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THE ROAD LESS TRAVELLED: CRIMINAL CONDUCT NOT COMMONLY PROSECUTED

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INTRODUCTION

Most people, especially those caught up in amorous affairs with someone other than their spouses, probably don't consider that every carnal encounter constitutes a crime that could, in theory at least, cost them up to ninety days in prison in the unlikely event of prosecution and conviction.

The fact remains, however, that in New York (as well as 16 other states), adultery is a crime (here, a class B misdemeanor) defined as engaging in sexual intercourse with another person when either or both have a living spouse. (PL 255.17).

While the participants, to the extent that they're thinking at all, may eventually consider the emotional and financial impact on their spouses and families, as well as the disapproval of others, the prospect of prosecution is probably the last thing on their minds.

While 22 percent of married men and 14 percent of married women have reportedly committed at least one adulterous act (whether out of boredom, dissatisfaction, or the desire for a new thrill), (divorcestatistics.info), and the United States has one of the world's highest divorce rates (roughly 750,000 divorces annually), the likelihood of criminal prosecution is remote at best. (See 1/28/21 article: "Divorce Rate in America, 35 Stunning Statistics for 2022" by Branka Vuleta at legaljobs.io).

Reportedly, there have been roughly a dozen prosecutions for adultery in New York State since the 1970's. (See 11/25/15 article: "New York's Questionable State of Mind: Silly NY Laws" by Janet Altschuler Esq at inaldefensetucson.com). As people have arguably become more tolerant of (or indifferent to) the personal shortcomings of others that do not affect them directly, such failings may, at worst, be grounds for moral disapprobation rather than fodder for criminal prosecution.

It is worth noting that in an action for divorce wherein the plaintiff alleges that the defendant committed adultery (though not necessary for a no-fault divorce), the defendant can invoke the 5th Amendment's privilege against SELF INCRIMINATION if asked about an illicit affair. (Dodd v Colbert, 64 AD3d 982 [3d Dep't 2009]). Of course, doing so will only prove the point.

CORROBORATION REQUIRED

Also, if someone is actually prosecuted for adultery, PL 255.30 (1) states that a person cannot be convicted of this crime (or of Attempted Adultery) solely upon the word of the other party to such relationship unsupported by other evidence tending to establish that the defendant attempted to engage with the other party in sexual intercourse, and that the defendant or the other party had a living spouse at the time of the (attempted) adulterous act.

STRANGE CRIMES

Whether or not one agrees or disagrees with the criminalization of conduct considered offensive according to the tenor of the times and social standards of acceptable behavior, New York State (whether by statute statue or local ordinances) has certainly had some curious laws including those proscribing: alcohol consumption on Sundays (more recently, no such purchases before noon), hanging outdoor clotheslines without a permit, conducting puppet shows in the open window of one's home, engaging in "offensive exhibitions" including throwing balls at someone's head, the wearing of masks by two or more people in public (clearly pre-Covid, since repealed), taking a "selfie" with a tiger, spitting on the sidewalk and flirting (thought to encourage prostitution). (See 10/12/17 article: "Strange and Unusual New York Criminal Laws & Statutes" by Arkady Bukh Esq. at nycriminallawyer.com).

OTHER NOT-SO-COMMONLY PROSECUTED CRIMES

BIGAMY (WHEN ONE ISN'T ENOUGH):

According to PL 255.15, a person is guilty of this crime (a class E felony) when he/she contracts or purports to contract a marriage with another person at a time when he/she has a living spouse. It is an AFFIRMATIVE DEFENSE to this crime (as well as to adultery) that the defendant acted under a reasonable belief that his/her intended spouse was unmarried. (PL 255.20).

While polygamy is illegal in all 50 states, the state of Utah does not proscribe cohabiting with someone in a marriage-like relationship when the person is already married to someone else. To be guilty of bigamy, one would have to obtain multiple marriage licenses fraudulently. (See 12/14/13 article: "Part of Utah's Bigamy Law Struck Down in Victory for U.S. TV Star," by Jennifer Dobson at reuters.com). In that case, (involving a reality TV star and his four "sister wives" and 17 children), a federal district judge held that the bigamy Law was unconstitutional insofar as it proscribed consenting adults from cohabitating and criminalized their consensual, sexual relationships.

