

## In this issue

Acting Commissioner Byrne's Message .....	1
Legislative Update .....	2-4
NICS Act Records Improvement Grant.....	5
New Domestic Incident Report (DIR) Repository.....	6
Federal Re-entry Grant for Onondaga County.....	7
Roll Out of DCJS New Criminal Justice Application Rescheduled for Early 2011 .....	8
SJS 7.0 Demo/Training Video .....	9
CrimeTime Online.....	10-11
Governor Paterson Honors Police Officer of the Year Recipients.....	13
New Strangulation Statute & Domestic Violence Cases.....	14-18
Results of Readership Survey .....	19

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# eJusticeNY

## Integrated Justice Report

Sean M. Byrne  
DCJS Acting Commissioner

RESPONDING TO THE CHALLENGES OF 21ST CENTURY LAW ENFORCEMENT BY PUSHING INFORMATION TO THE FRONT-LINE



### Message from Acting Commissioner Byrne

As we come to the end of one Administration and prepare for the next, I thought it would be interesting and instructive to look back over the past four years for a perspective on what has been accomplished in criminal justice since 2006, and how well this agency has served the public. The numbers tell a story that gives me great satisfaction.

Between the end of 2006 and the end of 2009, Index crime in New York State declined 6 percent. Violent crime dropped 11 percent. Property crime was down 5 percent. In fact, every single Index crime category – murder, rape, robbery, aggravated assault, burglary, larceny and motor vehicle theft – declined over the last four years.

The number of DNA samples awaiting processing dropped from 50,000 – a backlog that resulted from the 2006 expansion – to less than 3,400 and the number of hits increased to 8,500, resulting in convictions in 156 homicides, 519 sexual assaults and over 1,000 burglaries.

We process well over a half million arrest fingerprints annually, and provide a criminal history back to law enforcement and courts in an average of 23 minutes.

The number of sex offenders on the Sex Offender Registry has increased 28 percent. Last year, there were 6.4 million searches of the Sex Offender Registry. That is an increase of 205 percent in the last four years.

We opened Crime Analysis Centers in Buffalo, Rochester, Syracuse and Albany, expanded re-entry programs and made advances in juvenile justice and sex offender management. We operate 24/7 to ensure that law enforcement and courts can process arrests and will have immediate access to rap sheets. Use of eJusticeNY has increased dramatically; more than 50,000 law enforcement professionals and nearly 2,600 agencies are now using eJusticeNY. Operation IMPACT, our flagship crime-fighting initiative, remains a vital, vibrant and robust program, and the strategic law enforcement partnerships that IMPACT was designed to foster truly took hold.

We accomplished all of this during an era of unparalleled fiscal constraint. By the end of this year, our authorized staffing at DCJS will have declined nearly 17 percent since 2008. The state operations portion of our budget declined more than 6 percent. We have decreased support for many of the fine programs we fund across New York State. Those cuts have been painful – for us as well as you – but I believe, thanks to you, that we have been able to weather this storm without adversely impacting the public safety. I would like to thank you, on behalf of Governor Paterson and all New Yorkers, for your dedication, your commitment and your ability to do more with less.

## Legislative Update

### State Child Passenger Protection Act (Leandra's Law)

The Vehicle and Traffic Law was amended in 2009 to prohibit, as a class E felony, the first offense of driving while intoxicated or driving while ability impaired by drugs or both drugs and alcohol, if a child 15 years of age or younger is a passenger in the vehicle (L. 2009, ch. 496, eff. December 18, 2009 and August 15, 2010). Additionally, the crimes of vehicular assault in the first degree, aggravated vehicular assault, vehicular manslaughter in the first degree and aggravated vehicular homicide were amended to provide that a person who injures or causes the death of a single child passenger is guilty of the first degree or aggravated crime rather than the second degree crime. As of August 15, 2010, any person convicted of a DWI offense must be sentenced to a period of probation or conditional discharge, in addition to any other authorized sentence, and must be required to install and maintain an ignition interlock device on any vehicle owned or operated by such person for a period of at least 6 months.

### Amendments to the Penal Law

In response to reports that strangulation is often involved in domestic violence situations, the Legislature added a new Article 121 to the Penal Law, Strangulation and Related Offenses (L. 2010, ch. 405, eff. Nov. 11, 2010). The crime of criminal obstruction of breathing or blood circulation is defined as impeding the normal breathing or blood circulation of the victim by intentionally applying pressure on the throat or neck of the victim or by intentionally blocking the victim's nose or mouth. The conduct constitutes a class A misdemeanor and may be elevated to a class D felony if it causes loss of consciousness or physical injury, or class C felony if it causes serious physical injury.

The crime of assault, 2d degree, has been amended to increase the penalties for assaults on registered nurses, licensed practical nurses, and sanitation enforcement agents (L. 2010, ch. 318, eff. Nov. 1, 2010; ch. 345, eff. Sept. 12, 2010). Previously, an assault on such an individual was deemed a class A misdemeanor; it is now a class D felony.

The larceny statutes also have been amended. The theft of or from an ATM machine now constitutes the class D felony of grand larceny 3rd degree, in violation of Penal Law §155.35(2). A new crime, aggravated grand larceny of an ATM, a class C felony, has been added as Penal Law §155.43. A person is guilty of this crime if he or she commits grand larceny 3rd degree in violation of Penal Law §155.35(2) and has previously been convicted of grand larceny 3rd degree within the previous five years (L. 2010, ch. 464, eff. Nov. 1, 2010). The definition of grand larceny 4th degree, includes religious items displayed outside places of worship (L. 2010, ch. 479, eff. Aug. 30, 2010).

The Penal Law now provides greater protection to individuals who are incapable of taking care of themselves. Previously, a caregiver of a person over the age of 60 could be charged with endangering that person's welfare. Now, a caregiver can also be charged with endangering the welfare of any person who is unable to care for himself or herself because of a physical disability, mental disease or defect (L. 2010, ch. 14, eff. May 22, 2010).

Previously, the Penal Law contained an affirmative defense when a person left an infant not more than five days old with an appropriate person and notified the authorities of the child's location. That affirmative defense has been repealed and new legislation eliminates criminal liability where a person leaves an infant who is not more than 30 days old with an appropriate person (L. 2010, ch. 447, eff. August 30, 2010).

A public servant can now be guilty of the crime of defrauding the government when he or she uses government property or resources for private business purposes and the services or resources have a value in excess of \$1,000 (L. 2010, ch. 1, eff. February 12, 2010).

The definition of "sexual contact" has been expanded to include the emission of ejaculate (L. 2010, ch. 193, eff. October 13, 2010). Individuals who ejaculate on another but who make no physical contact can now be charged with sexual abuse 3rd degree, a class B misdemeanor.

The crime of criminal possession of a controlled substance 7th degree, has been amended to clarify that it is not a violation when an individual possesses only a residual amount of a controlled substance on a needle or syringe that he or she is lawfully entitled to possess under the Public Health Law, nor is the possession of the needle or syringe illegal (L. 2010, ch. 284, eff. October 28, 2010).

The Legislature created an affirmative defense to unlawfully dealing with a child 1st degree, in violation of Penal Law 260.20(2) by selling or attempting to sell alcohol to minors if the defendant has not been convicted of a violation of Penal Law §260.20 or §260.21 within the preceding five years and has completed an alcohol training awareness program (L. 2010, ch. 435, eff. September 29, 2010).

The Penal Law was amended to provide that gun manufacturers may now transport firearm silencers into the State (L. 2010, ch. 61, eff. April 28, 2010).

The Penal Law also was amended to provide that the transportation of slot machines for the purpose of repairing or assembling them in New York is also permissible (L. 2010, ch.321, eff. August 13, 2010).

## Legislative Update

### Vehicle and Traffic Law

The Vehicle and Traffic Law has been amended to remove the requirement that a licensed physician supervise the drawing of blood which can then be tested for any blood alcohol content (L. 2010, ch. 169, eff. July 13, 2010). The procedure may now be supervised by a registered professional nurse, a physician assistant, or a certified nurse practitioner. The blood may now be drawn by a clinical laboratory technician, a phlebotomist, or a medical laboratory technician.

