

New York Criminal Lawyer Resource Guide

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**New York Criminal Lawyer
Resource Guide**

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II. A note from Lisa Pelosi...

Thank you for downloading our resource guide. It gives you information about criminal law and criminal procedure.

This is an important part of your criminal defense. We think it is essential to give you this information to help you understand criminal procedure and take the necessary steps to ensure the best possible outcome for your criminal case.

So take your time to go through this resource guide and read through each process as it pertains to you. Educate yourself. It is important for you to be involved in your criminal defense and we created this guide to help you do just that. We know you are invested as much as we are in your success so please use this reference guide to assist you.

I hope you find this information helpful.

Best Regards,
Lisa Pelosi

How to Use the New York Criminal Lawyer Resource Guide

Here is what you need to do:

1. If you have been arrested on criminal charges, read through the topics that pertain to your case (i.e. search warrants, arraignments or initial court appearance information) and learn what to do next. **If you do not have an attorney you need one IMMEDIATELY. Remember, talk to no one but your lawyer.**
2. If you are currently under investigation and have not yet been arrested, you'll find information on pre-charging investigation, probable cause, search warrants and more.
3. If you have been arrested or convicted of a crime, you'll find helpful information on sentencing and felony penalties.
4. If you are looking to file an appeal after a conviction or expungement (having your record sealed), there is helpful information on those topics as well.

We provide you with a wide range of criminal law information, that covers everything from arrest to appeal. We are committed to making this reference guide a valuable resource that can be used to help you understand all aspects of your criminal defense.

III. Criminal Law and Procedures

1. Protections Under the U.S. Constitution

A defendant has the right to:

- remain silent
- competent counsel
- confront his/her accuser
- be free of cruel and unusual punishment

2. Probable Cause

You can be arrested without a warrant if law enforcement believes there is probable cause. Generally probable cause exists when there is enough evidence to cause a reasonable person to believe the “accused” has committed the crime in question. In other words if the police have evidence that you have or are about to commit a crime, then they have probable cause to make an arrest.

3. Miranda Warning

Under to the Fifth Amendment, after the police detain a criminal suspect, they must read you the Miranda warning, which at the minimum must be:

“You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to speak to an attorney, and to have an attorney present during any questioning. If you cannot afford a lawyer, one will be provided for you at government expense.”

In some cases the police will state the following

You have the right to remain silent and refuse to answer questions. Do you understand?

Anything you do say may be used against you in a court of law. Do you understand?

You have the right to consult an attorney before speaking to the police and to have an attorney present during questioning now or in the future. Do you understand?

If you cannot afford an attorney, one will be appointed for you before any questioning if you wish. Do you understand?

If you decide to answer questions now without an attorney present you will still have the right to stop answering at any time until you talk to an

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attorney. Do you understand?

Knowing and understanding your rights as I have explained them to you, are you willing to answer my questions without an attorney present?

4. Search Warrants

There are two basic types of warrants that may be issued by a judge - an arrest warrant and a search warrant. An arrest warrant gives law enforcement the authority to make an arrest of a particular person for a particular crime. If police have "reasonable" suspicion that a crime was committed, then they can make an arrest without a warrant. If you are arrested, law enforcement can search you and the area around you (meaning they can check and search the area within an arm's length) to find evidence they think is related to the crime.

If you are arrested without a warrant, you are entitled to a timely hearing to see if there is enough evidence to be formally charged with a crime. Even if there is not enough evidence at the time and you are released, it is still possible for you to be arrested for the same crime at a later date.

If a search warrant is issued, it is usually carried out at the discretion of the police (note: the warrant may indicate when the search is to be conducted). The police are expected to announce when they enter the premises being searched unless they think evidence may be destroyed or lost. Everyone in the premises will be detained during the search pending the completion of the search. If evidence is found and there is probable cause to believe people detained had something to do with the crime, they may be arrested and charged with the crime for which the search was issued.

If the police don't have a warrant and you give them permission to search you, your Fourth Amendment rights are waived and the search is considered legal. Any evidence found during this search can be used against you. However, it is illegal if you do not consent to the search. It is a violation of your Fourth Amendment rights, which protects you from illegal searches and seizures.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(for more information about protecting your rights go to www.flexyourrights.org or call 202-986-0861).

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5. Pre-Charging Investigation

When you are suspected of committing a criminal offense, you need an attorney immediately. Your attorney, during this time of difficulty and uncertainty, can initiate pre-filing investigations and get in contact with the investigating officer on your behalf. Too often we are contacted after the fact when the client has already given a statement to the police.