In a similar vein, a person is guilty of PROCURING A MARRIAGE LICENSE (PL 255.10), a class A misdemeanor, when he/she procures a license to marry another person at a time when he/she has a living spouse, or the other person has a living spouse.

As for the OFFICIANT, a person is guilty of UNLAWFULLY SOLEMNIZING A MARRIAGE (PL 255.00, A class A misdemeanor) when:

1. He/she PERFORMS A MARRIAGE CEREMONY or presumes to SOLEMNIZE A MARRIAGE knowing that he/she is NOT AUTHORIZED by the laws of this state to do so, or

2. Being so authorized, he/she performs a marriage ceremony (or solemnizes a marriage) KNOWING THAT A LEGAL IMPEDIMENT TO SUCH MARRIAGE EXISTS.

Conversely, a person is guilty of UNLAWFULLY ISSUING A DISSOLUTION DECREE (PL 255.05, a class A misdemeanor), when NOT BEING A JUDICIAL OFFICER authorized to issue decrees of divorce or annulment, he/she ISSUES A WRITTEN INSTRUMENT reciting or certifying that he/she or some other (purportedly but not actually authorized) person has issued a valid decree of civil divorce, annulment, or other dissolution of a marriage.

OFFENSES INVOLVING CHILDREN, DISABLED PERSONS AND THE ELDERLY (PL ARTICLE 260)

While most criminal defense attorneys have handled cases involving endangering the welfare of a child (PL 260.10[1]: knowingly acting in a manner likely to be harmful to the physical, mental, or moral welfare of a child under 17-years old), there are other, lesser-used sections that proscribe specified acts of misconduct in relation to children including:

UNLAWFULLY DEALING WITH A CHILD 1ST DEGREE (PL 260.20[1]), a class A misdemeanor, where a defendant KNOWINGLY PERMITS A CHILD UNDER 18 TO ENTER/REMAIN IN A PLACE, PREMISES OR ESTABLISHMENT WHERE SEXUAL ACTIVITY (as defined by PL Articles 130, 230 [Prostitution] or 263 [Sexual Performance by a Child] or ACTIVITIY INVOLVING CONTROLLED SUBSTANCES (PL Articles 220, and 221) is maintained or conducted, and he/she KNOWS OR HAS REASON TO KNOW that such activity is being maintained or conducted, or

2. he/she GIVES/SELLS (or causes to be given/sold) any ALCOHOLIC BEVERAGE (ABC Law section 3) to a person under age 21. (This subdivision does NOT apply to the parent/guardian or purveyor who gives such beverage to such person who is a STUDENT IN A CURRICULUM LICENSED OR REGISTERED BY THE STATE EDUCATION DEPARTMENT, where the tasting/imbibing of alcoholic beverages is required in courses that are part of the required curriculum, provided such beverages are given only for instructional purposes during classes conducted pursuant to such curriculum.

It is NO DEFENSE that the child acted as the AGENT or representative of another person or that the defendant dealt with him/her as such.

It is an AFFIRMATIVE DEFENSE (to subdivision 2) that the defendant who sold alcoholic beverages to a person under age 21 had not (within the preceding five years) been convicted of PL 260.20 or PL 260.21 (Unlawful Dealing with a Child 2d degree), and that the defendant, after the commencement of this prosecution, has completed an ALCOHOL AWARENESS training program per ABC Law Section 17 (12). An eligible defendant may request a reasonable adjournment to complete such program.

SOME CASES:

People v Diaz, 24 NY3d 1187 (2015): Conviction affirmed where evidence established that the defendant exercised dominion and control over apartment where she lived with her four underage children, and she knew or had reason to know of the on-going presence of heroin and drug paraphernalia.

People v Wing, 77 NY2d 851 (1991): Defendant's purchase of beer for underage drinkers at their request (using their money), was sufficient to sustain the defendant's conviction for unlawful dealing with a child.

Similarly, in People v Remington, 305 AD2d 1021 (4th Dep't 2003), the defendant's admission that he gave alcohol to a 17-year-old was found to have supported the defendant's conviction.

