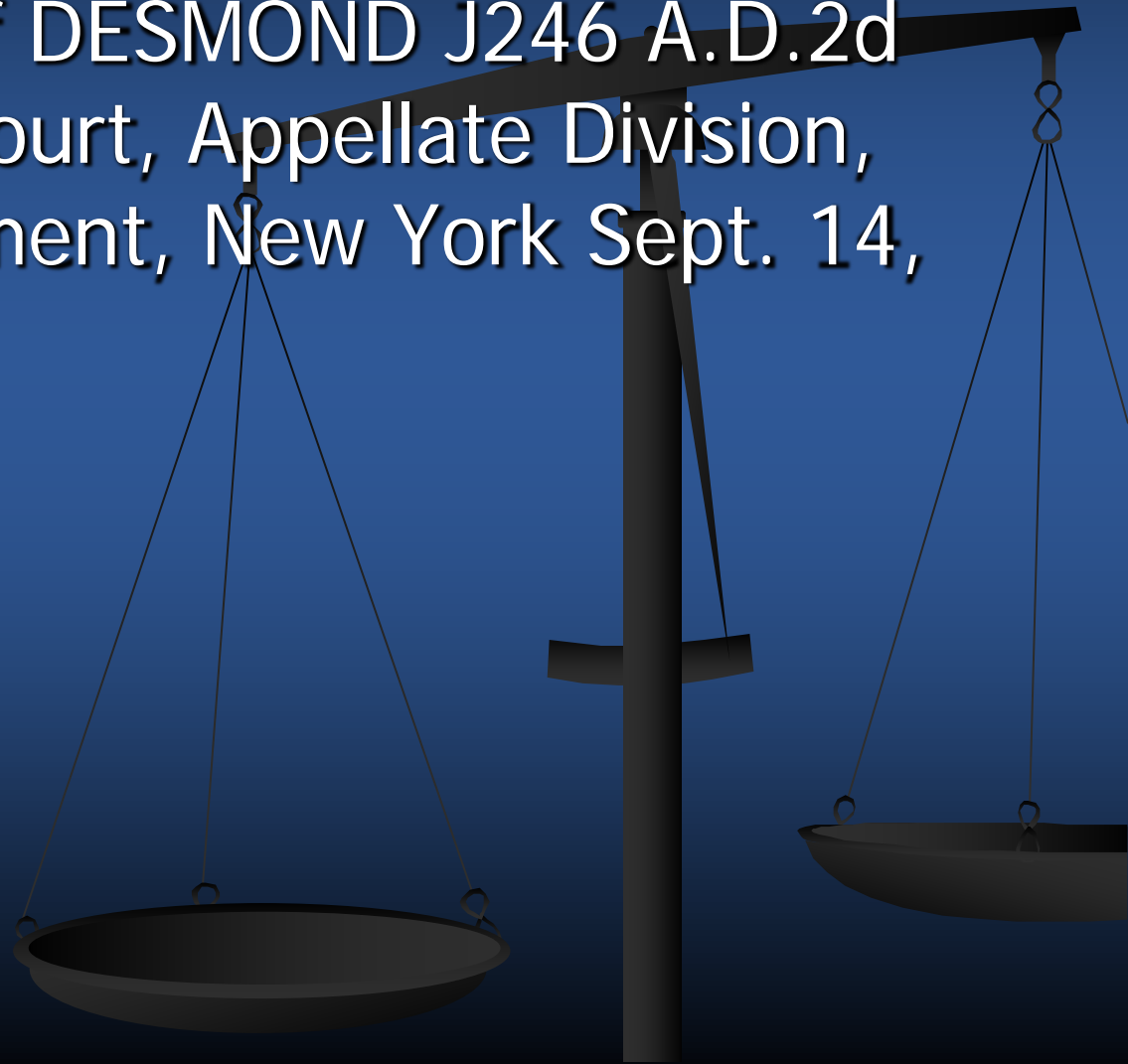


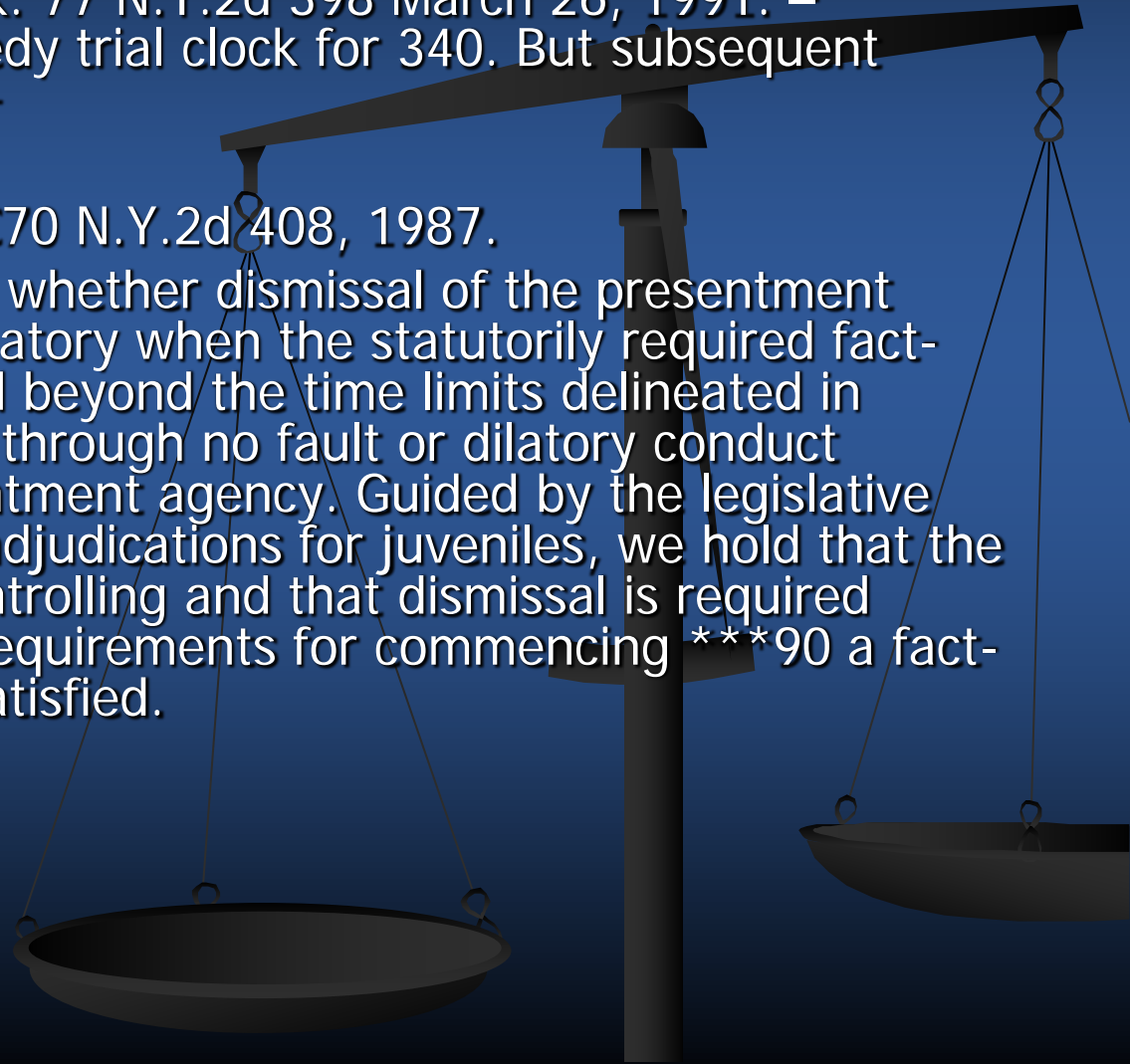
# FCA Speedy Trial Case Law

- In the Matter of DESMOND J246 A.D.2d 111 Supreme Court, Appellate Division, Second Department, New York Sept. 14, 1998.



# In the Matter of RANDY K

- In the Matter of RANDY K. 77 N.Y.2d 398 March 26, 1991. – warrants did not toll speedy trial clock for 340. But subsequent cases distinguished this –
- 
- In the Matter of FRANK C70 N.Y.2d 408, 1987.
- we are asked to consider whether dismissal of the presentment agency's petition is mandatory when the statutorily required fact-finding hearing is delayed beyond the time limits delineated in Family Court Act § 340.1 through no fault or dilatory conduct attributable to the presentment agency. Guided by the legislative goal of assuring speedy adjudications for juveniles, we hold that the source of delay is not controlling and that dismissal is required whenever the statutory requirements for commencing \*\*\*90 a fact-finding hearing are not satisfied.
- 3 N.Y.3d 441



# In the Matter of MICHAEL M

- In the Matter of MICHAEL M., 3 N.Y.3d 441 2004.
- This appeal calls upon us to decide whether the jurisdictional requirements for filing in Family Court are met when an order of removal and the accompanying pleadings and proceedings contain only hearsay allegations; and, if they are not met, whether this deficiency is waivable. For the reasons that follow, we conclude that such a removal is jurisdictionally defective. Further, the defect is non-waivable and thus is reviewable for the first time upon appeal