YOU HAVE THE RIGHT TO REMAIN SILENT AND NOT TALK TO THE POLICE.

A criminal lawyer will contact the police for you, since nothing they say can be used against you. Please remember, the police are very good at getting people to talk. You will need an attorney to talk to investigators on your behalf, especially if you are NOT GUILTY of the charges. The main purposes of the pre-filing investigations are to advise you of your rights and to negotiate with police and prosecutors. It is also a way of showing the prosecution that they have a weak case, therefore not worth pursuing. Not only would you be saved from the emotional toll of prosecution, but you can save thousands of dollars on bail, court and attorney's fees.

6. Getting Arrested

Criminal prosecution begins with an arrest and ends at a point before, during or after trial. The majority of criminal cases end when a criminal defendant accepts a plea bargain offered by the prosecution. In a plea bargain, the defendant chooses to plead guilty before trial to the charged offenses, or to lesser charges in exchange for a more lenient sentence or the dismissal of related charges.

A police officer may arrest a person if:

- the officer observes the person committing a crime;
- the officer has probable cause to believe that a crime has been committed by that person; or
- the officer makes the arrest under the authority of a valid arrest warrant.

After the arrest, the police books the suspect. When the police complete the booking process, they place the suspect in custody. If the suspect committed a minor offense, the police may issue a citation to the suspect with instructions to appear in court at a later date.

If you are stopped or arrested by police for anything from a DUI to shoplifting, there are some important things to keep in mind. **KNOW YOUR RIGHTS.** According to the American Civil Liberties Union (ACLU), you want to make sure you do the following:

Try to stay calm

Do not argue with law enforcement officials

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Think carefully about what you say. Remember, anything you say can be used against you in a court of law

Try not to complain at the scene and tell police they are wrong. It can only make a bad situation worse

Ask for a criminal lawyer and talk to no one but your lawyer

The ACLU recommends getting names of witnesses and/or arresting officer names or badge numbers and writing everything down ASAP

(for more information about protecting your rights go to www.flexyourrights.org or call 202-986-0861 or call New York Criminal Lawyer Lisa Pelosi at 877-Law-NewYork).

7. Bail

If a suspect in police custody is granted bail, the suspect may pay the bail amount in exchange for a release. Release on bail is dependent on the person's promise to appear in court with their criminal lawyer at all scheduled proceedings. Bail may be granted to a suspect immediately after booking or at a later time after a bail review hearing. Alternatively, a person may be released on his "own recognizance." A person released on his own recognizance need not post bail, but must promise in writing to appear at all scheduled court appearances. "Own recognizance" release is granted after the court considers the seriousness of the offense, and the suspect's criminal record, threat to the community and ties to family and employment. Your criminal lawyer can explain the process more in depth.

8. Arraignment

The suspect attends his/her first court appearance at the arraignment with their lawyer. During arraignment, the judge reads the charges filed against the defendant in the complaint and the defendant chooses to plead "guilty," "not guilty" or "no contest" to those charges. The judge will also review the defendant's bail and set dates for future proceedings.

9. Preliminary Hearing or Grand Jury Proceedings

The Preliminary Hearing is when the judge decides if there is probable cause to make you stand trial for the crime in which you are charged. Also referred to as preliminary examination or probable cause hearing, this is when the judge looks at the evidence presented by the prosecution to see if a crime has been committed and if you committed it. This is not when your guilt or innocence is decided, but if the court decides there is enough evidence to proceed with charging you. If so, then the court will "retain jurisdiction" over you until the case is settled or goes to trial.

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The grand jury is a group of 15-23 people (16-23 in federal courts) that are selected to decide if there is probable cause to indict a person for a specific crime or crimes. The proceedings are secret and usually held without the suspect or defense lawyer present. During the grand jury proceeding, the prosecutor presents the charges to the grand jury and (similar to the preliminary hearing) they usually only hear the prosecutor's side of the story. They usually indict since they do not hear from the defendant or get the other side of the story at this point.

10. Pre-Trial Motions

Pre-trial motions are brought by both the prosecution and the criminal lawyer in order to resolve final issues and establish what evidence and testimony will be admissible at trial.

