Appellant's 440 motion was erroneously denied without a hearing where the "submissions in support of his motion [were] sufficient to raise an issue of fact warranting a hearing with respect to deficiencies in his representation…and the effect on the voluntariness of his plea." Appellant's 1996 guilty plea to first-degree murder of his parents was made in exchange for a sentence of life without parole when New York still allowed the death penalty, but prior to the prosecution filing its notice to seek a death sentence. Appellant alleged in his motion that: (1) trial counsel misadvised him that he would not likely spend his life in prison because the death penalty would soon be held unconstitutional, and he would, as a result, be resentenced to a lower sentence; and (2) that his plea was involuntary because his cousin promised and provided him with a $10,000 payment in exchange for his guilty plea and renunciation of his claim to his parents' estates. Although the court possessed the discretionary authority to summarily deny appellant's 440 motion because his prior 440 motion could have raised these grounds but failed to and because appellant failed to include a supporting affirmation from trial counsel, the Third Department substituted its discretion and disregarded the procedural bars. Motion counsel's affirmation and the defense investigator's affidavit demonstrated "meaningful efforts" to obtain prior counsel's affirmation. Furthermore, the 440 motion was based, in part, on sworn statements from motion counsel and the investigator recounting discussions with prior counsel. These statements reflected that such incorrect advice was given during the plea negotiations. Appellant's affidavit and other information garnered during the reinvestigation supported that such advice, along with the offer of payment (with evidence of payment annexed to the motion), influenced appellant's decision to plead guilty. Paul J. Connolly represented Mower. (County Ct, Otsego Co)

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People v Nestler, 2025 NY Slip Op 05852
(3rd Dept 10/23/2025)
GUILTY PLEA | TERMS NOT HONORED | SPECIFIC PERFORMANCE REQUIRED | MODIFIED

ILSAPP: Appellant appealed from an Albany County Court judgment convicting him of second-degree grand larceny. The Third Department modified by vacating the sentence imposed, sentencing appellant to a prison term of 2 to 6 years, and directing him to make restitution. Appellant did not violate the terms of the plea agreement because at the time he pled guilty, he was not advised that failure to pay restitution prior to sentencing could result in an enhanced sentence. Under the plea agreement, the court promised a sentence of 2 to 6 years in prison, with the possibility of later reducing the conviction to third-degree grand larceny if appellant made full restitution within a year. When appellant failed to pay restitution, the court imposed an enhanced sentence of 4 to 12 years. Specific performance of the plea agreement was warranted because no new post-plea information justified not honoring the commitment. Appellant's argument survived the waiver of appeal and did not require preservation because appellant had no practical ability to object to the enhanced sentence pronounced at the end of the sentencing proceeding without advance warning. Hug Law, PLLC (Matthew Hug, of counsel) represented Nestler. (County Ct, Albany Co)

People v Smith, 2025 NY Slip Op 05847
(3rd Dept 10/23/2025)
JURY INSTRUCTIONS | IMPROPER THEORYSUBMITTED | COUNT REVERSED & REMITTED

ILSAPP: Appellant appealed from a Montgomery County Court judgment convicting him of two counts of second-degree murder, first-degree attempted robbery, and second-degree CPW, upon a trial verdict, and sentencing him to two terms of 25 years to life on the murder convictions, with lesser concurrent terms on the other convictions. As a matter of discretion in the interest of justice, the Third Department reversed the first-degree attempted robbery conviction and remitted for a new trial on that count. The court erred by providing an incorrect definition of this crime during its final jury instructions. The court initially correctly referenced the requirement of being armed with a deadly weapon but later omitted that element and substituted the element of causing serious physical injury, a different theory of first-degree robbery. Thus, "the charge, read as a whole against the background of the evidence produced at trial, likely confused the jury," and the court's error was not harmless. Adam G. Parisi represented Smith. (County Ct, Montgomery Co)

People v Brown, 2025 NY Slip Op 05995
(3rd Dept 10/30/2025)
SEARCH AND SEIZURE - Search Warrants/Description Of Premises

LASJRP: The Third Department upholds the denial of suppression where the mailing address of the apartment targeted by the warrant was 27 Court Street, 2nd Floor, but the warrant permitted a search of the apartment located at "3 Center St 2nd Floor."

The apartment building in question is situated on the corner of Court Street and Center Street and, according to tax records, the address of that building is 3 Center Street. The warrant provided a detailed description of the building. The investigator who applied for the search warrant had already been to the apartment and then returned to it after the warrant was issued, so there was no reasonable possibility that the wrong premises would be searched. (County Ct, Washington Co)

Matter of Kieran B., 2025 NY Slip Op 06006
(3rd Dept 10/30/2025)
SEALING | CIVIL RIGHTS LAW § 64-A(1) | RECORD OF TRANSGENDER APPLICANT'S NAME CHANGE SEALED

ILSAPP: Appellant appealed from a Saratoga County Supreme Court order granting the petition to change her name but denying her request to seal court records. The Third Department modified by reversing the part of the order denying appellant's request to seal court records, granting appellant's application to seal court records; and, as modified, affirmed. A court's discretion to grant or deny a sealing request under Civil Rights Law § 64-a(1) turns solely upon finding "that open record of an applicant's change of name would jeopardize such applicant's personal safety, based on totality of the circumstances." The Legislature found that transgender individuals face threats to their personal safety that are real, constant and everywhere. Thus, only in an "extraordinary" case will there be a "substantial basis" to find that an open court record of a name change proceeding would not place a transgender applicant's safety at risk. Here, the court abused its discretion when it invoked an inapplicable standard to deny appellant's request. Copps DiPaola Silverman, PLLC (Joseph R. Williams, of counsel) represented Kieran B. (Supreme Ct, Saratoga Co)

People v Riddick, 2025 NY Slip Op 05992
(3rd Dept 10/30/2025)
SEARCH AND SEIZURE - Search Warrants/Description Of Evidence

LASJRP: The Third Department upholds the hearing court's determination that the search warrant for defendant's mother's car was sufficiently particularized, concluding that the warrant authorizing the seizure of "[e]vidence, consisting of trace evidence, including but not limited to … Deoxyribonucleic Acid (DNA)" justified the seizure of items of clothing to be processed for DNA. (Supreme Ct, Albany Co)

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Matter of Snyder v Farrell, 2025 NY Slip Op 06002
(3rd Dept 10/30/2025)
WRIT OF PROHIBITION
LAW OF THE CASE DOCTRINE

LASJRP: The Third Department dismisses a CPLR article 78 proceeding that seeks to prohibit respondent judge from enforcing an order which vacated a prior order precluding a witness from making an in-court identification at trial.