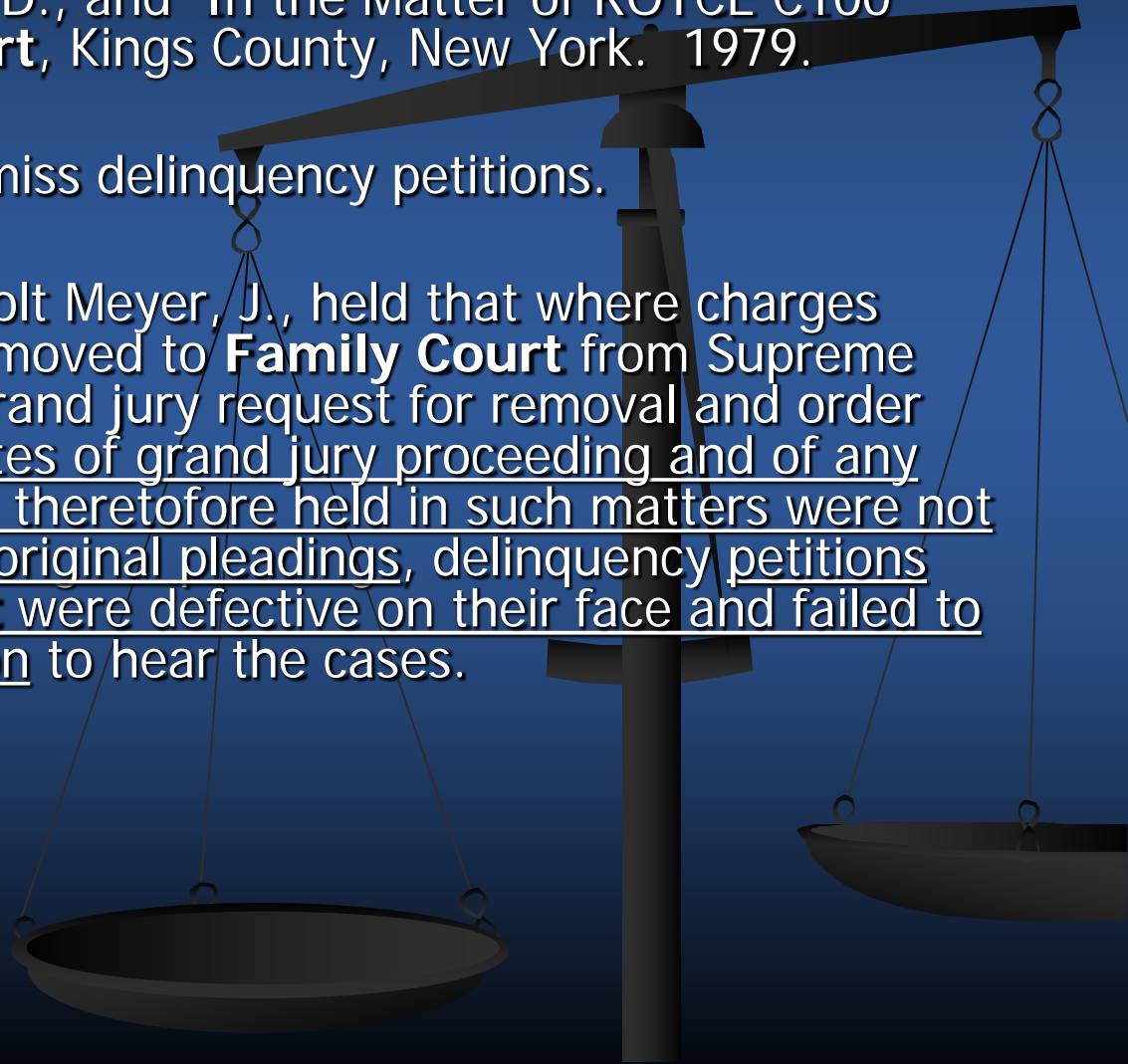
# In the Matter of TOMMY C

- 
- In the Matter of TOMMY C. 182 A.D.2d 312 Supreme Court, Appellate Division, Second Department, New York 1992
- Juvenile moved to dismiss second delinquency petition for failure of presentment agency to conduct fact-finding hearing within 60 days of initial appearance. The Family Court, Westchester County, Tolbert, J., dismissed petition. Appeal was taken. The Supreme Court, Appellate Division, Rosenblatt, J.P., held that: (1) 60-day statutory deadline to conduct fact-finding hearing ran from time of juvenile's initial appearance on **first petition**, and (2) juvenile's right to timely fact-finding hearing was violated.

# In the Matter of MARTIN D

- In the Matter of MARTIN D., and In the Matter of ROYCE C100 Misc.2d 339 **Family Court**, Kings County, New York. 1979.
- **Synopsis**
- Motions were filed to dismiss delinquency petitions.
- 
- The **Family Court**, M. Holt Meyer, J., held that where charges against juveniles were removed to **Family Court** from Supreme Court, accompanied by grand jury request for removal and order directing same, but minutes of grand jury proceeding and of any and all other proceedings theretofore held in such matters were not forwarded, nor were the original pleadings, delinquency petitions before the **Family Court** were defective on their face and failed to give such court jurisdiction to hear the cases.