A motorist who causes physical injury to a pedestrian or bicyclist while failing to exercise due care, shall be guilty of a traffic infraction with a possible sanction of 15 days in jail; a motorist who causes serious physical injury shall be guilty of a traffic infraction with a higher monetary penalty. A second conviction within five years will constitute a class B misdemeanor (L. 2010, ch. 333, eff. Oct. 12, 2010).

An unsafe driver who causes serious physical injury shall have his or her license suspended for six months. When a driver is guilty of this offense a second time within five years, the driver will have his or her license suspended for a period of one year (L. 2010, ch. 409, eff. August 13, 2010).

See also *State Child Passenger Protection Act (Leandra's Law)* above.

### Procedural Changes

The Criminal Procedure Law (CPL) statutes relating to procedure after arrest and arraignment were amended to clarify that an arrested person can make a phone call on a phone provided by the law enforcement facility to any telephone number in the United States or Puerto Rico for the purpose of obtaining counsel or informing a relative or friend of the arrest (L. 2010, ch. 94 and 96, eff. July 24, 2010).

The CPL was amended to prohibit, in a city with a population of one million or more, the storing in a computerized or electronic database identifying information of an individual who has been stopped, questioned, and/or frisked by a police or peace officer if that individual was released without further legal action (L. 2010, ch. 176, eff. July 16, 2010).

The CPL was amended to provide that those with prosecution-related convictions may move to vacate such conviction if the person's participation was a result of having been a victim of sex trafficking (L. 2010, ch. 332, eff. August 13, 2010).

The CPL was amended to provide that uniformed court officers now have the ability to execute bench warrants in counties around the State (L. 2010, ch. 10, eff. May 22, 2010).

The Legislature repealed three sections of the loitering statute that had long been declared unconstitutional (L. 2010, ch. 232, eff. July 30, 2010): loitering for the purpose of begging (Penal Law §240.35[1]); loitering for the purpose of engaging in certain sexual acts (Penal Law §240.35[3]); and loitering for the purpose of sleeping in a transportation facility (Penal Law §240.35[7]).

The Legislature extended Kendra's Law until June 30, 2015 (L. 2010, ch. 139, eff. June 29, 2010). Kendra's Law established a procedure for obtaining court orders to require individuals with certain types of mental illness to receive and accept outpatient treatment.

### Sex Offenders

The Penal Law was amended to provide that a level 2 or 3 sex offender will now be guilty of criminal trespass 2nd degree, if he or she enters a school attended or formerly attended by the victim of the crime. Certain exceptions are authorized including permission to enter for the purpose of voting (L. 2010, ch. 315, eff. November 1, 2010).

The Division of Criminal Justice Services is required to make sex offender registry information regarding level 2 and 3 offenders available to municipal housing authorities (L. 2010, ch. 278, eff. September 28, 2010).

### Crime Victims

Voter registration records of domestic violence victims will remain confidential (L. 2010, ch. 73, eff. May 5, 2010).

Victims of domestic violence, including family or household members, are now permitted to cast their votes at the Board of Election by paper ballot instead of a polling place (L. 2010, ch. 38, eff. April 14, 2010).

## Legislative Update

### Sentencing

A probation report is no longer necessary in misdemeanor cases when a judge does not impose a jail sentence in excess of 180 days (L. 2010, ch. 179, eff. July 15, 2010). Previously, a pre-sentence report was required when the jail sentence was in excess of 90 days. A court still retains the discretion to order a report in any case.

Courts may require, as part of a sentence for a hate crime, that the defendant complete a program, training session, or counseling session, directed at hate crime prevention and education (L. 2010, ch. 158, eff. November 1, 2010).

The Drug Law Reform Act of 2004 was amended to clarify that a sentence of parole supervision can be either an indeterminate sentence of imprisonment or a determinate sentence of imprisonment imposed upon an 'eligible defendant' (L. 2010, ch. 121, eff. June 15, 2010).

### Miscellaneous items

The Tax Law was amended to provide that any person or corporation who, with intent to evade payment of any tax, fails to file a return for three consecutive taxable years shall be guilty of a class E felony (L. 2010, ch. 57, eff. August 11, 2010).

New York's Arts and Cultural Law was amended to reinstate criminal penalties in connection with the resale of tickets to places of entertainment (L. 2010, ch. 151, eff. July 2, 2010).

The Statewide Office of Indigent Services was recently created to study and make recommendations for improvement in the current indigent defense system (L. 2010, ch. 56, eff. June 22, 2010).

## DCJS Legal Resources

The New York State Division of Criminal Justice Services' (Division), Office of Legal Services (OLS) is a critical component of New York's criminal justice system that provides legal counsel to the Division and offers a wide range of services to law enforcement agencies and prosecutor offices across the State.

OLS ensures that the Division complies with state and federal laws and regulations. From the development of a request for proposal through execution of a contract, from creation to implementation of rules and regulations governing agency responsibilities, to drafting legislation, the OLS guides the Division through numerous state and federal statutory and regulatory requirements.

The following is a partial list of links to criminal justice information that provide useful resources to the Law Enforcement Community as well as the public. The complete list is available on the [DCJS Public Web Site](#).

### [Enacted Laws](#)

Includes summaries of significant criminal justice legislative accomplishments that have been enacted into law since 1995.

### [Criminal Justice Program Bills](#)

Summaries of criminal justice legislation that was introduced for consideration to the New York State Legislature by the Governor for the current legislative session.

### [Case Summaries](#)

Brief summaries of selected judicial decisions that were issued by the Court of Appeals, the highest appellate tribunal in New York State, which may be of interest to the criminal justice community.

### [DNA Databank Regulations](#)

Title 9 of the New York Codes, Rules and Regulations (NYCRR) regulations governing the policies and responsibilities New York State's DNA Databank.

### **Courts**

Provides links to the [New York State Courts](#) including Appellate Courts. Also provides links to [Federal courts](#) including the U.S. Supreme Court, the U.S. Circuit Court of Appeals and the United States District Courts.

### [Law Libraries](#)

Includes links to various law libraries making it possible to perform research from a variety of resources.

## Governor Paterson and Congresswoman McCarthy Announce Federal Grant to Enhance Public Safety



This summer, Governor David A. Paterson and Congresswoman Carolyn McCarthy announced that New York State will receive nearly \$6 million in Federal funds to improve access to crucial information that will keep firearms out of the hands of individuals precluded from purchasing them under the Federal Brady Act.

New York received the grant – the largest awarded so far to five states that will receive funding – through the Federal National Instant Criminal Background Check System (NICS) Act Records Improvement Program. The grant will allow the State to enhance its efforts to create a system to electronically capture and transmit information from a variety of State agencies to the FBI that is currently collected, in many cases on paper, by those agencies. Congresswoman McCarthy was the prime sponsor of the legislation that made New York eligible for the funds.

This is the second time New York will receive the largest Federal grant made to a state through the NICS Improvement Program. Last year, it received \$937,414; only two other states (Nevada and Oregon) received funding.

"New York State is committed to working with the Federal government to make the Brady Bill as effective as possible, and I thank the United States Department of Justice for this grant," Governor Paterson said. "These additional funds will foster a more complete and efficient conduit that will assist the FBI in ensuring that individuals who attempt to purchase firearms in this State are suitable candidates for gun ownership. I want to thank Congresswoman McCarthy for sponsoring this legislation, and our entire congressional delegation for getting it passed."

Congresswoman McCarthy said: "These funds will be a big help for New York to continue as one of the leaders in improving our nation's firearm background check system. The funding will work towards ensuring that violent criminals and the mentally ill no longer slip through the cracks and gain access to dangerous weapons. Since coming to Congress fourteen years ago, I have dedicated my life to reducing the needless deaths from gun violence. There is still much needed work to be done to truly end the gun violence epidemic, but this crucial funding is a victory, and I will continue to lead this important fight in Congress."

Five State agencies – the Division of Criminal Justice Services (DCJS), Office of Mental Health (OMH), Office for People with Developmental Disabilities (OPWDD), Department of Health (DOH) and Office of Court Administration – will share the grant. DCJS, which already has an electronic system in place to share criminal history information with the FBI, is spearheading the NICS improvement initiative.