Prohibition will not lie as a means of seeking collateral review of mere trial errors of substantive law or procedure. Petitioner's legal arguments may be reviewed on direct appeal from his criminal convictions. With respect to petitioner's claim that respondent violated the law of the case doctrine, the Court notes that a judge should ordinarily not reconsider, disturb or overrule an order in the same action issued by a court of coordinate jurisdiction, but where, as here, a new judge has been assigned to a pending matter, the doctrine would not preclude that judge from entertaining a motion to reargue, which is what the judge did here. (County Ct, Ulster Co)

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In the online version of the *REPOR*T, 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 Manganiello, 2025 NY Slip Op 03873
(4th Dept 6/27/2025)
FIFTH AMENDMENT | BIOMETRIC DATA TESTIMONIAL | REVERSED & REMITTED

ILSAPP: Appellant appealed from an Oswego County Court judgment convicting him of possessing a sexual performance by a child. The Fourth Department reversed, vacated the plea, and granted appellant's motion to suppress evidence found on his cell phone. Requiring appellant to unlock his cell phone using biometric data (his fingerprint) had a testimonial aspect sufficient to trigger Fifth Amendment protection. Based on information received from Google LLC, investigators obtained a warrant that stated, in relevant part, that "[e]xecuting police officers may, if necessary, press the fingers or capture a facial image of [appellant] . . . for the purpose of attempting to unlock any computer or electronic device secured via a biometric lock." Police executed the warrant, took appellant's phone, and told appellant that the warrant required him to unlock his cell phone. Appellant subsequently placed his finger on the phone and unlocked the device revealing more than 100 sexually explicit videos involving children. Relying on *United States v Brown* (125 F4th 1186, 1203 [DC Cir 2025]) and distinguishing the facts of a contrary Ninth Circuit ruling considering a similar issue, the Fourth Department reasoned that appellant's biometric data was testimonial because the data he provided "directly announce[d] [his] access to and control over the phone, as well as his mental knowledge of how to unlock the device." Accordingly, execution of the search warrant violated appellant's right against self-incrimination under the Fifth Amendment. Cerio Law Offices, PLLC (Shaun M. Chase, of counsel) represented Manganiello. (County Ct, Oswego Co)

People v Marsh, 2025 NY Slip Op 03874
(4th Dept 6/27/2025)
***MIRANDA* | WAIVER NOT [VALID] BECAUSE APPELLANT DID NOT READ ENTIRE FORM | SUPRESSION GRANTED**

ILSAPP: Appellant appealed from a Cattaraugus County Court judgment convicting him of first-degree assault. The Fourth Department reversed, suppressed his post-arrest videotaped statements, and granted a new trial. Appellant was not fully advised of his *Miranda* rights and did not knowingly, intelligently, and voluntarily waive them before giving a statement. The recording revealed that the detective never read the *Miranda* warnings to appellant, who was 30 years old and had no criminal record. Instead, the detective provided appellant with a piece of paper containing the *Miranda* warnings and, after learning that appellant could "read okay," asked appellant to read the first warning, but not all of the warnings. The detective then walked out of the camera's view momentarily, and appellant could be seen and heard reading the first two rights aloud to himself before saying "Ok, I get it" before signing the waiver form. The detective then confirmed appellant had read all the rights and briefly discussed the waiver of the right to counsel. Given that appellant read aloud only 20.4% of the words in the *Miranda* warnings and looked at the form for less than five seconds before signing the waiver, it was highly improbable, if not impossible, for appellant to have read all the *Miranda* warnings. Justice Keane, in dissent, would have affirmed because the detective provided appellant with a written copy of the *Miranda* warnings, confirmed that appellant could "read and write okay" and asked appellant whether he read all of the rights and the "waiver of rights" at the bottom of the page. The Legal Aid Bureau of Buffalo (Bhagyashree Gupte, of counsel) represented Marsh. (County Ct, Cattaraugus Co)

People v Rosa, 2025 NY Slip Op 03907 (4th Dept 6/27/2025)
MURDER - Felony Murder/Affirmative Defense

LASJRP: The Fourth Department concludes that the court should have charged the jury on the affirmative defense to felony murder where two co-defendants approached a male standing at the passenger door of a vehicle while defendant approached a female at the driver's side of the vehicle; while defendant had his back to the co-defendants, one of them shot and killed the male; defendant then knocked the female to the ground and stole her purse; and when interrogated defendant asserted that although he drove his co-defendants to the scene,

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he did not know they intended to commit a crime, was not aware they were armed, and was not himself carrying a weapon. (Supreme Ct, Monroe Co)

People v Sanders, 2025 NY Slip Op 03884
(4th Dept 6/27/2025)
30.30 | POLICE DISCIPLINARY RECORDS |
HEARING ORDERED | HELD IN ABEYANCE

ILSAPP: Appellant appealed from an Onondaga County Court judgment convicting him of attempted second-degree murder, second-degree CPW, and tampering with physical evidence. The Fourth Department held the appeal in abeyance and remitted for a hearing on appellant's speedy trial motion to determine whether the prosecution improperly withheld police disciplinary records relating to the subject matter of the case. Although the prosecution improperly used a screening panel to determine which records to disclose, that error alone did not entitle appellant to reversal. Hiscock Legal Aid Society (Casey S. Duffy, of counsel) represented Sanders. (County Ct, Onondaga Co)

People v Szurgot, 2025 NY Slip Op 03906
(4th Dept 6/27/2025)
POSSESSION OF STOLEN PROPERTY - Value

LASJRP: The Fourth Department concludes that the evidence that the vehicle's value was at least $3000 value is not legally sufficient to support the conviction of criminal possession of stolen property in the third degree.

The victim testified that he purchased the new vehicle for approximately $20,000, that he then drove it 240,000 miles over the course of 12 years, and that it was in a "[h]eavily used" condition when it was stolen. Although the victim testified that he had consulted the "blue book," he provided only vague testimony that his "guess" or "approximate estimation" was that the vehicle was valued at $4,000. Although a police officer estimated that the vehicle was valued between $6,000 and $10,000 based on his observations and consultation with the "blue book," that testimony was also conclusory. (County Ct, Ontario Co)

Matter of Tyler F., 2025 NY Slip Op 03965
(4th Dept 6/27/2025)
NAME CHANGE

LASJRP: The Fourth Department grants an application to change the child's first name, noting, inter alia, that there are no objections to the application, which is expressly supported by the mother as well as petitioner; that the child currently uses the new name and has done so for the last several years; that the child's teachers use the new name, and the school has gone so far as to create a new file for the child utilizing the new name; that the new name was chosen by the child in conjunction with his parents, who also sought counsel from school professionals, as a name more consistent with the child's gender identity; that the discrepancy between the child's chosen name and legal name was causing the child anxiety in certain situations and was a source of bullying at school; and that the parents wish to create uniformity between the child's preferred name and various insurance information and other identifying documentation.

The Court cannot condone the lower court's decision not to use the pronouns associated with the child's gender identity or the court's "more concerning" reference to the child as "it" in the challenged order. (Supreme Ct, Genesee Co)

Matter of Wasicki v Wilber, 2025 NY Slip Op 03932
(4th Dept 6/27/2025)
CUSTODY - Decision-Making Authority

LASJRP: The Fourth Department concludes that the court erred in awarding the parties sole medical and dental decision-making authority in alternating years. The award is arbitrary and poses practical concerns. The Family Court should determine whether medical and dental decision-making authority should be shared between the parties, or which party should have sole authority for each area of decision-making on a non-alternating basis. (Family Ct, Oneida Co)

People v Wilmet, 2025 NY Slip Op 03901
(4th Dept 6/27/2025)
PRE-SENTENCING REPORT | IMPROPER MENTION OF
ACQUITTED CONDUCT | AFFIRMED & PSR MODIFIED

ILSAPP: Appellant appealed from a Livingston County Court judgment convicting him of second-degree rape and EWC. The Fourth Department affirmed the judgment but directed County Court to redact all copies of appellant's pre-sentencing report (PSR) referencing criminal conduct of which appellant was acquitted. The PSR's inclusion of alleged sexual offenses involving another child was "inappropriate and inflammatory." Geneseo County Conflict Defender (Bradley E. Keem, of counsel) represented Wilmet. (County Ct, Livingston Co)

Matter of Ibn I.-A., 239 AD3d 1485 (4th Dept 6/27/2025)
ABUSE/NEGLECT - Summary Judgment/Alford Plea In
Criminal Proceeding