■



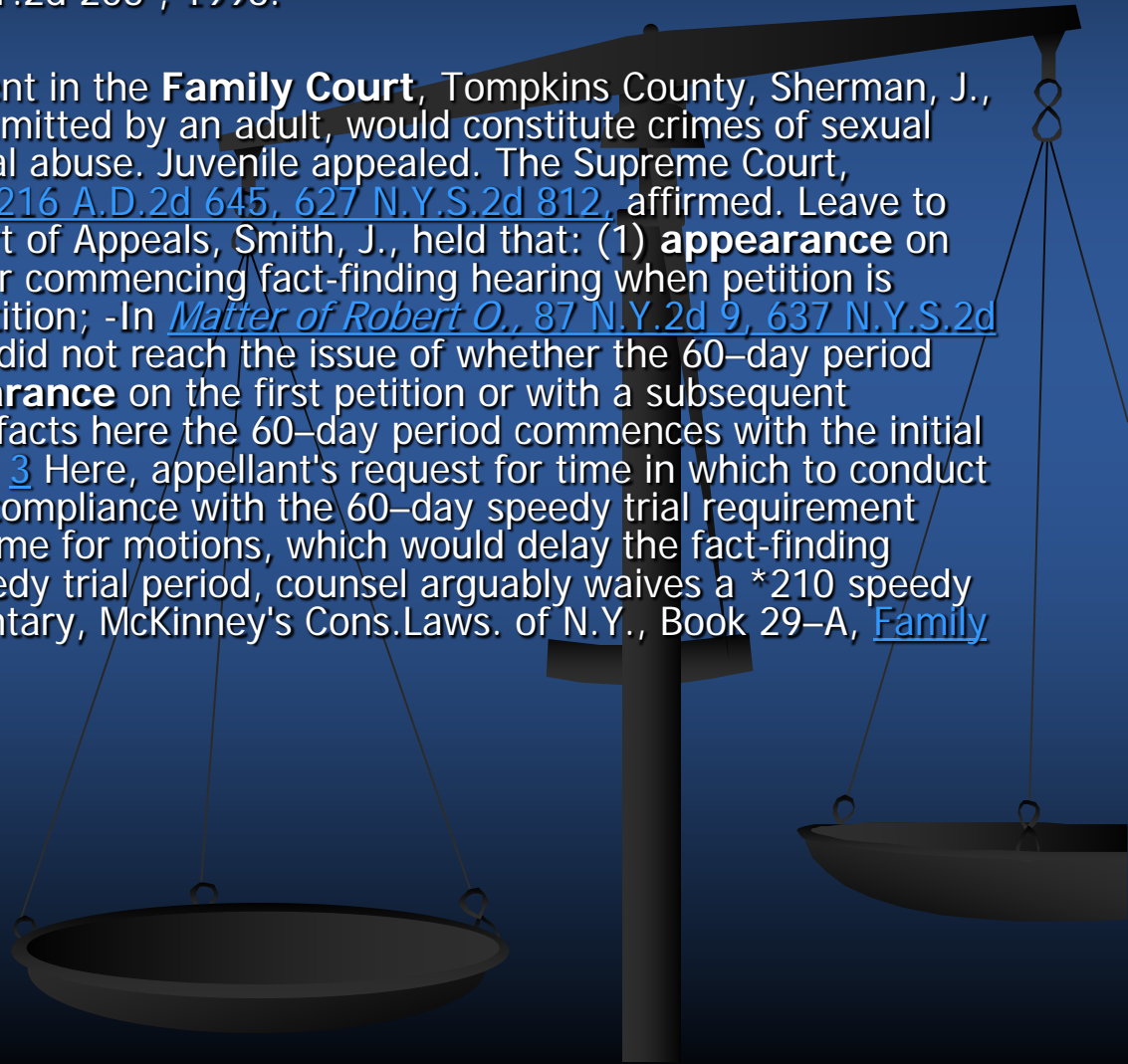


# In the Matter of WILLIE E

- In the Matter of WILLIE E., 88 N.Y.2d 205 , 1996.