Under the Brady Act, firearms dealers are required to notify the FBI whenever individuals seek to purchase handguns or rifles. The FBI then checks State and Federal records – via NICS – to determine whether the individual has a criminal record, conviction for a misdemeanor domestic violence-related crime, an active order of protection, has been involuntarily committed to a mental institution or has been deemed incompetent by a court, any of which would preclude such individual from buying a firearm.

Firearms dealers typically receive a NICS response – an approval to sell, a denial or a request for more time to access additional information – within 10 minutes of making requests.

Currently, OMH compiles involuntary commitment records and sends that information to NICS periodically. The NICS improvement grants will allow the State to plan for the development of a system that, in conjunction with the DOH, will automate, maintain and share OMH records, as well as those detailing mental health adjudications by State courts and involuntary commitments made to facilities operated by the OPWDD.

The ultimate goal of the NICS improvement program is to ensure that all of New York's pertinent records will be readily accessible when an individual seeks to purchase a firearm, in the same manner as the State's criminal history data is currently available. The grant funds will be distributed as follows: DCJS, \$2,310,350; Office of Court Administration, \$1,741,608; OMH, \$1,113,680; DOH, \$726,350 and OPWDD, \$102,600.

## New Domestic Incident Report Repository to Provide Law Enforcement with Important Tool for Investigating, Prosecuting Domestic Incidents

*Information is key to victim and officer safety, effective enforcement and prevention*



Vital, comprehensive information on domestic violence incidents will be readily available for the first time ever to Upstate and Long Island law enforcement agencies under a new initiative that is scheduled to go live in April 2011.

Using approximately \$1.5 million in federal American Reinvestment and Recovery Act aid, the New York State Division of Criminal Justice Services (DCJS) is developing a centralized, electronic Domestic Incident Report (DIR) repository. The repository will give police officers, sheriff's deputies, prosecutors, probation and parole officials the ability to search – by victim or offender name, incident address or document number – DIRs filed by more than 550 police agencies in the 57 counties outside of New York City.

Law enforcement agencies across Upstate and on Long Island respond to approximately 175,000 domestic incidents annually, using a paper DIR to document each call, regardless of whether an arrest was made. Those DIRs detail a wealth of information, such as the names of the individuals involved and the circumstances surrounding each call, including if weapons were present at the location or threats were made; that information can be crucial to victim and officer safety and assist with effective prosecution of domestic violence cases.

But, those hard-copy reports, which are filed chronologically with each department and DCJS as required by law, are not conducive to cross-referencing or data-mining. The new system mirrors one that has been utilized by the New York Police Department and will provide a far more complete look at the incidence of domestic violence across the rest of the state, allowing law enforcement and advocates to develop policies and coordinated strategies that will better help them combat domestic violence in their jurisdictions.

Police departments and sheriffs' offices will continue to use hard-copy DIRs when their officers respond to calls for service, and will continue to mail copies of those reports to DCJS. Once received, DCJS staff will scan the reports and extract specific identifiers – names, addresses, addresses of incident locations and document numbers – that will be verified and then compiled into a secure electronic database.

Authorized users, such as police, prosecutors and dispatchers, will be able to search the electronic database by those specific identifiers, and will see every DIR associated with an individual or address, regardless of which agency filed the paper report. Also in the search result, the name of each victim, offender and incident location would be “hot-linked,” allowing the user to see all DIRs connected to a victim, offender or address.

For example, Albany police will be able to see if a DIR was filed in neighboring Colonie. Or, an assistant district attorney will be able to research whether an individual arrested for harassing his ex-girlfriend has been named as an offender, and his ex-girlfriend as the victim, on three prior DIRs that didn't result in an arrest. The electronic repository will provide prosecutors with a complete history of abuse and calls for service, allowing them to build stronger cases for prosecution.

A search of the DIR repository by incident address also will generate a summary of all DIR activity at that location, including the number of reports filed and if there are any “red flag” indicators, such as violence that occurred, threats that were made or whether there was access to weapons.

Dispatchers will be able to use that DIR history summary to advise responding officers of any potential threats so they can determine how to best staff and handle the call. Once the DIR repository is operational, work will begin to link it to the one operated by the N.Y.P.D.

This system breaks new ground in that confidential victim information, in addition to suspect information, will now be stored and retrievable in a DCJS data system. Given confidentiality concerns, DCJS will need strong protocols to ensure that users are carefully screened and properly trained, and that unauthorized access is prevented. In addition, policy needs to be developed with regard to how DCJS will respond to outside requests for specific incident forms. Access to the DIR records will be logged and audited in the same manner as for access to Criminal History Records.

## Governor Paterson Announces Federal Re-entry Grant

*More than \$700,000 will support transitional employment program in Onondaga County*

Governor David A. Paterson and Acting Commissioner Sean M. Byrne of the Division of Criminal Justice Services (DCJS) announced on September 22, 2010, that New York State has been awarded a \$704,948 federal Second Chance Act grant to help provide transitional employment and other vocational services in Onondaga County for individuals recently released from prison.

“The goal of my Administration’s re-entry strategy is to ensure that former offenders remain former offenders and become assets to their community,” Governor Paterson said. “Last year, I committed \$14 million in federal stimulus grants to support re-entry initiatives in New York City, Albany, Rochester and Buffalo. This federal grant will allow us to support the expansion of a proven re-entry program to the Syracuse area.”

Acting Commissioner Byrne said: “We know that parolees who are employed are far less likely to re-offend and far more likely to become law-abiding, tax-paying, productive members of society. This federal aid will help provide former offenders with the tools they need to successfully transition back to their communities. We are very pleased to have the assets to support an exciting initiative by two leaders in re-entry, the Center for Employment Opportunities and the Center for Community Alternatives.”

Under a grant proposal approved by the U.S. Department of Justice, the Center for Employment Opportunities (CEO) – a New York City-based organization that expanded its transitional employment program to Buffalo, Rochester and Albany with stimulus aid – the Center for Community Alternatives (CCA) in Syracuse and the Onondaga County Re-entry Task Force will join services to create the Onondaga Supportive Jobs Program for returning offenders. The funds will be channeled through DCJS, which is the recipient of the grant.

CEO ([www.ceoworks.org](http://www.ceoworks.org)) has been operating as an independent organization in New York City since 1996. Findings from an independent, random-assignment evaluation of CEO programs begun in 2005 show that people who enroll in CEO have significantly lower rates of recidivism on a variety of measures, including arrests, convictions and re-incarceration. CEO opened offices in Buffalo, Albany and Rochester this year with the help of federal stimulus aid committed to its program by Governor Paterson.

“This Second Chance Act grant will allow us to assist nearly 150 individuals with the skills and experience they need to return to the labor market and turn their lives around,” said Mindy Tarlow, executive director of CEO. “We couldn’t be happier to bring CEO’s proven employment model to Syracuse in partnership with DCJS, the Onondaga County Re-entry Task Force and the Center for Community Alternatives.”

The CCA ([www.communityalternatives.org](http://www.communityalternatives.org)) will provide case management, reintegration support, work readiness training, job development, job placement and retention support for people who are released from state prison to Onondaga County. CCA will receive referrals from the state Division of Parole and the Onondaga County Re-entry Task Force and then will pass along “employment-ready” participants to CEO, which will oversee the transitional job aspect of the program. In addition to its offices in Syracuse, CCA has offices in Buffalo, Rochester and New York City.

The program will provide immediate employment opportunities for individuals released from prison by placing them on a transitional job as part of a CEO work crew. After completing a one-week life skills education course, this transitional job will give the individual the experience they need to work with a job developer who will help place the participant into permanent, unsubsidized employment. Throughout this process, the individual will receive case management support from CCA.

“The opportunity to integrate CCA’s reentry services with the CEO model provides new opportunities for people returning to Syracuse from state prison,” said Marsha Weissman, executive director of the Center for Community Alternatives. “The program will not only contribute to successful reentry, but will enhance public safety, as people who are able to get work once released are much less likely to return to crime.”