LASJRP: The Fourth Department upholds a finding of neglect entered via summary judgment, noting that the father pleaded guilty to manslaughter in the second degree and, even though the conviction was based on an Alford plea, petitioner established the factual nexus between the conviction and the allegation in the neglect petition; and that police reports established that the mother was killed in the presence of the children. (Family Ct, Genesee Co)

People v Anwar, 240 AD3d 1172 (4th Dept 7/25/2025)
CPL § 440.10 | IAC| MANDATORY BAR INAPPLICABLE |
REVERSED | DISSENT

ILSAPP: Appellant appealed from an Onondaga County Court

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order summarily denying his CPL § 440.10 motion. The Fourth Department reversed and ordered a hearing on appellant's ineffective assistance of counsel claims. The claims were not procedurally barred pursuant to CPL § 440.10(2)(a), although he had previously argued on direct appeal that he was denied effective assistance of counsel. His current claims involved matters outside the record, and a hearing was necessary to determine whether counsel's waiver of an interpreter adversely impacted appellant's right to meaningfully participate in his own defense. Appellant submitted evidence that he was not able to navigate technical topics without the help of an interpreter and had used interpretation services at all court proceedings except one before counsel waived them. The dissent (Bannister and Keane, JJ.) agreed that County Court improperly invoked the procedural bar but would have nonetheless affirmed, because the motion was legally and factually insufficient to warrant a hearing. The motion was filed 10 years after the trial and appellant's claims were not adequately supported by the motion papers. James Ostrowski represented Anwar. (County Ct, Onondaga Co)

People v Brown, 240 AD3d 1278 (4th Dept 7/25/2025)
LEGAL INSUFFICIENCY | ACCESSORIAL LIABILITY | AFFIRMED | DISSENT

ILSAPP: Appellant appealed from an Oswego County Court judgment convicting him of second-degree murder, first-degree burglary, and related charges. The Fourth Department affirmed. The conviction stemmed from Brown's alleged participation in a home invasion robbery with other participants, during which two individuals were shot, one of them fatally. The evidence at trial did not establish who the shooter was. The dissent (Whalen, P.J., and Smith, J.) would have found the evidence legally insufficient to establish the community of purpose required for accomplice liability with respect to the shootings. There was no evidence that Brown knew his codefendants possessed the handgun involved, and the shooting occurred almost immediately after the home entry. (County Ct, Oswego Co)

People v Buckmaster, 240 AD3d 1372 (4th Dept 7/25/2025)
SORA | DUE PROCESS | NO NOTICE OF COURT'S POINTS ASSESSMENT | REVERSED & REMITTED

ILSAPP: Appellant appealed from a Steuben County Court judgment adjudicating him a level three sex offender under SORA. The Fourth Department reversed and remitted for a new risk assessment hearing. As the prosecution conceded, the court violated Buckmaster's due process rights by failing to inform him that it would be assessing additional points that were neither recommended by the Board of Examiners of Sex Offenders nor requested by the prosecution. Although the issue was unpreserved, the court reached it in the interest of justice. Andrew J. DiPasquale represented Buckmaster. (County Ct, Steuben Co)

People v Casiano, 240 AD3d 1212 (4th Dept 7/25/2025)
EXCESSIVE SENTENCE | *MIRANDA* | NO CUSTODIAL INTERROGATION | MODIFIED | DISSENT

ILSAPP: Appellant appealed from a Monroe County Supreme Court judgment convicting him of two counts of second-degree CPW. The Fourth Department reduced the sentence—not mentioned in the opinion—in the interest of justice by imposing 4 years' imprisonment for both CPW counts, to run concurrently, and otherwise affirmed. Suppression was properly denied, because the questioning by police officers "constituted a noncustodial investigatory inquiry for which *Miranda* warnings were not required." The dissent (Ogden, J.) would have reversed and granted suppression because every factor in determining whether appellant was in custody for *Miranda* purposes weighed in his favor: (1) he was with police in his backyard for almost an hour; (2) his freedom of action was restricted where the encounter began with police telling him "not to move" and "to get on the ground;" (3) the backyard full of officers searching for a gun was a highly intrusive atmosphere; and (4) he did not cooperate with police and tell them where the gun was, despite their repeated accusatory questions. Considering the above, police should have read appellant his *Miranda* warnings. The error was not harmless because the prosecution relied on appellant's statements at various points in the trial. Even if the evidence of guilt was overwhelming, the dissent would have still found that there was a reasonable possibility that the admitted statements contributed to appellant's conviction. Monroe County Public Defender (Clea Weiss, of counsel) represented Casiano. (Supreme Ct, Monroe Co)

[*Ed. Note:* *Counsel was appointed by the Court of Appeals, 2025 NY Slip Op 78516 {10/16/2025}*]

Matter of Castro v Rios-Osorio, 240 AD3d 1414 (4th Dept 7/25/2025)
CUSTODY | DEFAULT | ABUSE OF DISCRETION BY DENYING ADJOURNMENT | REVERSED & REMITTED

ILSAPP: Father appealed from an Onondaga County Family Court default order awarding sole legal and physical custody to the mother. The Fourth Department reversed and remitted for a new hearing on both parties' petitions. Limiting its review to the "matters which were the subject of contest before the trial court under CPLR 5511," the Fourth Department held that the order was properly entered on default and the substance of the custody order was thus not reviewable. However, Family Court abused its discretion by denying the father's adjournment request. The father had personally appeared at all prior proceedings; this was his first adjournment request; it was

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neither a delay tactic nor a result of his own lack of diligence; and his incarceration at the time prevented him from communicating with his attorney or gathering important evidence. Law Office of Veronica Reed (Veronica Reed, of counsel) represented Rios-Osorio. (Family Ct, Onondaga Co)

Matter of Clark v Strassburg, 240 AD3d 1393 (4th Dept 7/25/2025)
CUSTODY MODIFICATION | DECISIONMAKING AUTHORITY | IMPROPER INTERFERENCE WITH RELIGIOUS EXERCISE | MODIFIED AND REMITTED

ILSAPP: Father appealed from a Genesee County Family Court order modifying a custody order to grant sole custody of the children to the mother. The Fourth Department modified, remitted, and otherwise affirmed. Family Court's provision ordering the middle child to "attend the Church of Jesus Christ of Latter-Day Saints every Sunday," except for the Sundays when the child is in the mother's care, was unconstitutional insofar as it mandated specific religious exercise. Therefore, this provision was vacated and the matter remitted for Family Court to designate which parent would have decision-making authority for that child's religious education and practice. Jennifer M. Lorenz represented Strassburg. (Family Ct, Genesee Co)

People v Curtin, 240 AD3d 1295 (4th Dept 7/25/2025)
PROBATION | IMPROPER CONDITION: NO CONTACT WITH DAUGHTER | HELD & REMITTED

ILSAPP: Appellant appealed from an Erie County Supreme Court judgment convicting him of possessing a sexual performance by a child after a plea. The Fourth Department held the appeal and remitted for a hearing. Although appellant did not challenge the appeal waiver, the court found his argument outside its scope because it related to the legality of the sentence. Supreme Court erred in imposing the requirement that he not have any contact with his daughter without setting forth any basis on the record for imposing it. Particularly because that condition impacted his constitutionally protected liberty interest as a parent, the Fourth Department remitted for a hearing on whether it was warranted by the circumstances of the case. Nicholas T. Texido represented Curtin. (Supreme Ct, Erie Co)

People v Davis, 240 AD3d 1162 (4th Dept 7/25/2025)
RIGHT TO COUNSEL - Waiver/Pro Se Representation - Conflict Of Interest

LASJRP: Defendant informed the court that he did not want his assigned attorney from the public defender's office to represent him and requested new assigned counsel. The court conducted an extensive colloquy, during which defendant repeatedly stated that he did not want assigned counsel to defend him because he believed that counsel, the court, the previous judge, and his two prior public defenders were conspiring to sabotage his defense in order to protect the arresting officer. When the court responded that it would not assign substitute counsel, defendant stated repeatedly that he would represent himself and not permit assigned counsel to continue to represent him if the court did not assign substitute counsel. The court denied the request for substitute counsel, and the trial continued with assigned counsel representing defendant.