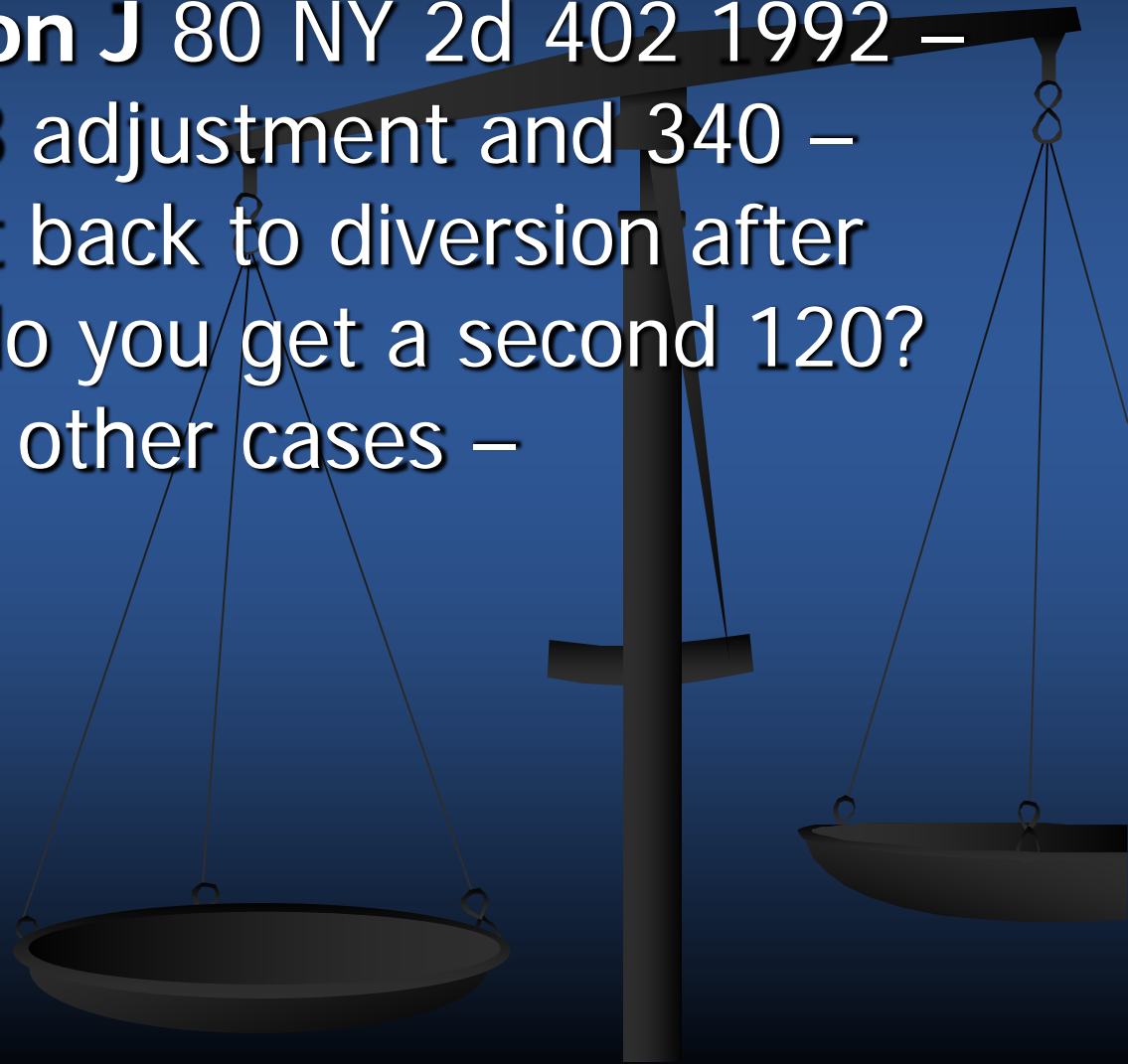
- **Synopsis**

- Juvenile was adjudicated delinquent in the **Family Court**, Tompkins County, Sherman, J., for committing **acts** which, if committed by an adult, would constitute crimes of sexual misconduct and first-degree sexual abuse. Juvenile appealed. The Supreme Court, Appellate Division, [Cardona](#), P.J., [216 A.D.2d 645](#), [627 N.Y.S.2d 812](#), affirmed. Leave to appeal was granted, and the Court of Appeals, Smith, J., held that: (1) **appearance** on first petition begins time period for commencing fact-finding hearing when petition is refiled due to dismissal of first petition; -In [Matter of Robert O.](#), [87 N.Y.2d 9](#), [637 N.Y.S.2d 329](#), [660 N.E.2d 1108](#), this Court did not reach the issue of whether the 60-day period commences with the initial **appearance** on the first petition or with a subsequent petition.