

VICTIM & WITNESS ASSISTANCE GUIDE



FIGHTING CRIME BUILDING HOPE

**DISTRICT ATTORNEY
P. DAVID SOARES**

**ALBANY COUNTY DISTRICT ATTORNEY'S OFFICE
6 LODGE STREET
4TH FLOOR
ALBANY, NY 12207
(518) 487-5460**

WWW.ALBANYCOUNTYDA.COM

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CHERYL K. FOWLER
DEPUTY CHIEF ASSISTANT
DISTRICT ATTORNEY

A Message from Albany County District Attorney David Soares

Each year, thousands of people in New York become victims and/or witnesses of crimes. The vast majority of these people have no prior experience dealing with the criminal justice system. My staff includes trained crime victim specialists who support victims and witnesses in the immediate aftermath of crime and provide assistance throughout the ongoing court process.

The Victim Services Unit is here to ensure that services are made available to the victims and witnesses of crimes in Albany County. Victim/Witness Specialists are assigned to victims and witnesses of crimes to help assist them in a variety of ways throughout the criminal justice process.

This brochure contains a summary of important aspects of the criminal justice system that may be helpful to victims of crime and their families. Please do not hesitate to contact my office if you have any questions about our services or your rights as a crime victim or witness.

Very truly yours,

A handwritten signature in black ink, appearing to read "P. David Soares", is written over a horizontal line.

P. David Soares
District Attorney

THE ROLE OF THE ALBANY COUNTY DISTRICT ATTORNEY

The Albany County District Attorney's Office represents the citizens of the State of New York when prosecuting defendants accused of committing a criminal offense in Albany County. If a crime is committed against your person or property, you do not have to hire a private attorney. The District Attorney's Office prosecutes your case in the name of the State (i.e., the State of New York vs. John Doe).

An Assistant District Attorney (ADA) and Victim/Witness Specialist are assigned to each case once it enters the court system. The ADA and Victim/Witness Specialist will keep you informed of the progress of the case and will answer any questions that you may have.

Your input and involvement are important. It is the policy of District Attorney P. David Soares that your interests and concerns are presented to the court. It is also important to the District Attorney that your input is considered when determining appropriate recommendations concerning the disposition of the case.

- Victim/Witness services available to you include:
 - Crisis intervention and emotional support
 - Referrals for financial, medical, counseling, legal, and other services
 - Court accompaniment and in-court support
- Information and assistance are also available regarding:
 - Safety planning
 - Victim Impact Statements
 - Property return and intervention with employers or creditors
 - Claims for victim compensation
 - Applications for inmate status notification
 - Post-disposition referral services at state and/or county correctional facilities
 - Restitution and reparation

If you have any questions or concerns, please contact the Victim/Witness Specialist assigned to your case or call the Crime Victim Services Unit at 518- 487-5460.

SERVICES AVAILABLE TO VICTIMS

Albany County District Attorney's Office: Crime Victim Services Unit

- Crisis intervention and emotional support
- Assistance with applications to the NYS Office of Victim Services (OVS) for compensation
- Information and service referrals
- Assistance with Victim Impact Statements
- Application of Inmate Status Notification

Albany County Crime Victim and Sexual Violence Center

- Crisis intervention and emotional support
- Referrals for financial, medical, counseling, legal, and other services
- Court accompaniment and in-court support
- Individual, family, and group therapy
- Assistance with applications for compensation to the NYS OVS

Victim Identification and Notification Everyday (VINE)

- Crime victims/witnesses can access offender status information such as parole, facility location, and earliest release date by calling a toll free number, 1-888-VINE-4-NY (1-888-846-3469). This number can also be used to register for notification of an inmate's release from custody.
- Offender information can also be accessed at www.vinelink.com. Victims and Victim/Witness Specialists can access this site to register for release notification. The VINElink site allows victims to register for release notification against offenders housed in other states as well as those in New York State. VINElink allows users to register to receive notification by both phone and e-mail.
- Because many domestic violence victims are involved in criminal court and Family Court cases simultaneously, the State Wide Automated Information and Notification (SAVIN-NY) provides additional notification regarding orders of protection for victims involved in Family Court. More information is available at www.savin-ny.com.