BUT, in People v Leonard, 29 NY3d 1 (2017), the Court of Appeals held that the trial court ERRED in admitting Molineux (prior bad act) evidence that the defendant had previously given the underage victim alcohol (prior to having sexual intercourse with her) because such testimony amounted to evidence of CRIMINAL PROPENSITY which was UNFAIRLY PREJUDICIAL.

PL 260.21 UNLAWFULLY DEALING WITH A CHILD 2D DEGREE

A person is guilty of this crime when:

1. being an owner, lessee, or manager of a place where ALCOHOLIC BEVERAGES ARE SOLD OR GIVEN AWAY, he/she permits a child LESS THAN AGE 16 to enter or remain there UNLESS:
   a. the child is ACCOMPANIED BY HIS/HER PARENT, guardian, or authorized adult, or
   b. the entertainment/activity is conducted for the benefit or under the auspices of a NON-PROFIT SCHOOL OR OTHER EDUCATIONAL/RELIGIOUS INSTITUION, or is
   c. otherwise permitted by law, or
   d. the establishment is CLOSED TO THE PUBLIC for a specified period to conduct an activity/entertainment, during which the child is in or remains in such establishment, and NO ALCOHOLIC BEVERAGES ARE SOLD, SERVED OR GIVEN AWAY there during such period. The SLA SHALL BE NOTIFIED IN WRITING by the licensee of such establishment of the intended closing of the place to conduct any such activity/entertainment NOT LESS THAN 10 DAYS prior to any such closing, or (see next category below):

NO TATS FOR TOTS

2. he/she MARKS THE BODY OF A CHILD UNDER AGE 18 WITH INDELIBLE INK OR PIGMENTS BY MEANS OF TATOOING, or

NO CIGS FOR KIDS

3. he/she SELLS OR CAUSES TO BE SOLD TOBACCO IN ANY FORM TO A CHILD UNDER AGE 21.

It is NO DEFENSE to subdivision 3 that the child acted as an AGENT or REPRESENTATIVE of another person or that the defendant dealt with him/her as such.

BAIT-AND-SWITCH: SUBSTITUTION OF (INFANT) CHILDREN

A person is guilty of this crime in violation of PL 130.55 (a class E felony), when, having been TEMPORARILLY ENTRUSTED WITH A CHILD LESS THAN ONE YEAR OLD and INTENDING TO DECIVE A PARENT, GUARDIAN, OR OTHER LAWFUL CUSTODIAN OF SUCH CHILD, HE SUBSTITUTES PRODUCES OR RETURNS TO SUCH PARTY A CHILD OTHER THAN THE ONE ENTRUSTED.

(See PL Article 135 for other crimes relating to Kidnapping, Trafficking, Custodial Interference and Coercion).

OTHER VULNERABLE VICTIMS:

PL 260.24 ENDANGERING THE WELFARE OF AN INCOMPETENT OR PHYSICALLY DISABLED PERSON 2D DEGREE

A person is guilty of this crime (class A misdemeanor) when he/she RECKLESSLY ENGAGES IN CONDUCT which is LIKELY TO BE INJURIOUS TO THE PHYSICAL, MENTAL OR MORAL WELFARE OF A PEPRSON WHO IS UNABLE TO CARE FOR HIM/HERSELF BECAUSE OF PHYSICAL DISABILITY, MENTAL DISEASE OR DEFECT.

This statute is nearly identical to Endangering the Welfare of a Child except that the victim's vulnerability relates to his/her physical or mental condition rather than age.

The offending conduct rises to the level of ENDANGERING 1st Degree (PL 260.25), a class E felony, when the defendant KNOWINGLY acts in a manner that is likely to be harmful to the welfare of an incompetent or disabled person. (See People v Fassino, 169 AD3d 921 [2d Dep't 2019]: Evidence sufficient to support conviction where nursing home staff members ignored visual and audible alarms indicating that elderly resident was in respiratory distress for two hours, which resulted in death).