In a 3-2 decision, the Fourth Department rejects defendant's contention that the court erred in denying his request to proceed pro se. Defendant did not unequivocally ask to proceed pro se, and only asked to proceed pro se as an alternative to receiving new counsel, thereby seeking to leverage his right of self-representation in an attempt to compel the court to appoint another lawyer. He made no standalone request to proceed pro se.

The majority also concludes that the court did not err in refusing to assign substitute counsel. The alleged conflict of interest resulted from a federal civil rights action defendant had brought against, inter alia, the public defender's office, which related to the alleged conspiracy to protect the arresting officer from perjury charges. The court allowed defendant to raise and explain that issue, but concluded that "there was no conspiracy" and "no grand design" against defendant. (County Ct, Monroe Co)

People v Davis, 240 AD3d 1376 (4th Dept 7/25/2025)
LEGAL INSUFFICIENCY | FAILURE TO RULE ON TRIAL ORDER OF DISMISSAL MOTION | HELD & REMITTED

ILSAPP: Appellant appealed from a Monroe County Court judgment convicting him of third-degree CPW after a nonjury trial. The Fourth Department held the appeal and remitted. Although the defense made a motion for a trial order of dismissal, which it renewed at the close of proof, the court never ruled on it. Because the failure to rule is not a denial, the Fourth Department remitted for a ruling on the motion before reaching the merits of the legal insufficiency argument. Frank Policelli represented Davis. (County Ct, Monroe Co)

Matter of Eddaoudi v Obtenu, 240 AD3d 1437 (4th Dept 7/25/2025)
CUSTODY MODIFICATION & RELOCATION | LACK OF RECORD SUPPORT | REVERSED & REMITTED

ILSAPP: Father appealed from an Onondaga County Family Court modifying the parties' custody stipulation to grant sole legal and physical custody of the child to the mother, with permission to relocate to Massachusetts. The Fourth Department reversed and remitted for a new determination and an additional hearing, if necessary. Family Court's order modifying the parties' prior custody order and granting the mother's relocation petition lacked a sound and substantial basis in the record, as it failed to adequately consider all the relevant factors. In granting the relocation request, the court did not give due consideration to the father's good faith basis for opposing a requested move—specifically, the mother's non-

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U.S. citizen status and her desire to relocate with the child to Morocco. Further, the court made no factual findings to support its custody determination, did not consider the father's concerns pertaining to the mother's immigration status and removal of the child to Morocco, and failed to make the requisite findings of fact pertaining to the child's best interests. Law Office of Veronica Reed (Veronica Reed, of counsel) represented Obtenu. (Family Ct, Onondaga Co)

People v Ernst, 240 AD3d 1252 (4th Dept 7/25/2025)
30.30 | PROSECUTION APPEAL | COC INVALID | NO DUE DILIGENCE | AFFIRMED | DISSENT

ILSAPP: The prosecution appealed from an Erie County Supreme Court order dismissing the indictment on speedy trial grounds. The Fourth Department affirmed. Despite the prosecution's awareness that police conducted a welfare check of appellant's children two days after the alleged assault, they sent only a single letter requesting related records. Supreme Court properly found the COC invalid, because the prosecution failed to exercise due diligence or make reasonable inquiries before filing the initial COC. Further, Supreme Court properly dismissed the indictment because the time chargeable to the prosecution exceeded the six-month period. No issues remained "under consideration by the court" with respect to appellant's omnibus motion. The dissent (Curran and Smith, JJ.) would have reversed. Although the COC was invalid, the prosecution could not be charged with more than six months of speedy trial time where appellant's omnibus motion remained pending. Supreme Court never ruled on appellant's request to compel production of certain materials pertaining to the welfare check, and nothing in the record indicated that appellant formally withdrew that part of the motion. Supreme court also abused its discretion in dismissing the indictment as a discovery sanction under CPL § 245.60, because the court failed to show that it had considered whether any other remedy would suffice as a sanction for the discovery violation. Nicholas T. Texido represented Ernst. (Supreme Ct, Erie Co)

People v Everson, 240 AD3d 1343 (4th Dept 7/25/2025)
DISCOVERY VIOLATION | ADJOURNMENT DENIED | AFFIRMED | DISSENT

ILSAPP: Appellant appealed from an Onondaga County Court judgment convicting him of first-degree rape and second-degree burglary. The Fourth Department affirmed. The prosecution violated their discovery obligations by waiting until mid-trial to disclose materials relied on by their latent fingerprint expert in violation of CPL § 245.20, but the majority found that County Court's remedy of an adverse inference charge was an appropriate sanction pursuant to CPL § 245.80(1)(a). The dissent (Ogden, J.) would have held that the failure to grant the defense's adjournment request was error. And it was not harmless, because the denial impacted the defense's ability to cross-examine the expert and potentially secure a defense expert; in addition, Everson was found not guilty on two other counts. The dissent read CPL § 245.80 as imposing two distinct obligations on the trial court to remedy belated disclosure: (1) to impose a prejudice-related sanction and (2) to give the defense a "reasonable time to prepare and respond to the new material." The curative instruction fulfilled the first duty, but an adjournment should have been granted to fulfill the second. (Supreme Ct, Onondaga Co)

[*Ed. Note:* *Counsel was appointed by the Court of Appeals, 2025 NY Slip Op 78519 (10/16/2025)*]

Matter of Fenton v Smith, 240 AD3d 1242 (4th Dept 7/25/2025)
VISITATION | NO DEFAULT WHERE COUNSEL PARTICIPATED | REVERSED & REMITTED

ILSAPP: Appellant mother appealed from a Seneca County Family Court order granting visitation to the father. The Fourth Department reversed and remitted for a new hearing before a different judge. Family Court erred when it found the mother in default. Although she was not present in court, her counsel appeared and actively participated on her behalf. The record was insufficient for the Fourth Department to make its own best-interests determination, however, particularly because Family Court did not appoint an Attorney for the Child. Charles Greenberg represented Smith. (Family Ct, Seneca Co)

People v Hannah T., 240 AD3d 1260 (4th Dept 7/25/2025)
EXCESSIVE SENTENCE | APPEAL WAIVER | AD JURISDICTION | DVSJA | SENTENCE REDUCED | DISSENT

ILSAPP: Appellant appealed from a Monroe County Court judgment convicting her of first-degree manslaughter, following a guilty plea, and sentencing her to 25 years' imprisonment and 5 years' PRS. Although the Fourth Department found the appeal waiver was valid, the majority nevertheless invoked its interest-of-justice jurisdiction to reduce the incarceratory sentence to 5 years—the minimum for first-degree manslaughter under the standard range and the maximum under the Domestic Violence Survivors Justice Act (DVSJA). Although a valid waiver generally forecloses an excessive sentence challenge, the majority held that neither "an agreement" between the prosecution and the accused nor actions by the legislature or Court of Appeals can divest the Appellate Division of its state constitutional authority to independently review a sentence, where a sentence is "fundamentally unjust and all other safeguards have failed." Here, the defense submitted a detailed mitigation report prior to sentencing chronicling extreme neglect and abuse by appellant's biological and foster families, resulting in impairment of her cognitive development and multiple clinical diagnoses. In reducing the sentence, the majority also cited