New York State Office of Victim Services (OVS)

- Provides information about victim compensation in addition to a comprehensive guide to New York State crime victims' rights (Please ask your Victim/Witness Specialist for a copy of the OVS literature).

Additional services and resources are available to crime victims. Albany County encourages victims/witnesses of crime to take advantage of all services they deem appropriate. Please refer to the **RESOURCES** section for a listing of additional services and resources.

OVERVIEW OF VICTIMS RIGHTS

Basic Rights of Crime Victims:

1. Right to certain kinds of compensation.
2. Right to be notified of judicial proceedings.
3. Right to be free from intimidation.
4. Right to submit a Victim Impact Statement.
5. Right to restitution.

There are additional rights specified for child victims, victims of domestic violence, and victims of stalking. For a more complete overview of the rights of victims in New York go to the New York State Office of Victims Services website at www.ovs.ny.gov.

COMPENSATION

New York State Office of Victim Services

- State agency providing financial relief to victims of crime who suffer physical injury as a direct result of the crime. In addition, seniors, disabled persons, children, and others who have not suffered physical injury as a direct result of the crime, also may be entitled to receive compensation.
- Victim/Witness Specialists can assist in filing an Office of Victim Services application.
- Compensation is available to reimburse the victim/witness for out-of-pocket expenses such as:
 - Indebtedness reasonably incurred for medical or other services, such as counseling, shelter services, or rehabilitative occupational training;
 - Loss of earnings or support not to exceed \$30,000;
 - Burial expenses not to exceed \$6,000 of a victim who died as a direct result of a crime;
 - The costs of crime scene cleanup and securing of a crime scene not to exceed \$2,500;
 - The reimbursement cost of repair or replacement of articles of essential personal property lost, damaged, or destroyed as a direct result of the crime, not to exceed \$500;
 - Moving/relocation expenses if necessary.

***** For more information go to www.ovs.ny.gov *****

Restitution and Reparation

- In addition to compensation from the Office of Victim Services, a victim/witness has a right to seek restitution and reparation. Restitution restores the victim to the financial position he/she was in before the crime was committed. Reparation is payment to the victim for damages caused by the crime. (Please contact your Victim/Witness Specialist for assistance with this process.)

Property Return

- Victim/witness property will be held for evidentiary purposes until the case is resolved. If you have a compelling reason for evidence return before final disposition please consult the assigned ADA or your Victim/Witness Specialist.