DCJS Acting Commissioner Byrne said the new program will work closely with the Onondaga County Re-entry Task Force, one of 16 DCJS-supported local groups that work with police departments, parole, probation, mental health and social service providers to provide coordinated services to offenders who have a high risk of recidivism and have difficult-to-address re-integration needs such as housing and employment.

Onondaga County District Attorney William J. Fitzpatrick, who serves as chairman of the local re-entry task force, said: “As District Attorney, I am responsible for public safety and holding criminals responsible for their conduct. I believe that pro-active efforts to reduce recidivism increase public safety in our community. By providing a safe and stable work environment, ex-offenders are much more likely to succeed in their quest to become productive, peaceful citizens. We appreciate the initiative shown by DCJS, CEO and CCA in providing this opportunity and look forward to working together to accomplish this goal.”

The Second Chance Act authorizes federal grants to government agencies and nonprofit organizations to provide employment assistance, substance abuse treatment, housing, family programming, mentoring, victims support, and other services that can help reduce recidivism.

## **Roll Out of DCJS New Criminal Justice Application Rescheduled for Early 2011**

### ***NYSID 10 Million Assignment for Criminal Justice Transactions will Follow***

The deployment planning for the new Integrated Justice application is underway. DCJS is informed by its vendor, Unisys Inc., that they will now be prepared to go live with the new system in the first quarter of 2011. A more definitive date will be announced when it becomes available. This deployment will migrate major fingerprint and disposition processing. This deployment will be followed a few weeks later by the deployment of the changes necessary to begin assigning NYSID 10 million numbers for criminal transactions. The current deployment plans are as follows:

- A brief system outage is scheduled for approximately three weeks before go live as the connectivity with the SAFIS system is verified.
- One week before go live, a second outage of longer duration will occur as DCJS conducts a dry run of the deployment process. The downtime will last for approximately two hours as DCJS runs a full test of the data migration programs. Verification of the application and a complete rollback is also scheduled for this test period.
- On the actual day of “go live”, we expect the process to entail an extended downtime of approximately two to four hours while data is migrated and series of smaller downtimes throughout the day while we deploy and verify different components.
- During both the dry run and the actual day of deployment the Customer Contact Center will provide email updates periodically throughout the process. If you would like to be included on this email list please send your contact information to the Customer Contact Center at (518) 457-5837 or 1-800-262-3257.

Once DCJS's new application is deployed, verified and in production for a few weeks DCJS will take the next steps to implementing the changes necessary to assign NYSID 10 million numbers for criminal transactions. Additional communication and coordination will accompany this rollout as well.

More details for the coming deployment will be made available shortly. If you have questions or concerns now, however, please contact the Customer Contact Center at (518) 457-5837 or 1-800-262-3257.



### **TAC's Corner**

#### ***eJusticeNY Integrated Justice Portal Training***

The New York State Police (NYSP) and the Division of Criminal Justice Services (DCJS), have begun training law enforcement agencies due to the release of the NYSPIN functionality to the eJusticeNY Integrated Justice Portal. This training is scheduled to roll out by NYSP Troop with Troop G being first. DCJS is responsible for training Courts and non-NYSPIN agencies. We will follow the NYSP schedule as close as possible.

DCJS will be introducing the newest version of the eJusticeNY fingerprint based rap sheet with the release of the Portal to the courts. In order to avoid confusion and to be sure all associated entities are reviewing the same version of the rap sheet, DCJS will be training and rolling out on a county-wide basis.

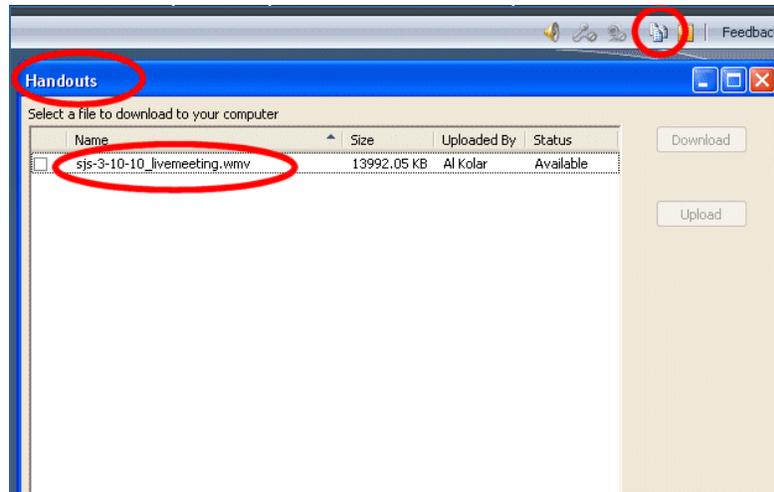
In the near future, an email will be sent by DCJS, to the County and Town and Village courts and other non-NYSPIN agencies, with information regarding the dates, times and places the DCJS Portal training will be held. These trainings will be provided to all counties in NYS over the course of the next nine months.

We look forward to sharing this significant undertaking with all of you and we welcome any feedback regarding this. You may direct any questions or concerns to the DCJS Customer Contact Center at [CCCenter@dcjs.state.ny.us](mailto:CCCenter@dcjs.state.ny.us) (518) 457-5837 or 1-800-262-3257.

## SJS 7.0 Demo/Training Video

By the time this newsletter reaches the field there will be over 150 Agencies using SJS 7.0 in New York State. Back on March 10, 2010, the DCJS Customer Service Group conducted a demonstration of SJS 7.0 in a Live Meeting format. Many SJS agencies attended this demo without leaving their departments because of this technology. The Customer Service Group sent e-mail invitations to all SJS users regarding this meeting. If you did not receive this notice then the Customer Service Group does not have a current e-mail address on file for your agency. Please e-mail Frank Clemente at [frank.clemente@dcjs.state.ny.us](mailto:frank.clemente@dcjs.state.ny.us) to update your e-mail address.

The SJS 7.0 Live Meeting was recorded and can be viewed at anytime by going to the following link: [March 10<sup>th</sup> SJS Demo](#). Once you are logged in, you will need to access the "Handouts" section to download the recording. Please see the "Handout" screen shot below. The actual "Handout" icon is represented by a triple page icon.



We encourage all of you who have not upgraded to version 7.0 to download the recording and show it to your staff. You can use this as a form of training once your department receives SJS 7.0 in the upcoming weeks.

The Three options available to you to receive the new upgrade are:

1. Bring your SJS server to DCJS (by appointment only) and receive the upgrade and training.
2. Allow DCJS staff to share control of your server through a program called Easy Assist. DCJS staff will work with your IT staff to complete the upgrade (approximately 1.5 hours). Your IT staff will turn the control over to a police department staff member for SJS 7.0 training (approximately 1.5 hours). So, in just about three hours you will receive the new SJS and have staff trained, without leaving your department.
3. Third and final option is to have your IT staff install the upgrade on their own with phone support from DCJS staff. The drawback with this option is the absence of the training piece. However, you can train yourselves by referring to the video located above or contact DCJS Customer Contact Center at (518) 457-5837 or 1-800-262-3257 and we will schedule hands on training here at DCJS for up to 9 members of your department.

Please contact Frank Clemente by e-mail or call (518) 457-5837 or 1-800-262-3257 to schedule your appointment to receive the newest version of SJS.

**\*\*\* NOTE \*\*\***

DCJS will no longer support the current version (6.5) after April 1, 2011. All Departments using SJS MUST be using version 7.0 by April 1, 2011.

## CrimeTime Online: User-Friendly Penal Law Just a Click Away

*Guest Article by Susan Valle, Executive Director  
New York Prosecutors Training Institute (NYPTI)*



Dispatch directs a police officer to a residential address. Near that address the officer catches a burglar carrying a stolen T.V. to his car. What charge does the officer use for the incident? Was it Burglary in the Second or Third Degree? What if more than one-eighth ounce of cocaine is found in the suspect's pockets and the officer does not recall the specific statute number to record? Or, later in the case, the judge asks the prosecutor whether a defendant's DNA sample needs to be taken following a conviction for burglary? How about the associated costs for taking that sample? The answers to all these questions and more are now at your fingertips, just a few clicks away.