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pleas for leniency from appellant's grandmother (mother of the decedent), and the fact that the co-defendant fired the fatal shots. Despite trial counsel's failure to request a hearing under the Domestic Violence Survivors Justice Act (DVSJA), the majority found "strong evidence" to support each factor in PL § 60.12(1). The dissent (Curran and Smith, JJ.) would have voted to affirm the sentence, castigating the majority for departing from well-established Court of Appeals precedent holding that a valid waiver of appeal prevents the Appellate Division from exercising its plenary review powers to reduce a sentence. While appellant's post-August 2019 offense date precludes bringing a CPL § 440.47 resentencing application, the dissent further noted that not "all other safeguards have failed," given appellant's strong claim via CPL § 440 motion for ineffective assistance based on trial counsel's failure to request a DVSJA hearing. Danielle C. Wild represented Hannah T. (County Ct, Monroe Co)

People v Harris, 240 AD3d 1175 (4th Dept 7/25/2025)
30.30 | PROSECUTION APPEAL | COC/SOR ILLUSORY | RESERVED & REMITTED

ILSAPP: The prosecution appealed from an Erie County Court order granting appellant's motion to dismiss the indictment on speedy trial grounds. The Fourth Department reserved decision and remitted for further proceedings. In its 30.30 decision, County Court failed to consider and calculate excludable speedy trial periods. Even if the COC was invalid and the SOR was illusory, the court was still required to consider possible statutory exclusions to CPL § 30.30, which may have stopped the speedy trial clock. (County Ct, Erie Co)

People v Hernandez, 240 AD3d 1208 (4th Dept 7/25/2025)
SEARCH AND SEIZURE - Fruits
APPEAL - Preservation

LASJRP: In a 3-2 decision, the Fourth Department suppresses defendant's spontaneous statements at the police station as the fruit of an unlawful detention that took place when troopers placed defendant in handcuffs after directing him to exit the vehicle during a traffic stop. The People failed to argue during the suppression hearing that defendant's statements were sufficiently attenuated from the unlawful detention, and the hearing court did not expressly decide the issue.

Two dissenting judges - noting that the discovery of a loaded firearm after the driver (defendant's girlfriend) stated that there was a gun in a bag in the vehicle provided the troopers with independent grounds to arrest defendant, who admitted in his statements that the gun belonged to him - would reserve decision and remit the matter for a ruling[.] There is no need to determine whether the attenuation exception applies unless and until it is determined that there is evidence to suppress in the first instance. The fact that the People did not argue attenuation below does not mean that this Court or the motion court must accept defendant's contention that his voluntary statements should be suppressed due to the unlawful detention. (County Ct, Monroe Co).

People v Kuhn, 240 AD3d 1442 (4th Dept 7/25/2025)
SORA | DUE PROCESS | LACK OF NOTICE | DOWNWARD DEPARTURE | REVERSED & REMITTED

ILSAPP: Appellant appealed from a Steuben County Court judgment adjudicating him a level two sex offender under SORA. The Fourth Department reversed and remitted for a new risk assessment hearing. The court did not provide Kuhn a meaningful opportunity to request a downward departure when it sua sponte assessed additional points, determining he was a level two risk when the prosecution had requested that he be designated a level one. Rosemarie Richards represented Kuhn. (County Ct, Steuben Co)

People v Reeder, 240 AD3d 1435 (4th Dept 7/25/2025)
RIGHT TO BE PRESENT AT SENTENCING | INSUFFICIENT RECORD | MOOTNESS | RESERVED & REMITTED

ILSAPP: Appellant appealed from a Cayuga County Court judgment convicting him of third-degree attempted CPCS. The Fourth Department reserved decision and remitted for further proceedings. Appellant's sentence included a PRS term of 3 1/2 years, which exceeded the maximum legal period of 3 years for a Class C felony drug offense. Although DOCCS alerted the court to the illegal sentence pursuant to its statutory duty under Correction Law § 601-a, resulting in an amended uniform sentence and commitment form, the record does not establish whether appellant was present when the sentence was amended, or whether he waived his right to be present. As such, contrary to the prosecution's contention, the matter was not moot because the lower court record was insufficient as to whether appellant was properly resentenced. David P. Elkovitch represented Reeder. (County Ct, Cayuga Co)

People v Smith, 240 AD3d 1218 (4th Dept 7/25/2025)
SUPPRESSION | PURSUIT AFTER STOP SUPPORTED BY REASONABLE SUSPICION | AFFIRMED | DISSENT

ILSAPP: Appellant appealed from an Onondaga County Court judgment convicting him of second-degree CPW. The Fourth Department affirmed. County Court properly denied the defense's motion to suppress physical evidence. Officers stopped Smith on the street after receiving a report of shots fired by "a Black male in all black" and determining that he matched that description. An officer testified that his purpose was "to detain" Smith, who then agreed to a pat frisk but fled before it could be conducted. Officers pursued him and later recovered a gun, which they testified they had seen him abandon during the chase. The Fourth Department held that, at the inception of the encounter with appellant, officers had a level-two founded

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suspicion of criminality and that Smith's flight elevated it to level-three reasonable suspicion. The dissent (Ogden, J.) would have held that running from the initially lawful, level-two encounter was insufficient to support the reasonable suspicion needed to justify the officers' pursuit. (County Ct, Onondaga Co)

People v Spinks, 240 AD3d 1176 (4th Dept 7/25/2025)
CONSOLIDATION OF INDICTMENTS | OVERLAPPING EVIDENCE | *MOLINEUX* | AFFIRMED | DISSENT

ILSAPP: Appellant appealed from two Monroe County Supreme Court judgments convicting him of second-degree murder, attempted murder, and related charges. The Fourth Department affirmed both judgments. The majority held that consolidation of the indictments, arising from two separate shootings, was proper where the same gun was allegedly used in both cases and each indictment charged offenses under the murder and CPW statutes. In opposing consolidation, appellant failed to demonstrate that he had important testimony to give on one case and the need to refrain from testifying in the other. Consolidation also promoted judicial economy based on overlapping witnesses: the ballistics expert and the officers who searched appellant's home. The dissent (Whalen, P.J.) would have reversed, finding that consolidation was not justified under CPL § 200.20 and improperly prejudiced appellant. Although the same gun was allegedly used in both crimes, the two incidents were not so similar as to allow introduction of the details of the first crime under the *Molineux* exception to establish a modus operandi as to the second. Consolidation thus allowed the jury to determine guilt based on appellant's alleged criminal propensity. The evidence supporting the assault case—including an identification by the complainant and appellant's DNA on the scene—was also much stronger than for the homicide, a shooting with no witnesses and only circumstantial evidence. Appellant demonstrated his need to testify in the assault case and to refrain from testifying regarding the homicide, which would require him to admit previously shooting his friend, the decedent, with rubber bullets after an argument. The court further erred in failing to provide appropriate limiting instructions and refusing to grant a circumstantial evidence charge, a claim warranting interest-of-justice review. David P. Elkovitch represented Spinks. (Supreme Ct, Monroe Co)

Matter of Hailey H., 2025 NY Slip Op 05406
(4th Dept 10/3/2025)
TERMINATION OF PARENTAL RIGHTS - Appeals