<sup>1</sup> We hold that under the facts here the 60-day period commences with the initial **appearance** on the first petition. <sup>3</sup> Here, appellant's request for time in which to conduct discovery and file motions made compliance with the 60-day speedy trial requirement impossible. when counsel seeks time for motions, which would delay the fact-finding hearing beyond the statutory speedy trial period, counsel arguably waives a \*210 speedy trial (see, [Sobie](#), Practice Commentary, McKinney's Cons.Laws. of N.Y., Book 29-A, [Family Ct. Act § 332.2](#), at 430-431),



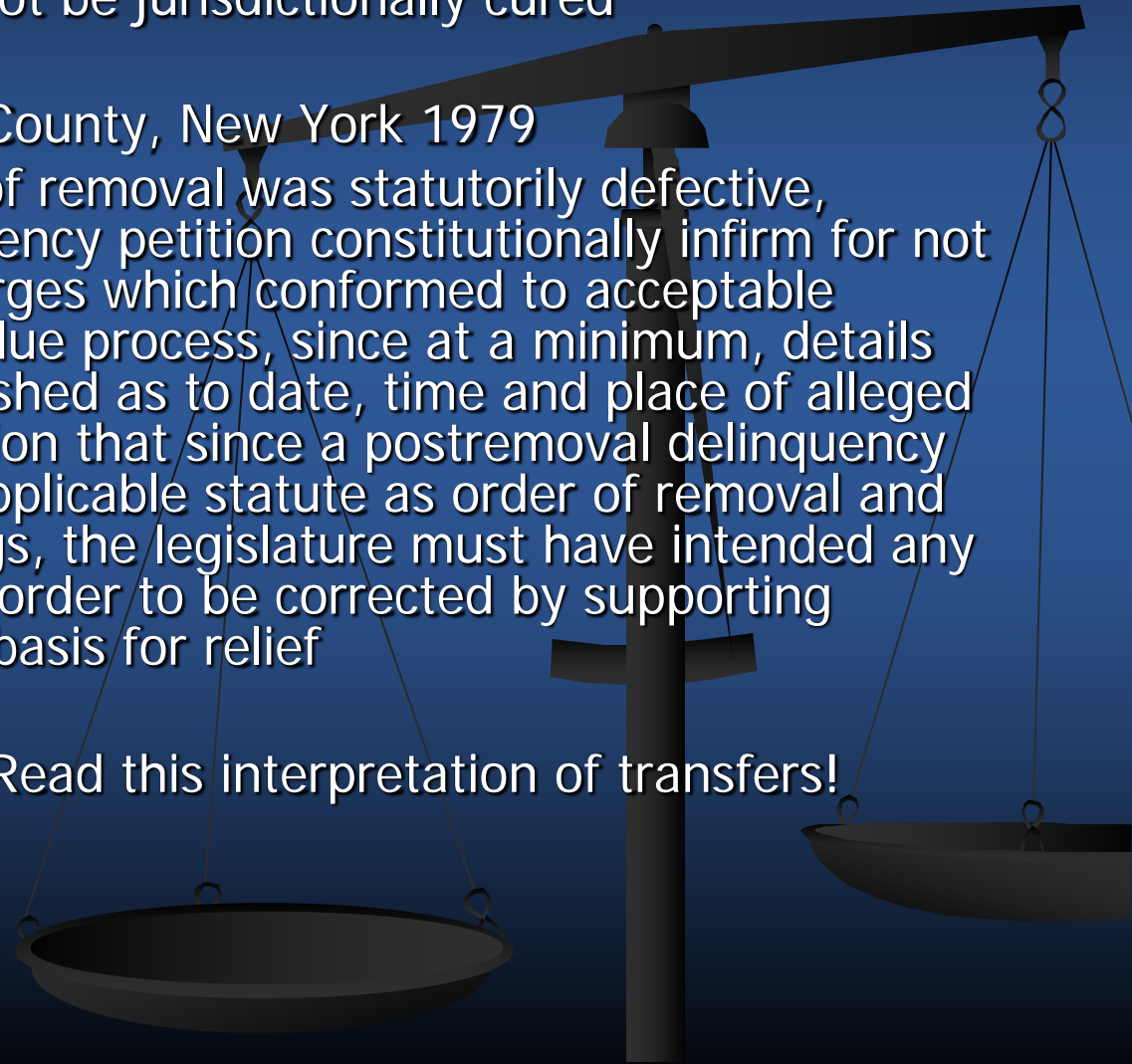
# Matter of Aaron J

- **Matter of Aaron J** 80 NY 2d 402 1992 –  
speedy trial 308 adjustment and 340 –  
120 days if sent back to diversion after  
petition filed ( do you get a second 120?  
Reconciled with other cases –