11. Trial

At trial, the judge or the jury will either find the defendant guilty or not guilty. The prosecution bears the burden of proof in a criminal trial. Therefore, the prosecutor must prove beyond a reasonable doubt that the defendant committed the crimes charged. The defendant has a constitutional right to a jury trial in most criminal matters. A jury or judge makes the final determination of guilt or innocence after listening to opening and closing statements, examination and cross-examination of witnesses and jury instructions. If the jury does not reach a unanimous verdict, the judge may declare a mistrial, and the case will either be dismissed or a new jury will be chosen. If a judge or jury finds the defendant guilty, the court will sentence the defendant.

12. Sentencing

During the sentencing phase of a case, the court determines the appropriate punishment for the convicted defendant. In determining an appropriate sentence, the court will consider a number of factors, including the nature and severity of the crime, the defendant's criminal history, the defendant's personal circumstances and the degree of remorse felt by the defendant. There are many mitigating factors (details that call for a more lenient sentence) or aggravating factors (which require more severe punishment) that influence a judge when he or she determines what penalty is appropriate or how long you will be in jail.

Some factors are:

- Were you the mastermind or just a helper in committing the crime?
- Do you have prior criminal record or history?
- Were there any outside pressures on you to commit the crime?
- Was anyone hurt during the crime?

Find more information on sentencing standards on our website www.New-York-Criminal-Lawyer.com on our free resources page under free articles.

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13. Appeal

An individual convicted of a crime, may ask that his or her case be reviewed by a higher court. If that court finds an error in the case or the sentence imposed, the court may reverse the conviction or find that the case should be re-tried.

14. Expungement

The process of getting your criminal records sealed, destroyed, or cleared is referred to as "expungement". People often want help getting their criminal record expunged and to expunge a record means, for all intents and purposes, means to treat the expunged record as if it does not exist. Expungements vary from state to state. However, having your record expunged is usually only available to those who have not been convicted of a crime. Even if you have not been convicted, a criminal record can show any arrest or citation even if you are found not-guilty in court. Understandably, people who have been charged with committing a crime are very motivated to expunge their records.

People wanting to expunge a record do so to clear their name and attempt to get some normalcy back after being arrested. Even if charges are dropped, people often have to deal with a tremendous amount of social backlash. The need for expungement is to help people get their lives back and clear their criminal record.

Four Key Common Elements of Expungement among State Statutes^[1]

A. Extent to which an individual can deny expunged record

Expungements are based on the premise those with criminal records an individual will have trouble reintegrating into society and may face barriers from participating in public life unless they have a legitimate means of being able to honestly deny that they have ever been charged with a crime or possessed a criminal record. As a result, most states permit individuals who have had their records expunged to answer in the negative if asked whether they have been arrested or charged of a crime. Therefore, if asked on a job or school application, an applicant with an expunged record may honestly answer "no" to having been charged with a crime. Additionally, for those states that permit expungements even after convictions, the same negative answer may be given for questions concerning conviction.

B. Crimes that may be expunged

The type of crime which has been allegedly committed will invariably determine the availability of expungement. In states where expungement is granted after a conviction, the severity of the crime will play a determinative role in whether or not expungement is possible. Conversely, states which prohibit the expungement of convictions (before a pardon is obtained) will often contain restrictions depending on the process taken to complete the case without a conviction. For example, it is quicker and easier to obtain an expungement when a charge has been dismissed as opposed to when a case has been placed on a "stet docket" (an inactive group of cases which are generally not reopened).

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C. Rehabilitation – Worthiness of Having Records Expunged

Typically, the waiting period before an application can be made is used as an indication of rehabilitation. In addition, a waiting period free of arrests or any trouble with the law is further used to affirm rehabilitation. State codes also contain provisions on the number of times expungement may be granted.

D. Expunged Records and Access to Criminal Records

The practical effects of expungement remain questionable when considering the number of people who can still access criminal records even after they have been expunged. It has even been advocated that licensing bodies of professions charged with upholding the public trust should have access to the expunged records of their members.^[2]

(from Electronic Privacy Information Center www.epic.org/privacy/expungement/)

Special note: A defendant also has rights as described below in the Fourth, Fifth, Sixth and Eighth Amendments.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

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Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[1] Michael D. Mayfield, *Revisiting Expungement: Concealing Information in the Information Age*, Utah L. Rev. 1057, 1059 (1997).

[2] Steven K. O'Hern, *Note: Expungement: Lies That Can Hurt You In and Out of Court*, 27 Washburn L.J. 574, 584-90 (1988).