ENDANGERING THE WELFARE OF VULNERABLE, ELDERLY PERSONS

A vulnerable elderly person (VEP) is defined in PL 260.31 (3) as a person AGED 60 OR OLDER who is SUFFERING FROM A DISEASE OR INFIRMITY associated with ADVANCED AGE and manifested by DEMONSTRABLE PHYSICAL, MENTAL OR EMOTIONAL DYSFUNCTION to the extent that he/she is INCAPABLE OF ADEQUATELY PROVIDING FOR HIS/HER OWN HEALTH OR PERSONAL CARE.

An INCOMPETENT OR PHYSICALLY DISABLED PERSON (I/PDP), per PL 260.31 (4), is an individual who is UNABLE TO CARE FOR HIM/HERSELF BECAUSE OF PHYSICAL DISABILITY, MENTAL DISEASE OR DEFECT.

A CAREGIVER, as defined in PL 260.31 (1) is a person who (i) ASSUMES RESPONSIBILITY for the CARE of a VEP or I/PDP pursuant to a COURT ORDER, or (ii) receives MONETARY OR OTHER VALUABLE CONSIDERATION for providing care for a VEP or an I/PDP).

PL 260.32 ENDANGERING THE WELFARE OF A VEP OR I/PDP 2D DEGREE

A person is guilty of this crime (a class E felony) when being a CAREGIVER FOR A VEP OR AN I/PDP:

1. with INTENT TO CAUSE PHYSICAL INJURY (PI) to such person, he CAUSES such injury to such person, or
2. he/she RECKLESSLY CAUSES PI to such person, or
3. with CRIMINAL NEGLIGENCE, he/she CAUSES PI to such person by means of a DEADLY WEAPON (PL 10.00 [12]) or DANGEROUS INSRUMENT (PL 10.00 [13]), or
4. he/she SUBJECTS SUCH PERSON TO SEXUAL CONTACT WITHOUT THE LATTER'S CONSENT. LACK OF CONSENT RESULTS FROM FORCIBLE COMPULSION OR INCAPACITY TO CONSENT OR ANY OTHER CIRCUMSTANCES IN WHICH THE VEP OR I/PDP DOES NOT EXPRESSLY OR IMPLIEDLY ACQUIESCE IN THE CAREGIVER'S CONDUCT.

   Where the victim's lack of consent is due solely to INCAPACITY to consent due to the victim's mental disability/incapacity, the corroboration requirements of PL 130.16 shall apply.

   Also, in any prosecution where the lack of consent is due to the victim's mental disability/incapacitation or physical helplessness, it is an AFFIRMATIVE DEFENSE that the defendant, at the time he/she engaged in such conduct, DID NOT KNOW OF THE FACTS OR CONDITIONS responsible for such incapacity to consent.

   Endangering the Welfare of a VEP or I/PDP rises to FIRST DEGREE (PL 260.34) a class D felony, when the caregiver:

   1. INTENTIONALLY CAUSES SPI to the victim, or
   2. RECKLESSLY CAUSES SUCH INJURY to such person.

CRIMES RELATING TO LAW ENFORCEMENT AUTHORITIES:

Being a police officer is arguably one of the most challenging jobs that anyone can undertake, especially now that every decision they make or action they take (or fail to make or take) is subject to more public scrutiny and criticism (some warranted and some not) than ever before, especially insofar the use of physical force is concerned.

While most criminal defense attorneys have represented clients charged with Resisting Arrest (PL 205.30) and Obstructing Governmental Administration (PL 195.05), there are other, less frequently charged offenses that directly or indirectly implicate the police or their law enforcement function. Among them are:

PL 190.26: CRIMINAL IMPERSONATION 1ST DEGREE

A person is guilty of this offense (a class E felony) when he/she:

1. PRETENDS TO BE A POLICE OFFICER OF FEDERAL LAW ENFORCEMENT OFFICER (CPL 2.15) or WEARS OR DISPLAYS WITHOUT AUTHORITY, ANY UNIFORM, BADGE, OR OTHER INSIGNIA OR FACSIMILE THEREOF, by which such officer is lawfully distinguished or expresses by his/her words or actions that he/she is ACTING WITH THE APPROVAL OR AUTHORITY OF ANY POLICE DEPARTMENT OR FEDERAL LAW ENFORCEMENT AGENCY and
2. so acts WITH INTENT TO INDUCE ANOTHER TO SUBMIT TO SUCH PRETENDED OFFICIAL AUTHORITY or otherwise to ACT IN RELIANCE UPON SAID PRETENSE and in the course of such pretense COMMITS OR ATTEMPTS TO COMMIT A FELONY.