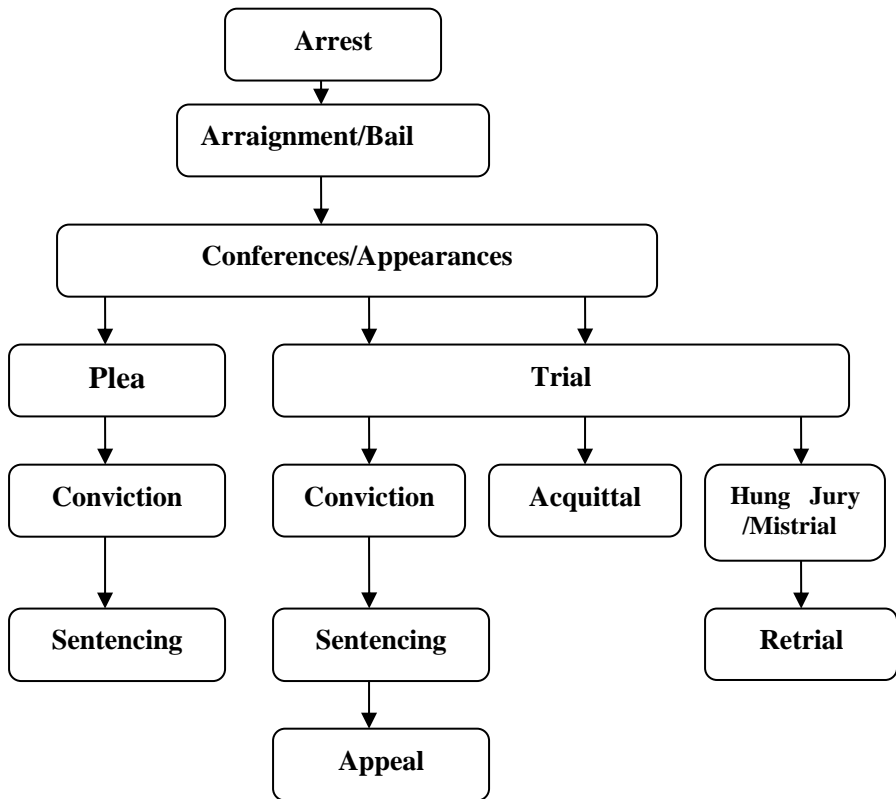
HOW THE COURT SYSTEM HANDLES CRIMINAL CASES

In Albany County, defendants in criminal matters are arraigned on misdemeanor charges or have a preliminary hearing on felony charges in the court of the city or town where the crime is alleged to have occurred.

Misdemeanors

A misdemeanor is a criminal offense for which a defendant can be sentenced to up to one year in jail. Examples include aggravated harassment, endangering the welfare of a child, petit larceny, and third degree assault.

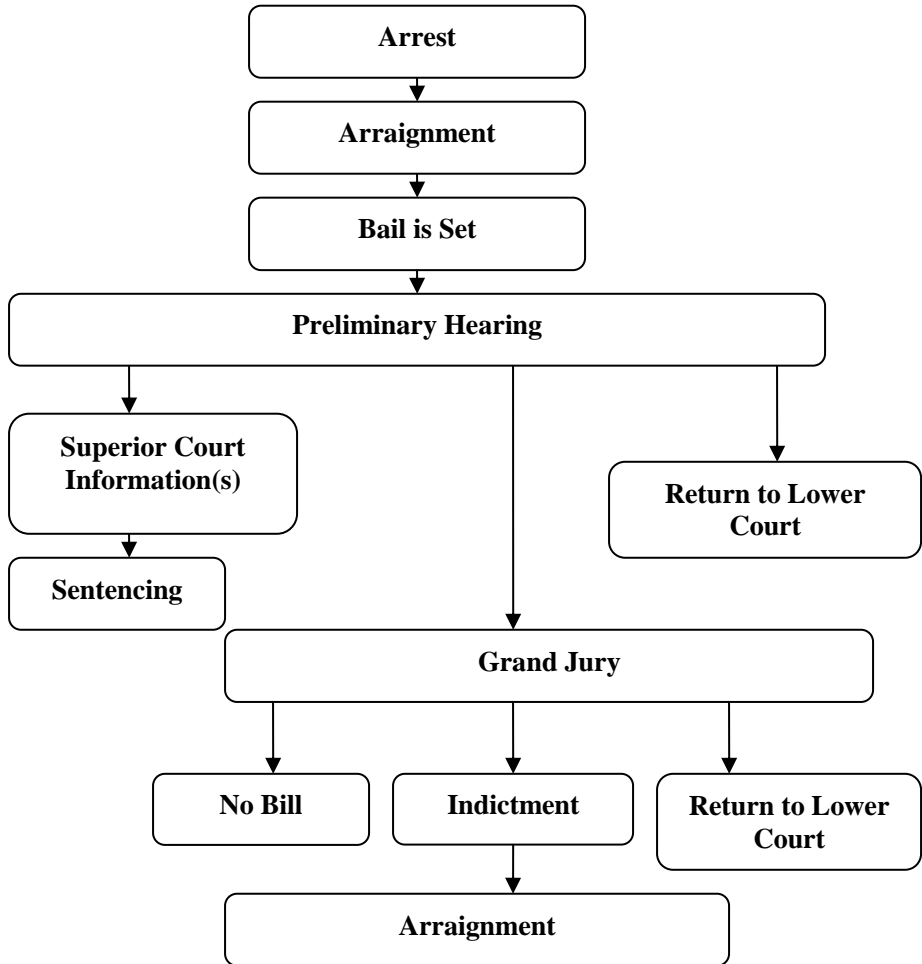
Misdemeanor cases proceed in the court of the city or town where the crime is alleged to have occurred.