In 2008, the New York Prosecutors Training Institute (NYPTI) embarked on a major overhaul of CrimeTime, a free sentencing application that determines a defendant's possible sentence based on the particular offense committed, age of the defendant, and criminal history. Originally created by the late George Dentes, the District Attorney of Tompkins County from 1990 to 2005, NYPTI transformed CrimeTime into a web-based application in December 2008, and made it available to the public via the website <http://crimetime.nypti.org>. Now, two years later, CrimeTime Online has been accessed through the Internet over 50,000 times.

Today, any police officer can access CrimeTime Online anywhere he or she has access to the internet. By looking up Burglary on CrimeTime, whether inside the patrol car or back at the station, a police officer can determine within seconds that the appropriate charges in the above scenario are Burglary in the Second Degree and Criminal Possession of a Narcotic in the 4<sup>th</sup> Degree, in violation of PL §§ 140.25(2) and 220.09(1). Just as easily, a prosecutor can now find all the sentencing options available for that defendant, and know that yes, a DNA sample must be given, and that the cost is \$50. Whether you need to obtain a quick definition before you write the arrest report, a citation to a particular crime, or available sentencing options for the Court, CrimeTime is there to help.

Here is a quick overview of how **CrimeTime Online** works:

1. Visit <http://crimetime.nypti.org>;
2. Enter your email address to enter the website;
3. Search for the Crime either by name or statute number;
4. Click on the name of the Crime for a complete statutory definition; or
5. Click on the button that says "Select This Crime" to see sentencing options;
6. Answer the questions regarding the age and criminal history of the defendant; and
7. Click "submit" to display the sentencing possibilities based on the crime chosen and your answers to the questions.

Beyond changing the look and feel of CrimeTime Online to conform to the web environment, NYPTI updated the internal procedures to ensure that any edits or changes that are needed in this program are done so quickly. Users can give NYPTI feedback by clicking the link at the bottom of every CrimeTime solution page. As always, we rely on the users to ensure that CrimeTime Online is 100% accurate. With this feedback feature, NYPTI's team of attorneys and computer programmers can make any necessary changes so that CrimeTime can continue to evolve and become a better product for the legal community.

Looking ahead, we hope to optimize this program by including more Vehicle and Traffic Law crimes, and other offenses outside the Penal Law that are commonly prosecuted throughout the state. After much work to transform CrimeTime to an Online version, the more than 50,000 hits in the past two years has reinforced the utility of this program and helped to carry on the legacy of George Dentes, whose foresight and dedication gave birth to an incredible tool that everyone in the legal community can use whenever a quick answer is needed. Good luck!

<http://crimetime.nypti.org>

For a full screen shot of **CrimeTime Online**, see page 11.

# CrimeTime Online: User-Friendly Penal Law Just a Click Away

Guest Article by Susan Valle, Executive Director, NYPTI



[All Laws](#)   [PL](#)   [VTL](#)

## Crime Time Online

Updated 2010 to include Child Passenger Protection Act (Leandra's Law)

NYPTI provides CrimeTime Online (CrimeTime) for educational purposes only. CrimeTime should not be used as a substitute for independent legal research, and is not legal advice.

Search Criteria (please input the cite number or phrase i.e. 255.17 or 'assault')

[Search For Crime](#)

**Search a Crime by name or number.**

1 2 3 4 5 6 7 8 9 10 ...

Cite	Name	Level
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**Sort listed crimes by clicking cite, name, or level.**

Penal Law 100.00	<a href="#">CRIMINAL SOLICITATION -5TH DEGREE</a>	VIOLATION	<a href="#">Select This Crime</a>
Penal Law 100.05	<a href="#">CRIMINAL SOLICITATION -4TH DEGREE</a>	CLASS A MISDEMEANOR	<a href="#">Select This Crime</a>
Penal Law 100.08	<a href="#">CRIMINAL SOLICITATION -3RD DEGREE</a>	CLASS E Felony	<a href="#">Select This Crime</a>
Penal Law 100.10	<a href="#">CRIMINAL SOLICITATION -2ND DEGREE</a>	CLASS D Felony	<a href="#">Select This Crime</a>
Penal Law 100.13	<a href="#">CRIMINAL SOLICITATION -1ST DEGREE</a>	CLASS C Felony	<a href="#">Select This Crime</a>
Penal Law 105.00	<a href="#">CONSPIRACY -6TH DEGREE</a>	CLASS B MISDEMEANOR	<a href="#">Select This Crime</a>
Penal Law 105.05	<a href="#">CONSPIRACY -5TH DEGREE</a>	CLASS A MISDEMEANOR	<a href="#">Select This Crime</a>
Penal Law 105.10	<a href="#">CONSPIRACY -4TH DEGREE</a>	CLASS E Felony	<a href="#">Select This Crime</a>
Penal Law 105.13	<a href="#">CONSPIRACY 3RD. B OR C FELONY OFFENSE- DEFENDANT OVER 18 YEARS OF AGE</a>	CLASS D Felony	<a href="#">Select This Crime</a>
Penal Law 105.15	<a href="#">CONSPIRACY 2ND. INTENT TO PERFORM A CLASS A FELONY</a>	CLASS B Felony	<a href="#">Select This Crime</a>
Penal Law 105.17	<a href="#">CONSPIRACY 1ST CLASS A FELONY OFFENSE-DEFENDANT OVER 18 YEARS AGE</a>	CLASS A Felony	<a href="#">Select This Crime</a>

**Clicking the crime displays the full statute.**

**Clicking here starts the process for a sentence.**

## Firearms, Defensive Tactics Instructors from 21 Law Enforcement Agencies Attend Reality-based Training Designed to Enhance Safety During High-risk Situations

*Week-long class sponsored in Albany by NYS Division of Criminal Justice Services*



Firearms and defensive tactics instructors from police departments and sheriff's offices in 10 counties were in Albany the week of November 8-12, learning how to teach their colleagues the skills and tactics designed to enhance the safety of everyone involved in high-risk situations.

The Office of Public Safety at the New York State Division of Criminal Justice Services (DCJS) coordinated the "reality-based" force-on-force training for 30 instructors from 21 law enforcement agencies: police departments in Albany, Bethlehem, Camillus, Cohoes, Colonie, Glenville, Gloversville, Guilderland, Hudson, Plattsburgh, Poughkeepsie, Rotterdam and Troy; sheriff's offices in Albany, Rensselaer, Schenectady, Oneida and Ulster counties; and the New York State Police, New York State Park Police and officers from the State University of New York.

The week-long training was designed to enhance officers' decision-making skills, reaction and response times by covering all aspects of a real force-on-force situation, such as a domestic violence call in which weapons are involved or the report of a robbery in progress.

The training covered the psychological and physical aspects of responding to such calls, and during the training exercises, participants used simulated weapons that act and feel like the firearms they use in the line of duty. Participants were also taught how to develop scenarios that can be used to train their fellow officers, using situations that those officers are likely to encounter on the job.

"Through its Office of Public Safety, DCJS is committed to providing training that enables officers to better serve and protect their communities," DCJS Acting Commissioner Sean M. Byrne said. "This training is vital. It teaches officers the skills they need to survive the dangers they encounter on the job, in addition to enhancing the safety of individuals with whom they interact during high-risk situations."

DCJS first offered reality-based training to firearms and defensive tactics instructors in April 2008. Since then, more than 200 instructors from law enforcement agencies across the state have been trained to teach their fellow officers. The course is taught by Kenneth R. Murray, the director of training for the Armiger Police Training Institute ([www.armiger.net](http://www.armiger.net)) and founder of the Reality Based Training Association located near Orlando, Fla. Murray has spent his career as a police and military trainer, specializing in the field of reality-based training.

In addition to providing standardized training and support to law enforcement, the DCJS Office of Public Safety administers the Law Enforcement Accreditation Program and operates an equipment repair center, where law enforcement agencies can bring their speed and alcohol detection instruments for repair and calibration.