PL 120.08: ASSAULT ON A POLICE OFFICER (OR PEACE OFFICER, FIREFIGHTER OR EMT)

A person is guilty of this crime (a class C felony) when with INTENT TO PREVENT a police officer (or another of the above professionals including a firefighter acting as a paramedic or EMT) from PERFORMING A LAWFUL DUTY, he/she causes SPI to such person.

Note that the intent for this crime is not to cause SPI but to prevent the performance of a lawful duty. The serious injury is incidentally caused by the acts intended to stop the officer from carrying out his/her duty.

In contrast, see PL 120.09, ASSAULT ON A JUDGE, (a class C felony) which requires an INTENT TO CAUSE SPI AND TO PREVENT THE JUDGE FROM PERFORMING HIS/HER JUDICIAL DUTIES, and CAUSATION OF SPI.

AGGRAVATED MURDER: PL 125.26 (1), CLASS A-1 FELONY

A(i). A person is guilty of this crime when he/she intentionally causes the death of a person who is a POLICE OFFICER engaged in the performance of his/her official duties and the defendant knows or reasonably should know that the victim was a police officer, or

ii. the intended victim was a PEACE OFFICER engaged in the performance of his/her official duties which the defendant knew or reasoanbly should have known was a uniformed COURT OFFICER, PAROLE OFFICER , PROBATION OFFICER or EMPLOYEE OF THE DIVISION FOR YOUTH, or

ii-a. the intended victim was a FIREFIGHTER, EMT, AMBULANCE DRIVER, PARAMEDIC, PHYSICIAN OR RN inolved in a FIRST RESPONSE TEAM or any other individual who, in the course of official duties, performs emergency response activities and was so engaged at the time of the killing, and the defedANt knew or reasonably shoulD have known that the intended victim was one of the above professionals, or

iii. the intended victim was an employee of a STATE OR LOCAL CORRRECTIONAL FACILITY who, at the time of the killing, was engaged in the performance of his/her official duites and the defendant knew or reasaonbly should have known that the victim was such an employee.

MURDER 1st DEGREE: PL 125.27 (1), CLASS A-1 FELONY

This crime is very similar to Aggravated Murder supra . It was passed in response to the Court of Appeals' criticism of New York State's procedure for imposing the death penalty (which no longer is in effect). (See People v LaValle, 3 NY3d 88 [2004]: death penalty statute rule unconstitutional due to flawed jury instruction in the event of deadlock).

A person is guilty of this crime when he/she:

1. intends to cause the death of another person and causes the death of such person (or a third person) and (a) either: i. the intended victim is a POLICE OFFICER engaged in the performance of his/her oficial duties and the defendant knew or reasonably should have known that the intended victim was a polce officer, or ii. The intended victim was a PEACE OFFICER engaged in the performance of his/her official duties, and the defendant knew or reasonably ahould have known that the intended victim was a uniformed court officer, parole officer, probation officer or employee of the Division for Youth, or ii-a. the intended victim was a FIREFIGHTER, paramedic, EMT, ambulance driver, physician or RN involved in a first response team who was engaged in auch activities and the defendant knew or reasonably should have known that the intended victim was one of those professionals, or iii. the intended victim was an employee of a state or local correctional facility and the defendant knew or reasonably should have known such fact.

(See subpargraphs iv-xiii for other categories of this crime).

AGGRAVATED CRIMINALLY NEGLIGENT HOMICIDE: PL 125.11

A PERSON IS GUILTY OF THIS CRIME (a class C felony) when with criminal negligence, he/she CAUSES THE DEATH OF A POLICE OFFICER OR PEACE OFFICER where such officer was performing his/her official duties and the defendant knew or reasoanbly should have known that the victim was one or the other.

MENACING A POLICE/PEACE OFFICER PL 120.18

While the menacing of a civilian constitues either a class B misdemeanor (intentionally placing another person in reasonable fear of death or imminent PI or SPI) or a class A misdemeanor (doing so with a deadly weapon, dangerous instrument, or what appeals to be a firearm), the offense rises to the level of a class D felony when the conduct is directed toward a POLICE OFFICER.