LASJRP: In this termination of parental rights proceeding, the Fourth Department concludes that the mother's notice of appeal was timely filed where the record establishes that the mother was served with the order appealed from only by email, which is not a method provided for in Family Court Act § 1113. (Family Ct, Ontario Co)

Matter of Hart v Lonneville, 2025 NY Slip Op 05365
(4th Dept 10/3/2025)
CUSTODY - Relocation

LASJRP: The Fourth Department upholds a determination allowing the father to relocate with the child to Kentucky where the child resided in substandard housing with the mother and her boyfriend for a prolonged period of time without a working toilet and with the mother having no credible plans to remedy the situation and the child sleeping on a pull-out couch; the father had a household income nearly five times that of the mother, and he recently purchased a new home where the child could have his own room; the father would also be able to enroll the child in sports and other activities after relocation to Kentucky; and the child would attend the elementary school that the father's oldest daughter - the child's step-sister - currently attends. (Family Ct, Seneca Co)

Matter of Johnson v Pritchard, 2025 NY Slip Op 05398
(4th Dept 10/3/2025)
CUSTODY MODIFICATION | IMPERMISSIBLE CONDITION ON VISITATION | MODIFIED & REMITTED

ILSAPP: Father appealed from an Oneida County Family Court order granting the mother sole legal and physical custody and ordering him to engage in counseling, including family counseling when the counselor deemed it appropriate, but failing to order any other visitation with the child. The Fourth Department modified by removing the provision regarding counseling and remitted to Family Court to set forth an appropriate visitation schedule, after a further hearing if necessary. Family Court erred in directing the father to engage in counseling as a condition of visitation and delegating its authority to the counselor to determine when visitation would occur. While counseling may be a component of a visitation order, it may not be a prerequisite to that visitation. Additionally, the presumption in favor of visitation for a non-custodial parent was not rebutted by record evidence showing that the relationship between the father and child was strained. Law Office of Veronica Reed (Veronica Reed, of counsel) represented Johnson. (Family Ct, Oneida Co)

People v Laws, 2025 NY Slip Op 05334 (4th Dept 10/3/2025)
ROBBERY - Threatened Use Of Force

LASJRP: The Fourth Department upholds a conviction for third-degree robbery where defendant entered the bank wearing a mask, told people inside the bank not to look at him, repeatedly banged on the counters, demanded that bank employees turn over large denomination bills, and announced that he was robbing the bank. The weight of the evidence establishes that defendant's threatened use of force was implied. (County Ct, Wayne Co)

Matter of Paris M., 2025 NY Slip Op 05381
(4th Dept 10/3/2025)
ABUSE/NEGLECT - Corroboration

LASJRP: The Fourth Department concludes that the child's out-

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of-court statements alleging that respondent sexually abused her on multiple occasions were adequately corroborated where her sibling's accounts of the preferential treatment respondent provided to the abused child and the reason why the child and the sibling ran away from their mother's home provided sufficient indicia of reliability; the allegations were further corroborated by a prior determination that respondent was a level two sex offender; and the court had the opportunity to assess the child's credibility when the court admitted in evidence a recording of the child's forensic interview, in which she described the abuse. (Family Ct, Erie Co)

Matter of Zwiefach v Heitzmann, 2025 NY Slip Op 05380 (4th Dept 10/3/2025)
CUSTODY AND VISITATION MODIFICATION | NO SPECIFIC REQUEST FOR RELIEF | AFFIRMED

ILSAPP: Father appealed from an Oneida County Family Court order modifying his parenting time. The Fourth Department affirmed. Although neither he nor the opposing party requested that his parenting time be modified in their cross-petitions, the Fourth Department rejected the argument that Family Court's order was therefore improper. Family Court may modify a prior order of custody or visitation without a specific application for that relief if the parties were given adequate notice and the opportunity to present any relevant testimony and evidence. Here, the father raised the issue of the visitation schedule on the record and presented testimony on the subject, demonstrating his awareness that the court would be considering it. (Family Ct, Oneida Co)

Matter of Anderson v Cintron, 2025 NY Slip Op 05591 (4th Dept 10/10/2025)
CUSTODY | UCCJEA | JURISDICTION DETERMINATION | REVERSED & REMITTED

ILSAPP: Mother appealed from an Erie County Family Court order dismissing her custody modification petition. The Fourth Department reversed, reinstated the petition, and remitted for further proceedings. The mother had filed a petition seeking to modify a prior custody order, which continued the child's residence with the father in Texas. Family Court dismissed the petition based on a lack of jurisdiction under the UCCJEA, but without holding a hearing or making a record of the proceedings. The Fourth Department reinstated the petition and remitted for new proceedings, since it could not determine whether Family Court complied with the UCCJEA's procedures and whether its decision had evidentiary support. Caitlin M. Connelly represented appellant mother Anderson. (Family Ct, Erie Co)

People v Beason, 2025 NY Slip Op 05598 (4th Dept 10/10/2025)
SPEEDY TRIAL - Absence Of Police Officer

LASJRP: The Fourth Department orders dismissal on statutory speedy trial grounds, concluding that a 33-day adjournment to secure an officer's testimony constitutes a period of unreasonable delay and is chargeable to them where the prosecutor stated that the officer was "currently not allowed to come to court due to an ongoing investigation by the Attorney General's Office," and that the prosecutor was unsure of "who" was telling the officer "not to come to court." (Supreme Ct, Monroe Co)

People v Clea, 2025 NY Slip Op 05590 (4th Dept 10/10/2025)
SENTENCING | FIREARM SENTENCING ENHANCEMENT | ENHANCEMENT IMPROPER | MODIFIED

ILSAPP: Appellant appealed from an Oneida County Court judgment convicting him of second-degree attempted murder, first-degree burglary, first-degree robbery, first-degree assault, first-degree criminal use of a firearm, and second-degree CPW. The Fourth Department modified by removing the 5-year statutory sentencing enhancement for criminal use of a firearm and otherwise affirmed. Penal Law § 265.09 provides for a 5-year sentence enhancement upon a conviction of first-degree criminal use of a firearm when a loaded firearm is used or displayed in the commission of an underlying class B felony. The enhancement was improper in this case, because (1) some of the convictions were not charged as underlying offenses for the firearm conviction; and (2) with respect to the burglary, which was, the jury did not find that Clea displayed a loaded weapon during it. The sentence enhancement was thus invalid. The unpreserved claim was reviewable because it concerned the legality of the sentence. Adam Amirault represented Clea. (County Ct, Oneida Co)

Matter of Cynthia M., 2025 NY Slip Op 05621 (4th Dept 10/10/2025)
NEGLECT | AGENCY APPEAL | PETITION REINSTATED | REVERSED & REMITTED

ILSAPP: Agency and attorneys for the subject children appealed from a Chautauqua County Family Court order dismissing a neglect petition against the mother and making a finding of neglect against the father based on domestic violence. The Fourth Department reversed, reinstated the petition against the mother, entered additional findings of neglect against both parents, and remitted for a dispositional hearing. The agency met its burden of proving neglect by a preponderance of the evidence on several grounds, including medical neglect and educational neglect. (Family Ct, Chautauqua Co)

People v Kuhn, 2025 NY Slip Op 05600 (4th Dept 10/10/2025)
PROBATION | IMPROPER: CONDITIONS | MODIFIED

ILSAPP: Appellant appealed from a Steuben County Court judgment convicting him of third-degree rape, upon his guilty plea. The Fourth Department modified by removing two conditions of probation and otherwise affirmed. One condition, requiring Kuhn to "not purchase, possess, or indulge in the use

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of alcohol or any products that contain alcohol," was not related to the probationary goal of rehabilitation. Similarly, a condition requiring drug and alcohol testing was also improper. The unpreserved issue was reviewable because it concerned the legality of the sentence. Rosemarie Richards represented Kuhn. (County Ct, Steuben Co)

Matter of Litwinski v Adinolfe, 2025 NY Slip Op 05614
(4th Dept 10/10/2025
CUSTODY - Relocation

LASJRP: The Fourth Department concludes that where the mother sought court approval of her proposed relocation from Hamburg in Erie County to Brocton in Chautauqua County, which would require the child to change school districts from the one contemplated in the prior order, the court erred in concluding that this was not a relocation case governed by the standard set forth in Matter of Tropea v Tropea (87 N.Y.2d 727) because the proposed move was minor and would not significantly impact the father's visitation. Where, as here, a custodial parent seeks judicial approval of a relocation plan to move away from the area in which the noncustodial parent resides that could hinder visitation by the noncustodial parent, the Tropea standard governs.