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## DCJS Training Calendar

<http://calendar.dcjs.state.ny.us/>

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## Governor Paterson Honors Police Officer of the Year Recipients

On September 15, 2010, Governor David A. Paterson bestowed Police Officer of the Year honors on four officers – three members of the New York State Police and a fallen member of the Mount Vernon Police Department – who demonstrated courage, bravery and fortitude in the face of grave danger.

“It takes a special person to commit his or her life to a career that is challenging, sometimes thankless, and as these officers’ experiences illustrate, extremely perilous,” Governor Paterson said. “The job can go from routine to dangerous in a split second, as we are so vividly reminded today. It takes a unique blend of duty and courage to wear a police officer’s badge, and it is with great pride – and solemnity – that I present these awards.”

The Governor posthumously honored Mount Vernon Police Officer Christopher Ridley with the Police Officer of the Year Award for 2008, and presented the award for 2009 to State Troopers Steven J. Borbee and Ian E. Henry, and State Police Investigator Rodney Livolsi during a ceremony at the State Capitol.

The Police Officer of the Year Award was initiated in 1983 to recognize a single police officer or team for an exceptional act of valor symbolizing the service of police in New York State. Nine officers from eight law enforcement agencies statewide were nominated for the 2008 award, while 11 officers from seven agencies were nominated for the 2009 award. All officers nominated for the award receive Certificates of Exceptional Valor from the Governor.

Officer Ridley was off-duty on January 25, 2008, when he attempted to break up a fight. He was violently attacked, and his service weapon fell to the ground. As on-duty officers arrived on scene, Officer Ridley was mistaken for the perpetrator and fatally wounded by other police officers.

On January 10, 2009, a routine traffic stop on Interstate 90 in East Greenbush escalated into a dramatic gun battle. Shortly after a speeding taxi was stopped by Trooper Henry, the passenger in the cab opened fire with an assault rifle, shattering the rear window of the taxi and striking the windshield of Trooper Henry’s vehicle.

Unarmed and off-duty, Investigator Livolsi came upon the scene, assisting Trooper Henry by using his personal vehicle to provide Trooper Henry with cover so he could back his vehicle down the highway to get out of firing range. He remained on scene with Trooper Henry, as the passenger of the cab repeatedly refused to surrender and yelled “shoot me” while he continued to exchange fire with officers.

The gun battle lasted for 43 minutes, during which the passenger discharged 28 rounds of high-caliber ammunition at law enforcement and civilians. The incident ended after Trooper Borbee, a rifleman based at the State Police barracks in Princetown, arrived on the scene, joining Trooper Henry at his position approximately 100 yards from the suspect. Trooper Borbee fired one round, killing the suspect.

In addition to the Police Officer of the Year Awards presented to Troopers Henry and Borbee and Investigator Livolsi and on behalf of Officer Ridley, the following officers received a Certificate of Exceptional Valor from Governor Paterson:

- Officer Reginald Huber Jr. of the Carthage Village Police Department;
- Deputy Sheriff Richard Brenner of the Dutchess County Sheriff’s Office;
- Deputy Sheriff Peter Gerardi of the Dutchess County Sheriff’s Office;
- Officer Shaun Moore of the Greece Police Department;
- Deputy Sheriff Jeremy Yela of the Orange County Sheriff’s Department;
- Detective Michael Corvi of the New York City Police Department;
- Detective Frank Sarrica of the New York City Police Department;
- Officer John E. Seeley of the New York State Park Police;
- Trooper Joseph E. Decker of the New York State Police;
- Deputy Sheriff Roger C. Schreader of the Niagara County Sheriff’s Office;
- Officer James J. Prince of the Perry Village Police Department;
- Officer Anthony J. DiPonzio of the Rochester Police Department;
- Officer Timothy Tonkin of the Suffolk County Police Department;
- Officer Steven DiScala of the Suffolk County Police Department;
- Officer Gerard Maxim of the Suffolk County Police Department; and
- Officer Charles Tramontana of the Suffolk County Police Department.

The Police Officer of the Year selection committee is composed of the following members: the Commissioner of DCJS; the Superintendent of the New York State Police; Counsel and Executive Director of the State Sheriffs’ Association; Executive Director of the State Association of Chiefs of Police; President of the Police Conference of New York; President of the New York State Association of Police Benevolent Association; and President of the Patrolmen’s Benevolent Association of the City of New York.

## The New Strangulation Statute and Domestic Violence Cases

Article by Johanna Sullivan, Counsel  
New York State Office for the Prevention of Domestic Violence

On November 11, 2010 a new law went into effect that created three new crimes pertaining to the act of strangulation: P.L. § 121.11 -Criminal Obstruction of Breathing or Blood Circulation (A Misdemeanor); P.L. § 121.12 Strangulation in the Second Degree (D Violent Felony); and P.L. § 121.13 Strangulation in the First Degree (C Violent Felony). Prior to this legislation, in New York State, a person could have been strangled almost to the point of death and yet criminal charges may not have been applicable if there were no physical injuries. Below is an explanation of the new law including a discussion of the act of strangulation with suggestions for the investigation and prosecution of strangulation cases.

### WHAT IS STRANGULATION?

While you may often hear victims and the public refer to strangulation cases as “choking” cases, these two acts are not the same. Strangulation is a form of asphyxia (lack of oxygen) which occurs when the carotid arteries or jugular veins are blocked by pressure being applied to the neck or throat or when the airway of the mouth or nose is blocked. In contrast, choking occurs when a foreign object blocks someone’s windpipe. While it is important to recognize the distinction and for those in law enforcement to use the accurate terms, if a victim indicates they have been “choked,” law enforcement should treat the case as a strangulation case.

### HOW MIGHT A STRANGULATION VICTIM PRESENT TO LAW ENFORCEMENT?

A victim that was strangled will frequently have either minimal or no visible signs of injury. A San Diego study of 300 strangulation incidents involving victims of domestic violence found no evidence of visible injury in 50 percent of the incidents, and only minor levels of injuries in another 35 percent of the incidents.<sup>1</sup> This result can be explained by the fact that it only requires eleven pounds of pressure applied for ten seconds to cause someone to lose consciousness, and ten seconds for that individual to regain consciousness when pressure is released, at times without any sign of injuries.<sup>2</sup> While there may be no or minimal visible signs of the physical injuries sustained by a strangulation victim, there may be other indicia of strangulation present such as those outlined below.

#### *Signs and Symptoms of Strangulation*

<i>Non-Visible Injuries</i>	<i>Minor Visible Injuries</i>
<ul style="list-style-type: none"> <li>• Difficulty swallowing</li> <li>• Hoarseness/loss of voice</li> <li>• Sore throat</li> <li>• Difficulty breathing</li> <li>• Vision Changes (e.g. blurred vision)</li> <li>• Altered mental state (strangulation victims may appear combative due to the loss of oxygen to the brain<sup>3</sup>)</li> <li>• Light headed or head rush</li> <li>• Loss of bodily functions-defecation or urination</li> <li>• Fainting or unconsciousness</li> <li>• Shaking</li> <li>• Loss of memory</li> </ul>	<ul style="list-style-type: none"> <li>• Minor finger nail marks (look for both defensive and offensive wounds)</li> <li>• Scratches</li> <li>• Redness</li> <li>• Neck swelling</li> <li>• Bruising behind the ears</li> <li>• Petechiae<sup>4</sup> (This may be visible in the eyes, scalp or face)</li> <li>• Tongue swelling</li> </ul>

<sup>1</sup>A Review of 300 Attempted Strangulation Cases Part II: Clinical Evaluation of the Surviving Victim, Journal of Emergency Medicine, Vol. 21, No.3 pp311-315 (2001).

<sup>2</sup>Correlation of Circumstances with Pathological Findings in Asphyxial Deaths by Hanging : A Prospective Study of 61 Cases from Seattle WA, Journal of Forensic Sciences, JFSCA, 30:4, Oct. 1985, 1140-47.