PL 120.18 states that a person is guilty of this crime when he intentionally places or attempts to place a police/peace officer in REASONABLE FEAR OF PHYSYICAL INJURY, SPI OR DEATH BY DISPLAYING A DEADLY WEAPON, KNIFE, PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM, (WHETHER OPERABLE OR NOT), WHERE SUCH OFFICER WAS IN THE COURSE OF PERFORMING HIS/HER OFFICIAL DUTIES AND THE DEFENDANT KNEW OR REASONABLY SHOULD HAVE KNOWN THAT SUCH VICTIM WAS A POLICE/PEACE OFFICER.

CRIME OF OMISSION: REFUSING TO AID A POLICE OR PEACE OFFICER

A person violates PL 195.10 (a class B misdemeanor) when, UPON COMMAND OF A POLICE OFFICER OR PEACE OFFICER identifable or identified to him/her as such, he UNREASONABLY REFUSES TO AID such officer in EFFECTING AN ARREST, OR IN PREVENTING THE COMMISSION BY ANOTHER PERSON OF ANY OFFENSE.

CRIME OF COMMISSION: OBSTRUCTING GOVERNMENTAL ADMINISTRATION 1ST DEGREE

A person is guilty of this crime (PL 195.08, a class E felony), when he/she violates PL 195.05 (attempting to prevent a public servant from performing an official function by intimidation, physical force/interference or any independently unlawful act) and does so by INTERFERING WITH A TELECOMMUNICATIONS SYSTEM THEREBY CAUSING SPI TO ANOTHER PERSON.

OBSTRUCTING GOVERNMENTAL ADMINISTRATION BY MEANS OF A SELF-DEFENSE SPRAY DEVICE

A person violates PL 195.08 (a class D felony) when he/she, by means of a self-defense spray device (e.g., pepper spray), when, with the intent to prevent a police/peace officer from performing a lawful duty, causes TEMPORARY PHYSICAL IMPAIRMENT to a police/peace officer by INTENTIONALLY DISCHARGING such spray device (PL 265.20[a][14]), thereby causing such temporary physical impairment.

KILLING A POLICE WORK DOG OR WORK HORSE: PL 195.06-a

A person is guilty of thus crime (a class E felony) when he/she INTENTIONALLY KILLS such animal while it is in the performance of its duties (e.g., sniffing for drugs, providing transportation for mounted police) under the supervision of a police officer.

A police work dog or work horse means any dog or horse owned or harbored by any state or municipal police department (or state/federal law enfrocement agency) which has been trained to aid law enforcement officers and is actually being used for police work purposes.

HIT THE GAS AND GO

Whle it is not uncommon for suspects who have been pulled over by police to take off (if they've stopped at all) and lead them on a high-speed chase, it is not all that common to see the ofenders charged with PL 270.25 (Unlawful Fleeing a Police Officer 3d degree, a class A misdemeanor), PL 270.30 (Unlawful Fleeing 2d degree, a class E felony) or PL 270.35 (Unlawful Fleeing 1st Degree, a class D felony.

The 3rd degree offense is committed when a motorist, knowing that he/she has been directed to stop his/her motor vehicle by a uniformed police officer or a marked police vehicle by the activation of the lights and/or siren, he/she attempts to flee such officer/vehicle by driving at or over 25-miles-per-hour above the speed limit or engaging in reckless driving (VTL 1212).

If, as the result of such conduct, a police officer or thirdd party suffers SPI, the defendant can be charged with PL 270.30 (2d degree), and if the result of such conduct is the death of a police officer or a third party, the defendant can be charged with PL 270.35 (1st degree).

UNLAWFUL WEARING OF A BODY VEST: PL 270.20 (CLASS E FELONY)

Police officers commonly wear body vests (i.e., bullet resistant soft body armor providing seven layers of bullet-resistant material providing protection against three shots of 158-grain lead ammunition fired from a .38 caliber handgun at a speed of 150 feet-per-second [PL 270.20 (2)], but it is UNLAWFUL for a person who (alone or with others) commits a VIOLENT FELONY OFFENSE while in possesssion of a FIREARM, RIFLE or SHOTGUN, and in the course and furtherance of such crime (e.g., armed robbery) to wear a body vest.