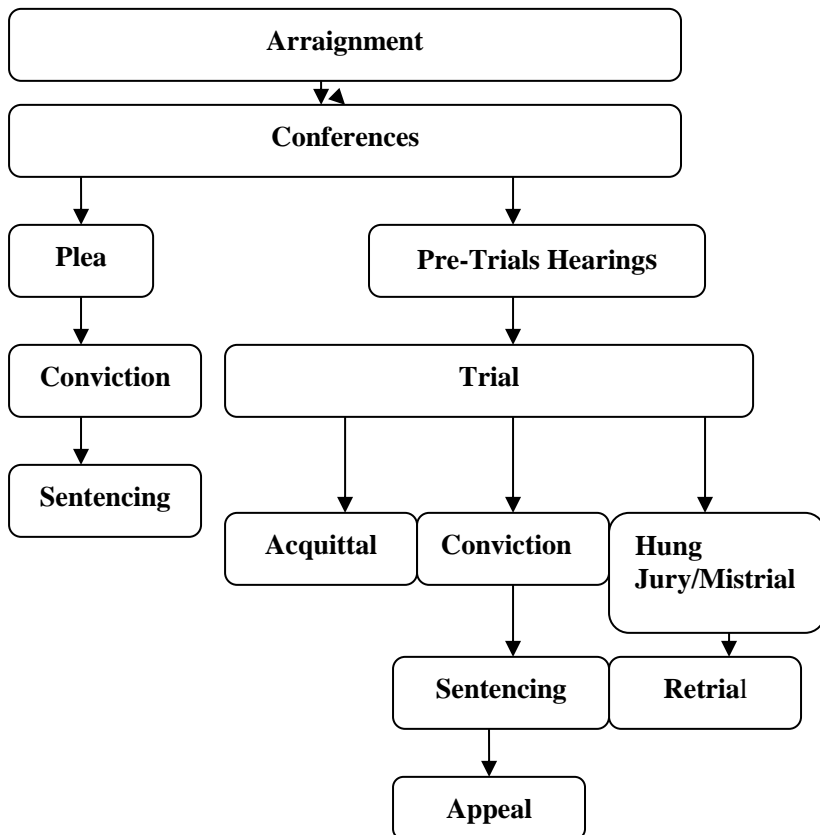
Felonies

A felony is a criminal offense for which a defendant can be sentenced to more than one year in jail. Examples include rape, murder, and grand larceny.

Felony-level cases are moved up to County Court to be handled by felony-level ADA's for grand jury action after the preliminary hearing is held (or waived).



FELONY CHART CONTINUED



THE STEPS OF THE COURT PROCESS

Arraignment and Bail

Arraignment is the defendant's first appearance in court before a judge. Unless requested, it is not necessary for victims and witnesses to come to court for the arraignment. However, you have the right to be at the arraignment. During an arraignment:

- The defendant is present. The defendant is entitled to be represented by an attorney. The court may appoint an attorney if the defendant is found to be indigent (unable to afford an attorney).
- The judge formally notifies the defendant of the charges. The defendant enters a plea of "guilty" or "not guilty." It is common for a defendant to plead "not guilty" at the arraignment. The defendant cannot enter a "guilty" plea to a felony in local court.
- The judge schedules a date for the defendant to return to court for a pre-trial conference and will either release the defendant on his/her own recognizance (without bail), impose bail, or remand the defendant without bail. The defense attorney may request a review of the bail amount at a future hearing.
- If the defendant is released on bail, the judge may impose additional conditions. For example, there is to be no contact with the victim or witnesses. Orders of protection are frequently issued for the victims/witnesses at the arraignment and will be mailed to the victim/witness if they are not present for the arraignment. The victim should contact their Victim Specialist if they do not receive a copy of the Order.

