

## CPL ARTICLE 380: SENTENCING.

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Court **must** pronounce sentence on each convicted count.

If no pre-sentence report is needed, Court can pronounce sentence on date of conviction, or shall adjourn to a fixed date. Where a necessary pre-sentence report has already been received by the Court, defendant **must** be asked if requesting an adjournment, and why; Court *MAY* grant.

Where a pre-sentence report **is** required, Court must order one, and fix date for receipt. Court may also order a pre-sentence report even if such not be required.

Defendant must be present at sentencing; however may be excused upon motion when charged only with misdemeanor/petty offenses, and where written waiver acknowledges the maximum sentence available.

If a Corporation defendant's counsel is absent after being "reasonably" noticed, Court may pronounce sentence anyway.

Court must allow District Attorney, Defendant's counsel, and Defendant to make statements regarding sentencing. For a felony: victim has right to speak, must notice the Court at least 10 days before date fixed for hearing; Court shall notify Defendant at least 7 days before. The Court must allow an adjournment upon request of a defendant not timely notified.

If a victim is unwilling/unable to make statement - or is deceased - a family member of legal guardian with personal knowledge can speak on their behalf; unless the Court finds such to be inappropriate.

Any victim's statement herein shall be made **before** those of defendant/counsel, and defendant/counsel may also rebut. Defendant shall have right to adjourn therefore, and may also provide written questions for the Court to out to the victim if appropriate (Court shall state reasons on record if declines). However: where Defendant, District Attorney, and Court have all agreed to a specific sentence, Defendant's rebuttal shall be limited to merely oral presentation at time of sentencing.

A victim waives right to speak upon failure to appear, and no further delays shall be had regarding defendant's sentencing.

Regarding any defendant imprisoned for Violent Felony: District Attorney shall, within 60 days after imposition of such sentence, provide a form to the victim(s) where they can indicate preference to be notified of defendant's release/escape. Prosecutor shall provide returned form promptly to the Department of Corrections. When defendant released: corrections to notify requesting victim by certified mail at designated address; if

escape: immediately to most recent address or telephone, as well as certified mail notice within 48 hours of defendant's return/capture. However the State is NOT liable for any failure!

Where defendant convicted of: violent felony; rape; incest; kidnapping; child sex or prostitution = District Attorney to provide victim within 60 days of sentence a form to indicate preference to be notified of defendant's application for name change. Thereafter, any such petition shall be noticed promptly and expeditiously by the D.A. to such victim, at most recent address/telephone.

The legal authority for any sentence - **EXCEPT: death** - as well as the Order of Commitment, if such be the case = Certificate of Conviction (or certified copy thereof).

For any Determinate or Indeterminate sentence of imprisonment [see Penal Law], stenographic minutes of sentencing hearing, together with the Certificate specifying the section of each convicted offense (as well as paragraph and subdivision where practicable) shall be forwarded to the detention institution within 30 days of sentence. However a failure does NOT constitute defect.

The Court shall also provide such Certificate - together with notification - to the Department of Social Services.

When an imprisoned defendant is less than 19 years of age, notification shall be provided to any school where such person be enrolled. This information shall be kept confidential, apart from the regular school records and student's permanent file, and be destroyed upon termination of student's enrollment.