DEATH, DYING AND DEAD BODIES

While people may abuse their bodies during their life times (e.g., drinking, smoking, overexertion), society tends to accord them reverance and respect after they have been put to their final rest. So, it is a crime (class A misdemanor), for example, to engage in sexual conduct with a dead human body (Sexual Misconduct, PL 130.20 [3]). (This statute also proscribes sexual conduct with an animal).

And, if a person CONCEALS, ALTERS OR DESTROYS A CORPSE with the intent to PREVENT ITS DISCOVERY, USE OR PRODUCTION AS PHYSICAL EVIDENCE in an OFFICIAL PROCEEDING, an AUTOPSY as part of a CRIMINAL INVESTIGATION or EXAMINATION BY LAW ENFORCEMENT PERSONNEL as part of a criminal investigation, (while having a reasonable expectation of such production or use as evidence), he/she has committed the class E felony of CONCEALMENT OF A HUMAN CORPSE.

(See NY Health Law Section 4200 for the duties with respect to burials of dead human bodies and Article 13.3 for rules relating to disinterments).

WHERE THERE'S A WILL…

PL 190.30 states that a person is guilty of UNLAWFULL CONCEALING A WILL (a Class E Felony) when with intent to defraud, he conceals, secretes, suppresses, mutilates or destroys a will, codicil or other testamentary instrument.

SOME CRIMES RELATED TO THEFT AND FRAUD

PL 165.25: JOSTLING: A person is guilty of this crime (a class A misdemeanor) when he intentionally and unnecessarily:

1. places his hand in the proximity of a person's pocket or handbag, or
2. jostles or crowds another at a time when a third person's hand is in the proximity of such person's pocket or handbag.

It is worth noting that larcenous intent is NOT an element of jostling. (See People v Booker, 69 NY2d 941 [1987]).

PL 165.30: FRAUDULENT ACCOSTING:

1. A person is guilty of this crime when when he/she accosts a person in a PUBLIC PLACE with the INTENT TO DEFRAUD him/her of money or other property by means of a TRICK, SWINDLE OR CONFIDENCE GAME.
2. A person who, at the time of the swindle or at some other time or place, makes statements (to the victim) or engages in conduct of a kind commonly made/performed in the perpetration of a known confidence game is PRESUMED to intend to defraud such victim of money or other property. (Think of Henry Gondorff's [Paul Newman's] and Johnny Hooker's [Robert Redford's] train ride fleecing of Doyle Lonnegan [Robert Shaw] in The Sting… "ya folla?').

See People v Abbott, 107 AD3d 1152 (3d Dep't 2013): Conviction upheld where evidence established that the defendant bamboozled a handicapped, elderly victim by pouring coffee under her car and then charging her $1400.00 to repair the alleged leak in her vehicle.

PL 165.35 FORTUNE TELLING: (MEDIUM MISDEMEANOR)

A PERSON commits this crime (a class B misdemeanor) when, for a fee or compensation which he/she directly or indirectly solicits or receives, he/she CLAIMS OR PRETENDS TO TELL FORTUNES, or holds him/herselF out as being able, by claimed or pretended use of OCCULT POWERS, to answer questions, or give advice on personal matters or to exorcise, influence or affect evil spirits or curses .

This statute does NOT apply to a person who engages in such conduct as PART OF A SHOW OR EXHIBITITION SOLELY FOR THE PURPOSE OF ENTERTAINMENT OR AMUSEMENT. (e.g., Professor Marvel in the Wizard of Oz).

GREEK TRAGEDY

While booze-soaked and otherwise dangerous and demeaning initiations of eager-to-belong young pledges may be a time-worn tradition at many fraternities across the country, there have been many tragedies involving students who have died from alcohol poisoning and other misfortunes. As far back as 1905, a student fraternity pledge was killed near Kenyon college when he was sent, as part of his initiation, to walk on a railroad bridge, believed to abandoned, only to be struck and by an unexpected train. More recently, from 1969 to 2017, there has reportedly been at least one university hazing death each year and 40 such deaths between 2007 and 2017. (See List of Hazing Deaths in the United States at en.m.wikipedia.org).