Order of Protection

- An order of Protection is a legal document in which a judge orders a defendant to follow specific rules for behavior: no contact (stay away) or no illegal contact.
- It remains in effect as written until it is changed or terminated by the Court. It cannot be changed by an agreement between the victim and the defendant. If the Order mandates that the defendant "stay away," it won't make a difference to the police that the victim invited the defendant in, or were willing to try to talk. All that will matter is what is documented on the Order.
- If the victim's situation changes – if things get worse, or if the victim decides to try to reconcile – the victim can ask the Court to change its Order. The Court can add new conditions or remove ones that currently

exist. However, it is ultimately the Court's decision whether or not the Order will be changed.

- A copy of the Order should be kept with the victim at all times. It should also be on file with the local police department. If the victim's children are also covered by the Order, a copy of the Order should be given to their babysitter, school, etc.
- If the defendant violates the Order, the victim should call the police to tell them exactly what happened. The police will want the victim to sign a statement, and the victim may need to return to court to tell the judge what happened.
- The victim should keep in mind that a no contact Order prohibits the defendant from communicating with them via a third party.
- An order of protection also prohibits the defendant from contacting the victim via email, telephone, or text messages.

Pre-trial Conference

A pre-trial conference is scheduled after the arraignment. The purpose of the pre-trial conference is to allow the ADA and the defense attorney to discuss the case. Victims and witnesses will be notified if their presence is required. If the opportunity to resolve the case before a trial arises, the victim will be consulted.

At the pre-trial conference:

- The defendant is present.
- The ADA and defense attorney discuss the case in order to decide how the case will proceed—including the possibility that the case may be resolved without a trial.
- The defendant may plead guilty and be sentenced by the judge. The victim's input about the sentence is important and will be solicited by the ADA or Victim/Witness Specialist.
- If the case is not resolved, the judge will set a date for trial.
- In some cases, additional hearings, conferences, or case status reviews will be scheduled before the trial date. The victim has a right to be notified and present at any of these court dates. However, unless requested by the ADA or Victim/Witness Specialist, the victim's presence is not required.

Felony/Preliminary Hearing (See Felony Level Flow Chart)

If the defendant is in jail, this proceeding must be held within 144 hours of the arrest. The victim may be required to give testimony. This does not guarantee that the defendant will remain in jail. The judge determines whether or not to hold the defendant for a grand jury hearing, whether or not to set bail, and whether or not there is enough evidence for felony level consideration.

Grand Jury

The purpose of a grand jury is to decide if there is enough evidence to indict the defendant (charge him/her with a crime). The Grand Jury is made up of 16 to 23 people, who are sworn not to reveal anything heard in the grand jury room. The defendant and his/her attorney are NOT present in the room. There is also no judge. Besides the grand jurors, only the victim and the ADA are allowed in the room. A social worker, rape crisis counselor, psychologist, or other professional providing emotional support may accompany a child victim who is 12 or under.

Trial

- Most cases are resolved without a trial. If a case does go to trial, victims and witnesses will be notified of the trial date and may receive a subpoena from the court. At a trial, you can expect the following:
- The State of New York, represented by the ADA, presents the evidence first. Witnesses are questioned by the ADA and then cross-examined by the defense attorney.
- The defendant is not required to present any witnesses. The defendant does not have to testify. However, defendants and defense witnesses who do testify may be cross-examined by the ADA.
- In a jury trial, the ADA has to begin the trial with an opening statement. This is a summary of the case. The defense attorney may also give an opening statement, but is not required to do so. At the conclusion of the evidence, the ADA and defense attorney each give a closing argument, summarizing the evidence presented at trial.
- The judge or jury decides whether the State of New York has proven its case beyond a reasonable doubt, and returns a verdict of guilty or not guilty. In jury trials, after closing arguments and before a jury is sent to deliberate, the judge instructs the jury on laws that the jury must consider in deciding the case. A jury's verdict must be unanimous.
- If the defendant is found guilty, the judge will impose a sentence either at that time or at a later date.
- If the defendant is found not guilty it is called an acquittal. An acquittal means the defendant was not proven guilty beyond a reasonable doubt.
- In the case of a hung jury or mistrial please consult your ADA or Victim/Witness Specialist.