## The New Strangulation Statute and Domestic Violence Cases

- Continued -

### HOW COMMON IS STRANGULATION IN DOMESTIC VIOLENCE CASES?

Strangulation, unfortunately, is a very common form of power and control that an abuser may exercise over a victim. In the San Diego study, referenced above, 89 percent of the strangulation cases had a prior domestic violence history.<sup>5</sup> In New York as well, unfortunately a large percentage of New York State domestic incident or arrest reports indicate that the victim was “choked”. Other national studies have found that between 30 to 68% of women in abusive relationships are strangled during the course of the relationship.<sup>6</sup> Therefore, it is critical that in every domestic violence case, law enforcement inquire as to whether the victim was strangled.

### HOW SERIOUS ARE STRANGULATION CASES?

All too often, law enforcement, and victims themselves, tend to minimize the severity of this action. THESE CASES MUST BE TAKEN SERIOUSLY. A victim who may have no visible injuries at the time of the incident could die, up to days or weeks after the incident, due to the progressive and irreversible effects of the strangulation.<sup>7</sup> In addition, strangulation is an increased risk factor for homicide, with some studies indicating that the odds of homicide are almost ten times more likely if there was a prior attempt to strangle.<sup>8</sup>

### HOW DID NEW YORK’S PENAL LAW HANDLE THESE CASES PRIOR TO THE RECENT LEGISLATIVE CHANGE?

Prior to this legislation’s passage, there was no specific delineated crime that captured the criminality of this behavior. Prosecutors and law enforcement were forced to try to charge the A Misdemeanor charge of Assault in the Third Degree, P.L. § 120.00 (1) which requires proof that the defendant caused physical injury to the victim. Physical injury is defined under P.L. §10.00 (9) as: “impairment of physical condition or substantial pain.” The case law places a very high burden on establishing physical injury. Some courts dismissed charges or reduced charges involving strangulation cases stating that the physical injury requirement had not been met even when victim’s experienced involuntary urination as a result of the strangulation, or where there was evidence of redness on the victim’s neck.<sup>9</sup> However, other courts held that the physical injury element had been met when the victim lost consciousness and experienced a sore and achy throat.<sup>10</sup> The high physical injury requirement combined with the inconsistent court decisions made it very difficult for law enforcement to bring assault charges, and frequently left prosecutors and law enforcement only able to charge violation-level harassment charges, clearly not representative of the severity of the crime.

<sup>3</sup> A Review of 300 Attempted Strangulation Cases Part II: Clinical Evaluation of the Surviving Victim, Journal of Emergency Medicine, Vol. 21, No.3 pp313 (2001).

<sup>4</sup> Petechiae are pinpoint hemorrhages of the skin which are sometimes visible in the conjunctiva of the eye. A Review of 300 Attempted Strangulation Cases Part III: Injuries in Fatal Cases, Journal of Emergency Medicine, Vol. 21, No.3 p318 (2001).

<sup>5</sup> A Review of 300 Attempted Strangulation Cases Part I: Criminal legal Issues, Journal of Emergency Medicine, Vol. 21, No.3 p306(2001).

<sup>6</sup> Archana Nath, Survival or Suffocation: Can Minnesota’s New Strangulation Law Overcome Implicit Biases in the Justice System?, 25 L. & INEQUALITY 253, 268 (2007).

<sup>7</sup> A Review of 300 Attempted Strangulation Cases Part III: Injuries in Fatal Cases, Journal of Emergency Medicine, Vol. 21, No.3 pp317-322 (2001).

<sup>8</sup> Klein, A. R. (2009). Practical Implications of Domestic Violence Research: For Law Enforcement, Prosecutors and Judges. NCJ22572. US Department of Justice, National Institute of Justice.

<sup>9</sup> People v. Melcherts, 160 Misc. 2d 470 (New York County 7-27-93)(court held no physical injury in case where victim was “choked” while being raped and robbed experiencing involuntary urination, bruising, and scratches ); People v. Lewis, 294 AD2d 847 (4<sup>th</sup> Department 2002)(court held no physical injury where victims had redness on her neck as a result of the strangulation).

<sup>10</sup> See Williams v. Walsh, 2004 WL 2754859 (S.D.N.Y.) (citing, People v. Bogan, 70 N.Y.2d 860, 862-63 (1987) (sufficient evidence for the jury to have found element of “physical injury” where defendant grabbed and choked victim and caused victim to lose consciousness, be taken to hospital and suffer pain and difficulty swallowing in days thereafter); People v. Delph, 704 N.Y.S.2d 209, 210 (1st Dep’t 2000) (sufficient where two minute choke and compression of windpipe rendered victim nearly unable to hear or see); People v. Brown, 662 N.Y.S.2d 934, 935 (3d Dep’t 1997) (jury could reasonably conclude victim suffered “physical injury” where defendant slammed her into couch, choked her to the point of almost passing out, left marks on neck and caused soreness and difficulty in swallowing); see also People v. Azadian, 600 N.Y.S.2d 278, 279 (2d Dep’t 1993) (sufficient evidence for jury to find physical injury where choking victim momentarily lost consciousness, suffered aches and bruises, and was treated by doctor); People v. Daniels, 553 N.Y.S.2d 30, 30-31 (2d Dep’t 1990) (sufficient evidence for jury to find element of “physical injury” where defendant choked victim until he felt dizzy, scratched his neck and face and caused him to be treated at the emergency room and suffer soreness and difficulty swallowing).

# The New Strangulation Statute and Domestic Violence Cases

- Continued -

## WHAT IS THE NEW LAW?

For years, many in the law enforcement and advocacy community have called for an amendment to the law to more accurately represent the severity of this crime. The legislation that went into effect on November 11, 2010 does just that. The new law, as outlined below, makes significant changes that will enhance law enforcement's ability to charge this crime and hold offenders appropriately accountable.

- **Change of the intent requirement:** Under the new law, the only intent required is that the defendant intended to *impede* someone's ability to breathe.
- **Removal of physical injury requirement:** Under the new law, a defendant can be guilty of an A misdemeanor charge even if there is no visible physical injury.
- **Delineates that loss of consciousness for *any period of time* constitutes physical injury** for purposes of Strangulation in the Second Degree.
- **Delineates that stupor constitutes physical injury** for purposes of Strangulation in the Second Degree.
- **Treats these crimes as violent felonies.**
- **Designates the three new crimes as family offenses.**

### ***New Penal Law Crimes***

#### **Criminal Obstruction of Breathing or Blood Circulation, P.L. § 121.11:**

This provision makes it an A Misdemeanor to intend to *impede* someone's ability to breathe by:

- applying pressure on the throat or neck; or
- blocking the nose or mouth of another.

There is no physical injury requirement for this offense.

#### **Strangulation in the Second Degree, P.L. § 121.12**

This provision makes it a class D Violent Felony to commit Criminal Obstruction of Breathing or Blood Circulation and cause either:

- Stupor, or
- Loss of consciousness *for any period of time*; or
- Any other physical injury or impairment.

#### **Strangulation in the First Degree, P.L. § 121.13**

This makes it a Class C Violent Felony to commit the crime of Criminal Obstruction of Breathing or Blood Circulation and cause serious physical injury.

### ***Family Offense Designation***

The new legislation also adds these crimes to the list of enumerated family offenses. Therefore, if the crime is committed by a member of the same family or household, the following must occur:

- **Mandatory Arrest:** A police officer shall arrest a person where they have reasonable cause to believe the defendant committed any one of these new strangulation crimes pursuant to C.P.L. 140.10 (4)(c).
- **Completion of DIR:** A domestic incident report, pursuant to C.P.L. § 140.10 (5), must be completed.
- **Entry into Order of Protection Registry:** If an order of protection is issued, it must be entered into the order of protection registry per Executive Law §221-a(1).
- **Concurrent Jurisdiction with Family Court:** A victim, can if *they* choose, also go to family court to obtain an order of protection pursuant to Family Court Act § 812 (1).