Acording to a 3/12/21 article by Ben Kesslen, "If Student Deaths Won't Stop Fraternity Hazing, What Will?" (abcnews.com), since 2000, there have been 50 hazing-related deaths due to a variety of conditions including heat stroke, drowning, alcohol poisoning, head injury, asphyxia and cardiac arrest.

Nevertheless, New York State appears to be operating in its own purple haze, designating this offense as either a VIOLATION (PL 120.17) or a class A misdemeanor (PL 120.16) depending on whether the pledge or someone else suffers physical injury.

According to the statutes, a peron is guilty of HAZING 2d DEGREE (PL 120.17) when in the course of another person's initiation or affilaiation with any organization, he INTENTIONALLY OR RECKLESSLY engages in conduct , including (but not limited to) making PHYSICAL CONTACT WITH or REQUIRING PHYSICAL ACTIVITY of such other person that creates a SUBSTANTIAL RISK OF PHYSICAL INJURY to such other person or a third person.

A person is guilty of HAZING 1st DEGREE (PL 120.16) when he/she commits Hazing 2d degree and thereby CAUSES PHYSICAL INJURY to the person or a third party.

OFFENSES AGAINST PUBLIC ORDER, SENSIBILITIES AND RIGHT TO PRIVACY:

Virtually evry criminal defense attorney has handled or pled out a case to some version of Disorderly Conduct under PL 240.20 (1-7). It provides a convenient off-ramp for prosecutors looking to salvage a weak case with a conviction as well as for defendants who wish to avoid a criminal conviction and not risk one by going to trial.

There are other, less commonly prosecuted sections of Artclie 240.00 that counsel should become familiar with including those relating to RIOT (PL 240.05-240.08) involving TUMULTOUS AND VIOLENT CONDUCT that creates a grave risk of public alarm, UNLAWFUL ASSEMBLY (PL 240.10 [gahering four or more people to engage in tumultuous and violent behavior]), CRIMINAL ANARCHY, (PL 240.15 [advocating the violent overthrow of gevernment]), DISRUPTION OF A RELIGIOUS SERVICE (PL 240.21, [making unreasonable noise or disturbance at a lawfully assembled religious service, funeral, burial or memorial service with intent to cause annoyance/alarm or recklessly creaing a arisk thereof), DISSEMINATING A FALSE REGISTERED SEX OFENDER NOTICE (PL 240.48), PLACING A FALSE BOMB OR HAZARDOUS SUBSTANCE 1st DEGREE (PL 240.62), 2d DEGREE (PL 240.61) or IN A SPORTS STADIUM/ARENA, MASS TRANSPORTATION FACILITY OR ENCLOSED SHOPPING MALL (PL 240.63), CRIMINAL INTERFERENCE WITH HEALTH CARE SERVICES OR RELIGIOUS WORSHIP 1ST DEGREE (PL 240.71), 2d DEGREE (PL 240.70) AND AGGRAVATED INTERFERENCE WITH HEALTH CARE SERVICES 2d DEGREE (PL 240.72) AND 1st DEGREE, DIRECTING A LASER AT AN AIRCRAFT 2D DEGREE (PL 240.76) AND 1sr DEGREE (PL 240.77).

FINAL OBSERVATION:

As is evident, the New York Penal Law is chock full of crimes, some of which are antiquated and others, (like directing a laser at an aircraft), which reflect not only changing societal attitudes about acceptable behavior but advancements in technology. (See, for example, PL Article 156 relating to offenses involving computers).

It is no small challenge to keep abreast of all of the different laws and most defense attorneys probably don't have the time or inclination to read them until they're called upon to represent a client who is charged with violating one or more of them. Nevertheless, since there are so many rules which prosribe

and punish almost every manor of misbehavior as there are police and prosectors looking for creative ways to charge them, sooner or later, counsel will have to defend conduct that they didn't even know was criminal. This article only scratches the surface of the road less travelled when it comes to crimes that are not commonly prosecuted.