SENTENCING

Victim Impact Statement

- In all cases, the ADA will consider the victim's views and the impact of the crime when determining the appropriate sentencing recommendation. The court will hear about the impact of the crime and the victim's feelings regarding sentencing.
- In accordance with Criminal Procedure Law Section 380.50, Victims (or in some cases, family members of the victim) are entitled to provide a Victim Impact Statement, verbally or in writing, to the judge prior to sentencing.
- This statement describes the physical, emotional, and financial impact of the crime on the victim, as well as the victim's input regarding the sentence.
- The ADA and the Victim/Witness Specialist will discuss the Victim Impact Statement with you and can assist you in preparing one.
- Any statement for a felony level case must be filed with the court at least 10 days before sentencing.
- The Victim Impact Statement may then be forwarded to the Probation Department, Department of Corrections, or the Parole Board.

Sentencing

A judge may impose any of the following sentences:

- A fine and surcharge
- Local incarceration in County Jail
- Suspended sentence: This is a sentence of imprisonment which is suspended for a period of time. The defendant is not incarcerated but is supervised by probation. The defendant may be incarcerated if he/she violates the condition of probation.
- Probation: The defendant is placed under the supervision of a probation officer and is required to fulfill certain conditions for a specified period of time.
- Adjournment in Contemplation of Dismissal (ACOD): The case is continued for a period of time with certain conditions. At the end of the time period, the case is dismissed if the defendant has fulfilled the conditions and has not committed another crime.
- Restitution: A restitution figure has to be presented to the District Attorney's Office prior to the sentencing of the defendant
- A sentence to state prison can be imposed for felony level cases ONLY.
- Community Accountability Board (CAB): In certain ordinance violations, misdemeanor, and select limited felony cases the District Attorney may

offer an offender the opportunity to participate in an alternative justice program, pending approval by the Judge. The Board (made up of community residents) and the offender establish a Reparative Agreement which details activities to be completed by offender. These activities center on community service and educating the offender of the impact of their actions. If the offender fails to abide by the Reparative Agreement their case is returned to the traditional criminal justice system for further action.

Before imposing a sentence, the judge considers the recommendations of both the ADA and defense attorney, and a pre-sentence investigation report prepared by the probation department. The judge will also consider the information contained in the Victim Impact Statement if the victim chooses to provide one.

COURT GUIDE FOR VICTIMS AND WITNESSES

Few people have had experience with the courts before becoming a victim or witness to a crime. Most people who have to testify will understandably be nervous. The best advice is to listen carefully to the questions, make sure you understand each question, take your time, and tell the truth. The following information will help you prepare for testifying:

- **Preparing for trial:**
 - You will meet with the ADA to discuss what happened and to review the testimony you will offer in court.
 - You are encouraged to provide all information even if you think it is unimportant, harmful, or embarrassing.

- **Appearing in court:**
 - You will be notified when to appear in court.
 - Some victims and witnesses will receive a subpoena, which is a court order to appear in court.
 - Please arrive on time (Please check with your Victim/Witness Specialist regarding parking options).
 - If you require documentation of your court appearance, contact the Victim/Witness Specialist.
 - Please speak with the ADA or Victim/Witness Specialist the day before you are scheduled to appear to make sure that the case is still expected to be heard.
 - It is not unusual for delays to occur so it is wise to bring a book or magazine to help pass the time.
 - **Court proceedings are formal. Please dress appropriately.**

Keep these points in mind while you are testifying:

- Always tell the truth.
- If you do not understand or know the answer to a question, say so.
- If a question can be answered by a simple yes or no, do so.
- Do not guess.
- Remain calm and courteous. Testifying can be frustrating, but it is important not to lose your temper or become argumentative.
- It is perfectly proper for you to have discussed the case and your testimony with the ADA or Victim/Witness Specialist beforehand. Do not deny having done so.
- Speak loudly and clearly.
- Listen carefully to all questions asked before answering.
- Do not discuss your testimony with other witnesses during the trial.
- Avoid any interaction with jurors.
- The ADA has the opportunity to question you again after you are cross examined.
- You may be entitled to a witness fee. Please see your ADA or Victim/Witness Specialist to apply for it.