## The New Strangulation Statute and Domestic Violence Cases

- Continued -

In addition, the strangulation offenses are added to various sections of existing law for other considerations, such as DNA collection, hate crime prosecution, etc.. Multiple other areas of the law are also amended with this legislation. The entire text of the legislation can be found at:

<http://public.leginfo.state.ny.us/LAWSSEAF.cgi?>

[QUERYTYPE=LAWS+&QUERYDATA=@SLPEN0P3THAI2I1+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=05795799+&TARGET=VIEW](http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=@SLPEN0P3THAI2I1+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=05795799+&TARGET=VIEW)

### HOW TO HANDLE STRANGULATION INVESTIGATIONS?

A thorough investigation of strangulation cases is crucial. Below is an abbreviated list of steps that should occur in every strangulation case.

- Ask in every domestic violence case if the victim was strangled or “choked”.
- If yes, make sure that the victim is seen by a medical professional—remember, victims can die up to days after an incident, even where there are no visible signs of physical injury.
- Conduct a thorough interview and investigation at the scene.
  - ✓ Ask the victim questions to identify signs and symptoms.

How is your breathing?  
Do you have a sore throat?  
Were you light headed?  
Are you having trouble swallowing?  
Did your voice change? (Record the victim’s voice)  
How long did it last?/How did it stop?  
Did your vision change in any way?  
Did you lose consciousness?

- ✓ Inquire about the victim’s thoughts while being strangled.

What did you think was going to happen?

- ✓ Ask specifics about the method and manner of the strangulation.

What was the suspect saying during the incident?  
What did the suspect use: hands, arms, other body part, a ligature, a bag, a pillow?  
Get details about the defendant’s actions: Did the suspect shake you? Throw you against a wall?

- ✓ Get detailed information about history of abuse or other strangulations.

- ✓ Gather evidence.

Get 911 tapes—the victim’s voice change might be evident on the tape.  
Photograph victim and suspect.  
Photograph and collect items used during strangulation.

- ✓ Make sure to ask questions to identify the dominant aggressor.

Height/weight etc.

A thorough investigation could mean the difference between an abuser facing D Violent Felony charges or an A Misdemeanor.

### HOW TO HANDLE STRANGULATION PROSECUTIONS?

The basis of all good prosecutions is a strong initial investigation. However, there are some unique aspects of handling a strangulation case after the initial investigation that should be taken into account.

#### *Introduce Evidence of Every Sign or Symptom of Strangulation*

Make sure that during the course of presenting your case that the evidence of every sign or symptom of the strangulation is established. Remember that the new enhanced D Violent Felony charge of Strangulation in the Second Degree requires proof of stupor, loss of consciousness or other physical injury or impairment which, to some extent, will be guided by the previous case law.<sup>11</sup> This could be the difference between an A Misdemeanor and a D Violent Felony.

## The New Strangulation Statute and Domestic Violence Cases

- Continued -

### ***Bring Attempted Murder Charges Where Appropriate***

While these three crimes will greatly enhance law enforcement's ability to hold offender's accountable for the act of strangulation, they should not replace the B Violent Felony charge of Attempted Murder in the Second Degree under Penal Law § 110/125.25 if the evidence would also support those charges. For example, if there is evidence of use of a ligature, statements threatening death or any other evidence that would meet the burden of proving that the defendant's intent was to kill the victim, law enforcement and prosecutors should err on the side of bringing Attempted Murder charges.

### ***Charge All Appropriate Offenses***

It is important to remember to charge the abuser with all pertinent charges. As was discussed above, strangulation is very common in domestic violence cases and may often occur within the context of other acts of violence or abuse. Law enforcement should remember to charge the offender with all appropriate offenses. For example, a victim may have been punched by the abuser during the course of the strangulation — do not forget to charge Assault in the Third Degree P.L. § 120.00(1), as well.

### ***Utilize an Expert***

While an expert witness is not needed to meet the elements of the three new charges, an expert could be useful in educating a judge or jury about the dynamics of strangulation. For example, judges and jurors may not understand that strangulation can cause unconsciousness within seconds and death within minutes, or that it is common for victims in strangulation cases to sustain no or minimal visible injuries.<sup>12</sup>

For a detailed discussion of handling strangulation investigations and prosecutions see Gael Strack's article: "*How to Improve Your Investigation and Prosecution of Strangulation Cases*" which can be found at: [http://ncdsv.org/images/strangulation\\_article.pdf](http://ncdsv.org/images/strangulation_article.pdf).

## **CONCLUSION**

New York's adoption of the three new penal law provisions is a critical step toward addressing the severity of this crime. However, adoption of legislation alone will not fix the problem: there needs to be strong training and implementation efforts in order for the legislation to be effective. A study on the impact of Minnesota's adoption of a strangulation statute showed that the effectiveness of the statute was weakened due to inadequate law enforcement training.<sup>13</sup> If we in New York learn from the experiences of Minnesota and provide enhanced training on the subject, as many agencies have already done, we will make huge strides in enhancing New York's response to domestic violence.

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<sup>11</sup>See case law discussed in footnote 10.

<sup>12</sup> "[How to Improve Your Investigation and Prosecution of Strangulation Cases](#)," Gael B. Strack, J.D., National College of District Attorney's (2007).

<sup>13</sup>Heather Wolfram, *The Impact of Minnesota's Felony Strangulation Law* (WATCH Report, Minneapolis, M.N.), Jan, 2007. At 11.




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**For More Information**

**New Strangulation Statute and Domestic Violence Cases**

[criminaljustice@opdv.state.ny.us](mailto:criminaljustice@opdv.state.ny.us)

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## Results of the Readership Survey

A total of 237 readers of the *eJusticeNY Integrated Justice Report Newsletter* responded to a recent web-based survey designed to determine satisfaction with the appearance, readability, content, quality and overall value of the publication. Here are the results.

Readability					
	Excellent	Good	Adequate	Poor	N/A
Relevance of articles	25.8%	59.0%	13.4%	0.5%	1.4%
Length of articles	18.4%	63.6%	16.0%	0.5%	1.5%
Clarity of writing	29.0%	58.0%	11.6%	0.0%	1.4%
Format of newsletter	29.7%	57.5%	10.8%	0.0%	1.9%

Quality of Newsletter	
Excellent	22.7%
Good	61.8%
Adequate	15.5%
Poor	0.0%

Layout/Appearance	
It's fine	89.7%
Too much information	5.1%
Not enough information	3.4%
Too many photos	0.9%
Not enough photos	0.9%

Degree/Amount Read	
Read most of it	43.8%
Read all of it	28.3%
Read some of it	26.2%
Do not read any of it	1.7%

Provides Important Information	
Yes	94.7%
No	5.3%

Other People in Department that Read Newsletter	
2 or more	52.3%
0	26.4%
1	21.3%

### Some suggested ways of improving the *eJusticeNY Integrated Justice Report* newsletter

- Consider distributing the newsletter more frequently so that information is more timely and concise.
- Publish more articles related to the migration to the Portal, connectivity and training in the future.
- Show the latest information in legal updates or pending legislation including the short/long term impact of the changes in the law.
- Publish an ongoing and comprehensive list of ALL Penal Law, VTC and CPL changes, as they occur.
- Include more information relevant to TACs.
- Add an upcoming events section on available training.
- Highlight a page for each of the other law enforcement departments: Probation, Parole, Corrections, etc.
- Let users send in questions, and let the questions you think may have a general interest be answered in an FAQ section in the newsletter.
- Send out a survey on the new Portal features.

Thanks go to everyone who participated in the survey. Every effort will be made to incorporate the feedback, including the various suggestions, to improve the content and appearance of the newsletter. We hope that our readership will continue to provide their feedback in the years to come.

## Statewide Automated Fingerprint Identification System (SAFIS) Hit

The Latent Print Unit made a SAFIS identification on a Stolen Vehicle case received from a local police agency. The vehicle was stolen and driven 400 miles before being located 7 days later in a nearby city. Three latent print impressions lifted from the metal surface of the vehicle were submitted. One latent print impression identified to a subject who has a prior arrest for driving while intoxicated.



## Remote Fingerprint Editing Software (RFES) Latent Hit

The Latent Print Unit made an identification on the FBI's IAFIS on a case received from a regional site. Two latent print images were digitally submitted, with both images tentatively identifying to a subject who has a prior arrest in Texas for entry without admission.

**DCJS Customer Contact Center  
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