# In the Matter of ERIC K

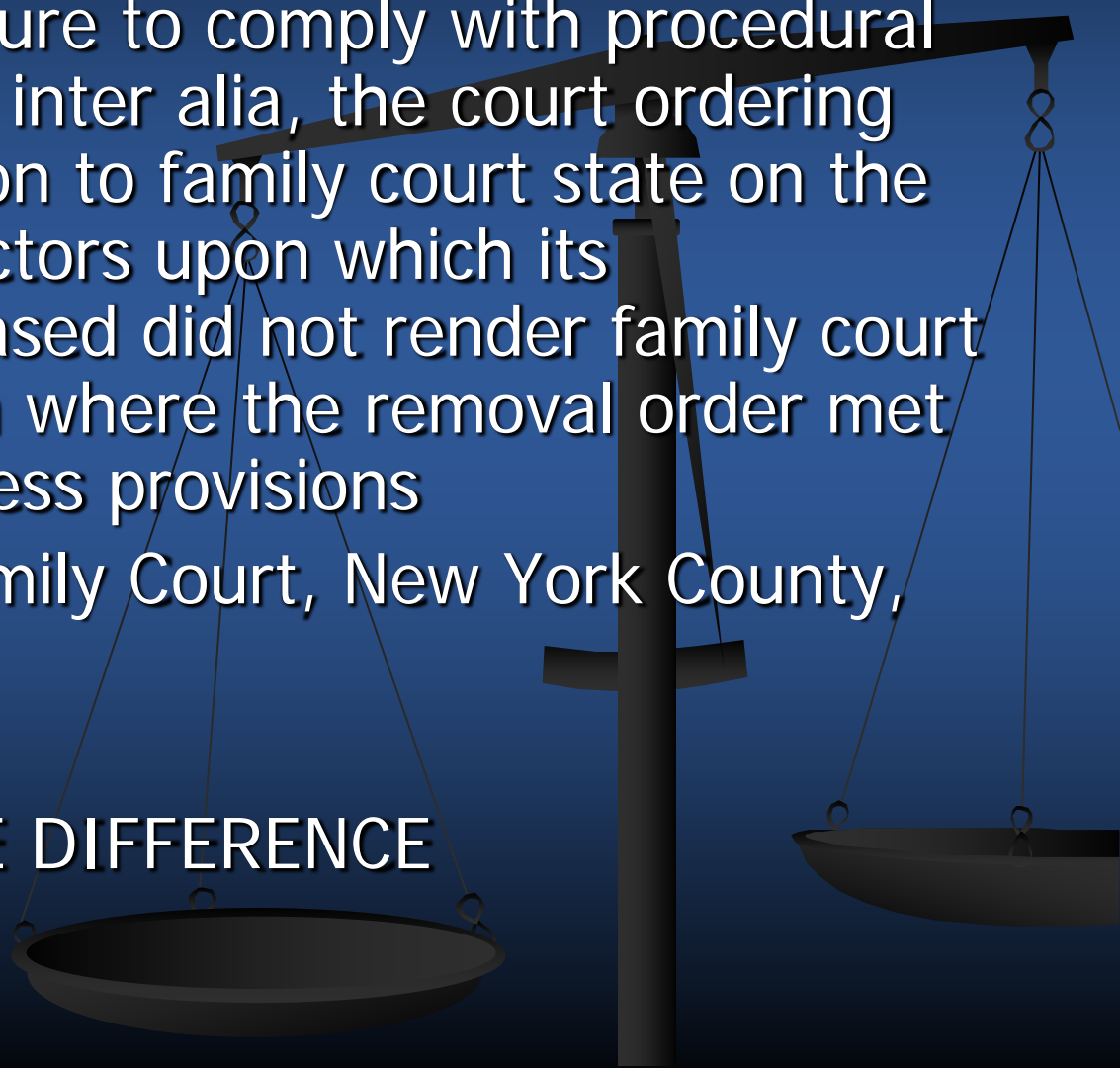
- Defective transfer – cannot be jurisdictionally cured
- 100 Misc.2d 796
- Family Court, Richmond County, New York 1979
- the criminal court order of removal was statutorily defective, rendering instant delinquency petition constitutionally infirm for not providing a notice of charges which conformed to acceptable standards of procedural due process, since at a minimum, details ought to have been furnished as to date, time and place of alleged incident, and (2) contention that since a postremoval delinquency petition was defined in applicable statute as order of removal and pleadings and proceedings, the legislature must have intended any lack of clarity in removal order to be corrected by supporting documents, provided no basis for relief
- NEED TO SYNOPIZE!!!! Read this interpretation of transfers!





# In the Matter of Claudia N

- criminal court's failure to comply with procedural requirements that, inter alia, the court ordering removal of an action to family court state on the record factor or factors upon which its determination is based did not render family court without jurisdiction where the removal order met statutory due process provisions
- 116 Misc.2d 73 Family Court, New York County, New York 1982
- NEED TO OUTLINE DIFFERENCE