COMMON CONCERNS

- **Fears or threats:**
Although retaliation is unlikely, you may be fearful after being a victim or witness to a crime. If you are worried or fearful about your involvement in the case, please contact the ADA or Victim Specialist. If you are threatened in any way, please call the police immediately and notify the ADA and/or your Victim/Witness Specialist.
- **Contact by defense attorney:**
In the coming weeks, you may receive a telephone call and visit from investigators or a defense attorney representing the defendant. It is well within your rights to consent to or refuse such an interview. In fact, no one can tell you that you must talk to or not talk to anyone. You should know that any statement you have made to law enforcement officials will at some point be turned over to the defense attorney.
- **Post-conviction services:**
 - The District Attorney's Victim Witness Services Unit is available to provide information and assist with concerns relating to the case even after the case is over.
 - If the defendant has been incarcerated, an advocate may assist victims in registering for programs available to notify them of

changes in an inmate's status and of an inmate's release from jail or prison, including parole eligibility.

- The New York State Department of Corrections offers two ways in which victims can be notified of changes in an inmate's status and of an inmate's release from jail or prison, including parole eligibility: mail or telephone. Requests for written notification may be filed with the ADA or Victim/Witness Specialist. Requests for telephone notification can be filed through VINE at 1-888-VINE-4-NY.
- The Albany County Correctional Facility's Inmate Services is available to provide information on an inmate's status (518-869-2643).
- New York State Division of Parole Victim Impact Program is available to notify victims when inmates are scheduled to see the parole board. In addition, victims are able to send a Victim Impact Statement to the parole board. Requests for notification of release can be sent to:

Parole Victim Impact Unit
97 Central Ave.
Albany, NY 12206

* Feel free to contact a Victim/Witness Specialist for assistance even after the case is over.

GLOSSARY OF COMMON TERMS

ACQUITTAL- the decision of a judge or jury that the defendant was not proven guilty beyond a reasonable doubt.

ADMISSION TO SUFFICIENT FACTS- an admission by the defendant that there is sufficient evidence to support a finding of guilty.

ARRAIGNMENT- the court hearing in which the defendant is charged with a crime and enters a plea of guilty or not guilty.

BAIL- an amount of money or property sometimes required by a judge to be paid to the court by the defendant to insure future attendance in court.

C.O.R.I. - Criminal Offender Record Information.

CHANGE OF PLEA- a change in defendant's plea from not guilty to guilty.

COMPLAINT- a written accusation of a crime made in the District Court by a police officer or a private citizen.

CONTINUANCES- postponements or scheduling of future dates.

DEFENSE COUNSEL- the attorney representing the defendant.

FELONY- a crime punishable by incarceration in the state prison for a period of more than 1 year.

INDICTMENT- a written statement of a crime by the Grand Jury charging the defendant.

INDIGENT- having insufficient income or assets to pay for a Defense Attorney.

JURISDICTION- the extent of authority of a particular court.

MISDEMEANOR- a crime punishable by incarceration in the county correctional facility for a maximum of 1 year.

REMAND- when the judge sends back (a prisoner or accused person) into custody, to await further court proceedings.

ROR (Released on own recognizance) – when the defendant is released from police custody with the understanding that they are responsible for their own actions until their next court date.

RUS (Released under the supervision of probation) – A release contingent upon reporting immediately to the probation department.