Although the court did not fully engage in the requisite Tropea analysis, the record is sufficient to permit this Court to do so, and the Court concludes that the mother met her burden. The mother established, inter alia, that she and the child would unite under a single household with the mother's new husband, with whom the child was well familiar, thereby allowing for the consolidation of household expenses and alleviating some of the time and financial costs associated with the mother's commute by permitting her to reside closer to her place of employment. The court, at the mother's behest, provided a liberal parental access schedule to the father including, but not limited to, extended weekend visitation and the same summer and holiday visits, and the visitation schedule greatly reduces the number of exchanges of the child between the parties. (Family Ct, Erie Co)

People v McCullough, 2025 NY Slip Op 05610
(4th Dept 10/10/2025)
LEGAL SUFFICIENCY | CPCS | INSUFFICIENT EVIDENCE OF INTENT TO SELL | MODIFIED

ILSAPP: Appellant appealed from a Monroe County Supreme Court judgment convicting him of third and fourth-degree CPCS. The Fourth Department modified by reversing the third-degree CPCS conviction and dismissing that count of the indictment. The evidence that appellant possessed two bags of crack-cocaine, together weighing just over 6.5 grams, was insufficient to establish that appellant intended to sell the narcotics. The court cited *People v Nellons*, 133 AD3d 1258, 1259 (4th Dept 2015), which held that "[m]ore than mere possession of a modest quantity of drugs, not packaged for sale and unaccompanied by any other saleslike [sic] conduct, must be present" to give rise to an inference of an intent to sell. Further, the third-degree CPCS count could not be reduced to seventh-degree CPCS, because that is an inclusory concurrent count of fourth-degree CPCS, of which appellant was also convicted. Monroe County Public Defender (Paul Skip Laisure, of counsel) represented McCullough. (Supreme Ct, Monroe Co)

Matter of Myel T.-F., 2025 NY Slip Op 05615
(4th Dept 10/10/2025)
ABUSE/NEGLECT - Drug Misuse

LASJRP: The Fourth Department rejects the mother's contention that the presumption of neglect based on substance misuse that arises under FCA § 1046(a)(iii) can be rebutted by evidence that the children were well cared for and not in danger. (Family Ct, Erie Co)

People v Ridley, 2025 NY Slip Op 05599
(4th Dept 10/10/2025)
SORA | IMPROPER SUA SPONTE POINTS ASSESSMENT | IMPROPER UPWARD DEPARTURE | REVERSED

ILSAPP: Appellant appealed from a Yates County Supreme Court order designating her a level three sex offender under SORA. The Fourth Department reversed in the interest of justice and remitted the matter to Supreme Court for a new risk level determination. The court violated appellant's right to due process when it assessed points under risk factor 14 that were not requested by the prosecution. Even assuming that harmless error applied, this error was not harmless because the court failed to set forth the findings of fact and conclusions of law upon which it based its decision to grant the prosecution's request for an upward departure to a level three, as required under Correction Law § 168-n (3). Michael Jos. Witmer represented Ridely. (Supreme Ct, Yates Co)

People v Ruise, 2025 NY Slip Op 05589
(4th Dept 10/10/2025)
SEARCH AND SEIZURE - Search Incident To Mental Hygiene Law Detention

LASJRP: Police officers entered an apartment with the tenant's permission in order to search for a person who was the subject of an active arrest warrant. Defendant was sitting at the kitchen table, apparently asleep or unconscious. The tenant told the officers that defendant had the same first name as the subject of the arrest warrant but was not the person they were looking for. An officer attempted unsuccessfully to wake defendant and then searched defendant's pockets for his identification. The officer found a cigarette box in defendant's pocket, in which he saw crack cocaine. The officers called an ambulance for defen-

Fourth Department *continued*

dant, but when the ambulance arrived, the medical personnel were able to wake defendant and determined that he did not need medical care. At the suppression hearing, the officer asserted that Mental Hygiene Law § 22.09 permitted him to search defendant since he was planning to call an ambulance to transport defendant. The suppression court agreed.

The Fourth Department agrees with defendant that the warrantless search was not justified. There was insufficient evidence that defendant was in danger of harming himself or others (see MHL § 22.09[b][2]). (County Ct, Genesee Co)

People v Surles, 2025 NY Slip Op 05603
(4th Dept 10/10/2025)
CONFESSIONS - Invocation Of Right To Remain Silent

LASJRP: The Fourth Department orders suppression where the police questioned defendant after he unequivocally invoked his right to remain silent.

After the police told defendant that they considered him a suspect in the underlying shooting and asked him "for his side of the story," defendant continually stated that "he didn't want to talk about that and [that] he'd rather take his chances."

Defendant's responses to a police officer who resumed the interrogation about an hour and a half after the prior questioning ceased did not negate defendant's prior unequivocal invocation of his right to remain silent because the officer failed to reread the Miranda warnings to defendant before resuming the interrogation and therefore failed to scrupulously honor his right to remain silent. (Supreme Ct, Erie Co)

Defender News *(continued from page 12)*

steps) can be daunting, if not entirely impossible or unaffordable," according to a webpage of The Arc. A recently-announced settlement of a 2018 lawsuit says that "[a]ssisted living providers in New York cannot refuse admission to prospective residents, or the continued residency of existing residents, because they have mobility limitations ...." Not only assisted living providers but New York State are defendants in the case. The announcement of the settlement noted that certain state regulations that allowed or even required discrimination against people who use wheelchairs had "not been updated since the passage of the Americans with Disabilities Act, the Affordable Care Act and the amendments to the federal Fair Housing Act as well as since the Supreme Court's decision in *Olmstead v. L.C.* [527 US 581] ...."

Disabilities May Impact Employment and Income Opportunities

Finding employment may also be challenging for people with disabilities. An Economic and Policy Insights paper from the State Comptroller in November reported that 2024 labor force participation rates for individuals with a disability in both the U.S. and New York were less than half that of people without a disability. However, "the number of individuals age 16 and over in the labor force who report having a disability increased in the nation and New York" between 2019 and 2024. Much of the growth was credited to remote work options. The report includes information about employment data regarding people with different types of disabilities and about state programs to help people with disabilities "secure and advance in employment ...."

Family Defenders representing or opposing a parent with a disability in child support proceedings should be familiar with the law underlying *Matter of Cutaia v Cutaia* (summary p. 36). "A parent seeking a downward modification of a child support obligation must submit competent proof that a termination of employment occurred through no fault of that parent and that the parent has diligently sought re-employment commensurate with his or her earning capacity (see *Matter of Rolko v Intini*, 128 AD3d 705, 706 [2015])."