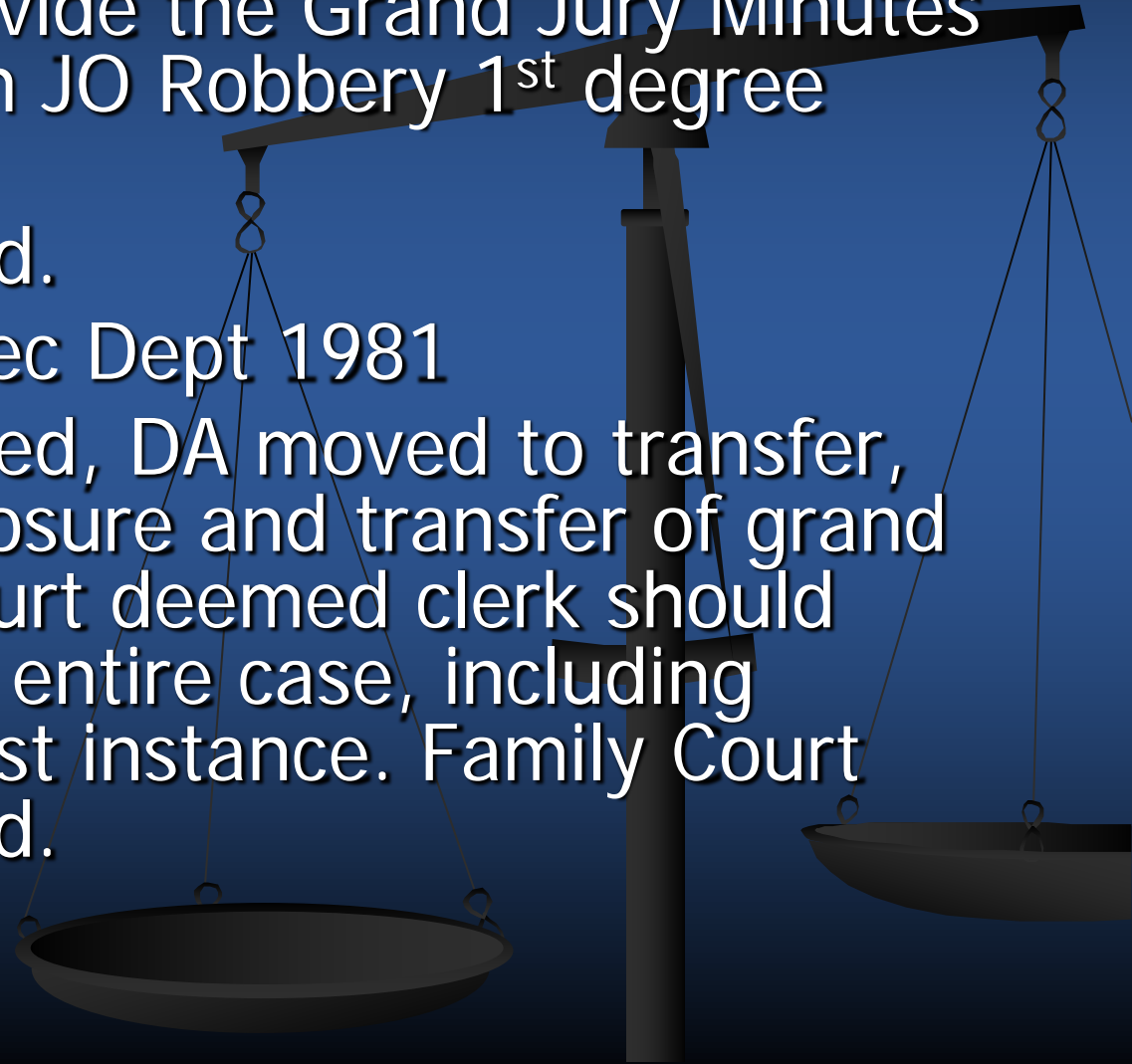
# In the Matter of MELEICK H

## ■ Synopsis

- In juvenile delinquency proceedings, juvenile petitioned to dismiss accusatory instrument charging him with first-degree rape as designated felony. The Family Court, Kings County, Bogacz, J., held that: (1) Family Court and criminal justice system had concurrent original jurisdiction over designated felony offenses specified in Family Court Act, including first-degree rape; (2) district attorney's decision not to prosecute crime as juvenile offender charge in criminal justice system did not preclude prosecution of case in Family Court as designated felony; and (3) even assuming that Family Court lacked concurrent original jurisdiction, district attorney's consideration of case and decision not to prosecute operated as sufficient exercise of original jurisdiction by criminal justice system to allow subsequent designated felony petition to be filed in Family Court.
- 170 Misc.2d 230 Family Court, Kings County, New York 1996

# In the Matter of GLENFORD S

- Clerk did not provide the Grand Jury Minutes in the transfer on JO Robbery 1<sup>st</sup> degree case.
- Petition dismissed.
- 78 A.D.2d 350 Sec Dept 1981
- Grand jury indicted, DA moved to transfer, objected to disclosure and transfer of grand jury minutes. Court deemed clerk should have transferred entire case, including minutes at earliest instance. Family Court petition dismissed.



# Ct Appeals reversed Glenford decision

- Court of Appeals of New York.
- In the Matter of LARRY W., v.
- CORPORATION COUNSEL OF CITY OF NEW YORK, &
- In the Matter of GLENFORD S., v.
- DISTRICT ATTORNEY OF KINGS COUNTY, 55 N.Y.2d 244 1982.
- GJ minutes not automatically disclosed to Respondent