Albany County

Albany County District
Attorney's Office
6 Lodge St. 4th Floor
Albany, NY 12207
518-487-5460

Albany County Crime Victim and
Sexual Violence Center
112 State St., Room 1100
Albany, NY 12207
518-447-5500
Sexual assault hotline:
518-447-7716
www.albanycounty.com/cvsvc

Albany County Correctional
Facility Inmate Services
518-869-2643

Albany County Department of
Social Services
162 Washington Ave.
Albany, NY 12210
518-447-7300

Albany County Child Protective
Services Hotline
1-800-342-3720

Albany County Adult
Protective Services
518-447-7177

Albany County
Stop DWI Program
Albany County Courthouse
16 Eagle St., Room 79
Albany, NY 12207
518-720-8100

Equinox
95 Central Ave.
Albany, NY 12206
518-434-6135
Domestic Violence Hotline
518-432-7865
www.equinoxinc.org

The Legal Project
6 Executive Park Drive
Albany, NY 12203
518-435-1770
www.legalproject.org

Homeless and Travelers Aid
138 Central Ave.
Albany, NY 12205
518-463-2124

Legal Aid Society of
Northeastern NY
55 Colvin St.
Albany, NY 12206
518-462-6765
www.lasnny.org

In Our Own Voices (LGBT)
245 Lark St.
Albany, NY 12210
518-432-4188
www.inourownvoices.org

Pride Center of
the Capital Region
332 Hudson Ave, Albany,
NY12210
518-462-2101
www.capitalpridecenter.org

New York State

NYS Department of Corrections
and Community Services
Office of Victim Services
The Harriman State Campus
1220 Washington Ave
Albany, NY 12226
1-800-783-6059
www.doccs.ny.gov

NYS Domestic Violence Hotline
English: 1-800-942-6906
Espanol: 1-800-942-6908

NYS Elder Abuse Hotline
1-800-342-9871

NYS Parole Victim Impact Unit
97 Central Ave.
Albany, NY 12206
518-486-4400 or
1-800-639-2650
www.parole.ny.gov

NYS Sex Offender Registry
1-800-262-3257 (press 2)

New York State Coalition
Against Sexual Assault
63 Colvin Ave
Albany, NY 12205
518-482-4222
www.nyscasa.org

New York State Coalition
Against Domestic Violence
119 Washington Ave.
Albany New York, 12210

Phone: 518-482-5465
Fax: 518-482-3807
www.nyscadv.org

NYS Office of Victim Services
Alfred E. Smith Office Building
80 South Swan St., 2nd Floor
Albany, NY 12210-8002
518 457-8727
1-800-247-8035
www.ovs.ny.gov

New York State Child Abuse and
Maltreatment register
1-800-342-3720

Victim Information and
Notification Everyday (VINE)
1-888-846-3469
www.vinelink.com

MADD
Mothers Against Drunk Drivers
790 Watervliet Shaker Road # 6
Latham, NY 12110
518-785-6233
www.madd.org/

National

Office for Victims of Crime
Criminal Justice Reference
Service
Washington, DC 20531
Phone: 202-307-5983
Fax: 202-514-6383
www.ojp.usdoj.gov/ovc

National Sexual Assault Hotline
1-800-656-HOPE (4673)

National Domestic
Violence Hotline
1-800-799-SAFE (7233)

Financial Resources:

Bad Checks
Bureau of Consumer Frauds and
Protection/Attorney General's
Office Victim Help Line
1-800-771-7755
www.oag.state.ny.us

US Postal Service: Office of
Inspector General
1-888-877-7644
www.uspsoig.gov

U.S. Securities and Exchange
Commission
1-800-732-0330
www.sec.gov

Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580
202-326-2222
www.ftc.gov

Federal Communications
Commission
445 12th St., SW
Washington, DC 20554
1-888-225-5322
www.fcc.gov

Anti-bullying

U.S. Department of
Health & Human Services
200 Independence Ave., S.W.
Washington, D.C. 20201
www.stopbullying.gov

Trevor Project
1-866-488-7386
www.thetrevorproject.org

Human Trafficking

National Center for Human
Trafficking: Polaris Project
P.O. Box 65323
Washington, DC 20035
202-745-1001
www.polarisproject.org

US Committee for Refugees
and Immigrants (USCRI)
Albany Office
991 Broadway, Suite 223
Albany, NY 12204
518-459-1790
www.refugees.org

NYS Office of Temporary
and Disability Assistance
40 North Pearl St.
Albany, New York 12243
518-473-1090
www.otda.ny.gov