Older people who are unable to find work may find access to government assistance curtailed, said news reports in the last quarter of 2025. The *Washington Post* reported on October 5, 2025, that the federal Administration "is preparing a plan that would make it harder for older Americans to qualify for Social Security disability payments," according to a *Newsweek* article the next day. *Newsweek* said the Administration "has denied there will be any changes to disability determinations processes for certain Social Security welfare benefits." The *Post*'s sources said that currently, "[o]lder applicants, typically over 50, have a better chance of qualifying because age is treated as a limitation in adapting to many jobs," but that changes under consideration would eliminate age as a factor, or at least raise to 60 the age at which it would be considered. Family defenders may need to know the status of disability eligibility requirements if some clients over 50 must show that they are unable to obtain income to maintain custody of their children or meet employment conditions of supervised release.

Child's Disability Warrants Appointment of Guardian

A family court denial of a mother's guardianship petition and motion for an order of special findings that would enable her nonverbal, severely disabled child to petition for Special Immigrant Juvenile Status under 8 USC 1101(a)(27)(J) was unanimously reversed by the First Department in September. The decision in *Matter of Sandy G.G.D. v Luis R.B.G.* (summary p. 24) said that while the "child's profound disabilities render him incapable of giving knowing consent to guardianship," the Attorney for the Child "has the explicit authorization to take positions on behalf of the subject child, including the legal determination and consent to guardianship via substituted judgment" and guardianship would be in the child's best interest.

Complainant's Disability is Aggravating SORA Factor

A complainant's disabilities were found to be a decisive factor in the appeal of a person designated a level two offender under the Sex Offender Registration Act (SORA). In *People v Rodas* (summary p. 33), the Second Department found that a court's consideration of factors not raised by the prosecution or the Board of Examiners of Sex Offenders when granting an upward departure designating the convicted person a level two sex offender was error. The error was harmless, however, because the prosecution had "proved, by clear and convincing evidence, that an aggravating factor of a kind and to a degree not adequately taken into account by the Sex Offender Registration Act: Risk Assessment Guidelines and Commentary (2006) existed in this case ... namely, the victim's physical disabilities .... Moreover, based on that aggravating factor, in light of the totality of the circumstances, an upward departure from the defendant's presumptive risk level one designation was warranted ...." (Citations omitted.)

Resources Regarding Disabilities are Available

Defenders can benefit from the assistance of defense professionals (social workers, client advocates, mitigation specialists) in determining how disabilities may affect cases and how to address issues. They can also help clients with disabilities navigate the requirements of the legal and regulatory systems. Lawyers with eligible clients may apply for funding for this. See Getting the Expert Funds You Need Under County Law § 722-c (NYSDA 2016). And defenders are encouraged to contact the Backup Center for help in finding relevant experts to assist regarding a particular disability or combination of disabilities.

Helpful resources may be found on the internet. NYSDA's website includes information regarding disabilities, such as a Family Defense Resources for People with Disabilities webpage and links on the Criminal Defense Resources webpage to relevant state agencies. The Unified Court System website includes a page relating to the ADA, including Reasonable Accommodations for Court Use and other links, including to a brochure on Working with Jurors With Disabilities, a guide for attorneys.

Because a range of disabilities can result from military service, defenders should determine whether a client with disabilities has served in the military and contact NYSDA's Veterans Defense Program (VDP) for a range of assistance as noted on their webpage. VDP can be reached through a web contact form or by calling 585-219-4862.

NYSDA Staff Changes

The end of 2025 brought welcome additions to NYSDA's staff.

Shelbey Smith joined NYSDA's Public Defense Case Management System (PDCMS) team in October, becoming its most recent member. Her position is Information Systems Specialist. Shelbey graduated with a B.S. in Computer Science from SUNY New Paltz; she also worked in the campus IT Department providing hardware and software support to faculty, staff, and students. A life-long resident of New York, Shelbey is committed to assisting her community through technical education and advancements. Outside of work, she enjoys art, writing, video games, and hiking with her dog.

Sarah Lee became part of NYSDA's Veterans Defense Program (VDP), beginning work as a Staff Attorney in October. She has criminal public defense experience in New York and Arizona and also has policy experience. Most recently, she was a project manager and policy analyst at the Council of State Governments Justice Center, where her work focused on criminal legal system data and transparency.

Filaree Moore is the Backup Center's newest Staff Attorney. She began work on December 1st, bringing with her a broad public defense background. Immediately before joining NYSDA, she was the Supervising Attorney of the Parole Advocacy Project and DVSJA Project at the Office of the Appellate Defender in New York City; she had been there since June 2024. Prior to that, Filaree was first a staff attorney and later a Supervising Attorney in the Homicide Practice Group at The Bronx Defenders. She began her legal career at the Colorado State Office of the Public Defender, having graduated from CUNY School of Law in 2013. She has a BA from Columbia University.

PDCMS, VDP, and the full NYSDA staff welcome these newest staff members!

Justice Advocate Chuck Culhane Has Died

Charles Culhane, a poet, a formerly incarcerated person, and a passionate opponent of the death penalty and other injustices in the criminal legal system, died at the age of 80 on November 14th. Chuck worked at NYSDA in 1992 and began serving on NYSDA's Client Advisory Board in 2004. He was close to NYSDA's founding Executive Director, Jonathan E. Gradess, who had written in the January-February 1986 issue of a NYSDA publication, *The Defender*, about the politically-driven denial of clemency to Chuck that year. That was also the period in which Chuck won a PEN America Prison Writing Award for "Of Cold Places."

The many stories about Chuck's activism include his 2011 appointment to the Community Corrections Advisory Board for the Erie County Jails, where he promptly joined in efforts to add to its membership to cure the absence of representation of the Hispanic community. He was instrumental in bringing his friend Pete Seeger "to perform at the annual dinner of The Western New York Peace Center" as NYSDA noted in a photo caption in the November-December 2013 issue of the *REPORT*. His appearance in a Death Penalty Action video in 2022 highlighted his anti-death-penalty work.

Chuck worked for justice until his death. If health did not allow him to be at a vigil or other event, he wrote a letter or other communication advocating for justice. Many people miss Chuck greatly, and will remember him as they work toward the goals he shared.

New York State Defenders Association
40 Beaver St., 4th Floor, Albany, NY 12207

NYSDA Membership Application

I wish to join the New York State Defenders Association and support its work to uphold the constitutional and statutory guarantees of legal representation to all persons regardless of income and to advocate for an effective system of public defense representation for the poor.
Enclosed are my membership dues:

$75 Attorney $40 Non-Attorney $40 Defender / Investigator $15 Student $15 Impacted Person

Name _____ Firm/Office _____

Office Address _____ City _____ State____ Zip _____

Home Address _____ City _____ State____ Zip _____

County _____ Phone (Office) _____ (Fax) _____ (Home) _____

E-mail (Office)_____ (Home) _____

At which address do you want to receive membership mail? Office Home

Please indicate if you are: Assigned Counsel Public Defender Legal Aid Attorney Impacted Person
Private Attorney Social Worker/Mitigation Specialist Parent Advocate

Attorneys and law students please complete: Law School_____ Degree_____
Year of graduation _____ Year admitted to practice _____ State(s) _____

I have also enclosed a tax-deductible contribution: $500 $250 $100 $50 Other $_____
Checks are payable to New York State Defenders Association, Inc. Please mail this form, dues, and contributions to: New York State Defenders Association, 40 Beaver St., 4th Floor, Albany, NY 12207.

To pay by credit card: Visa MasterCard Discover American Express

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