# Matter of GARY S

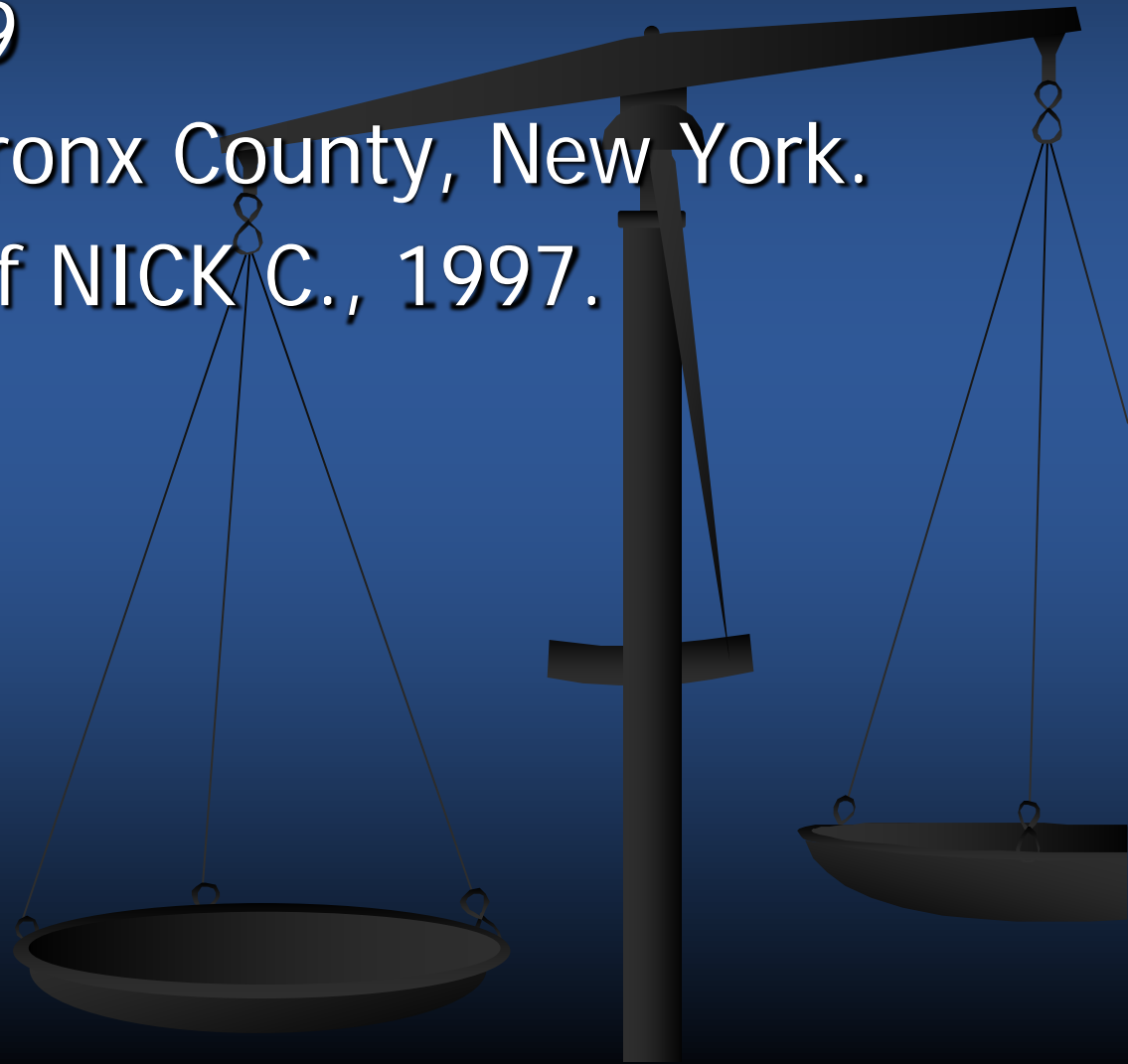
- In the Matter of GARY S. 100 Misc.2d 854



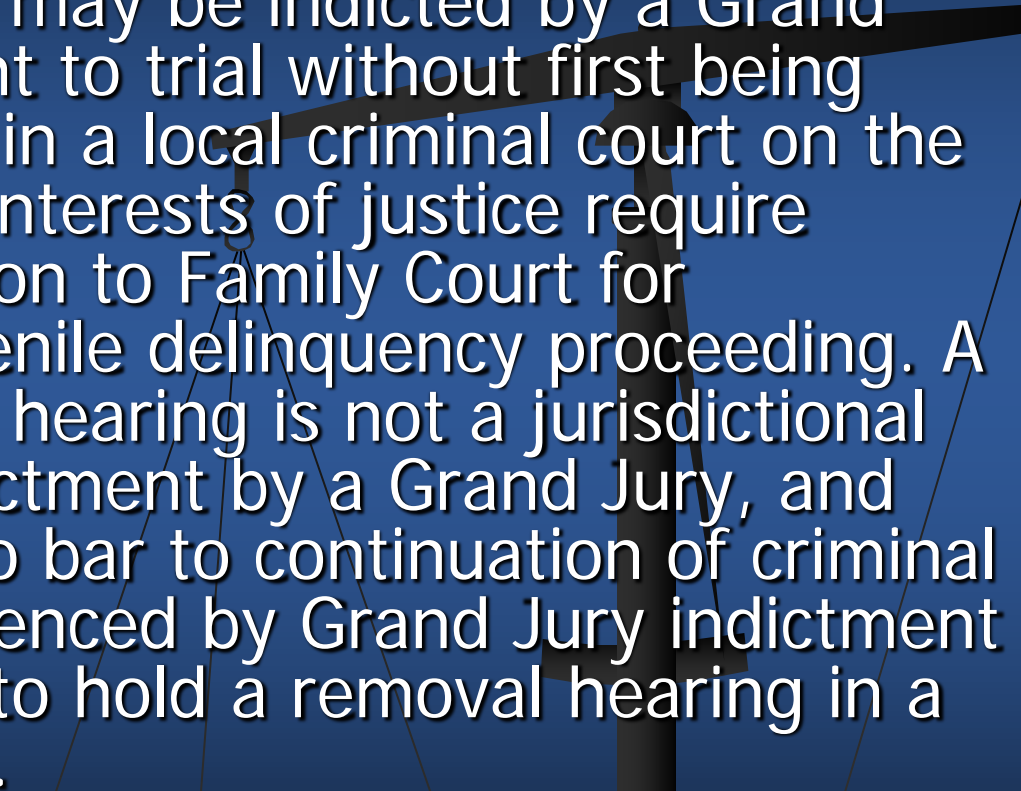


# In The Matter of NICK C

- 172 Misc.2d 739
- Family Court, Bronx County, New York.
- In The Matter of NICK C., 1997.



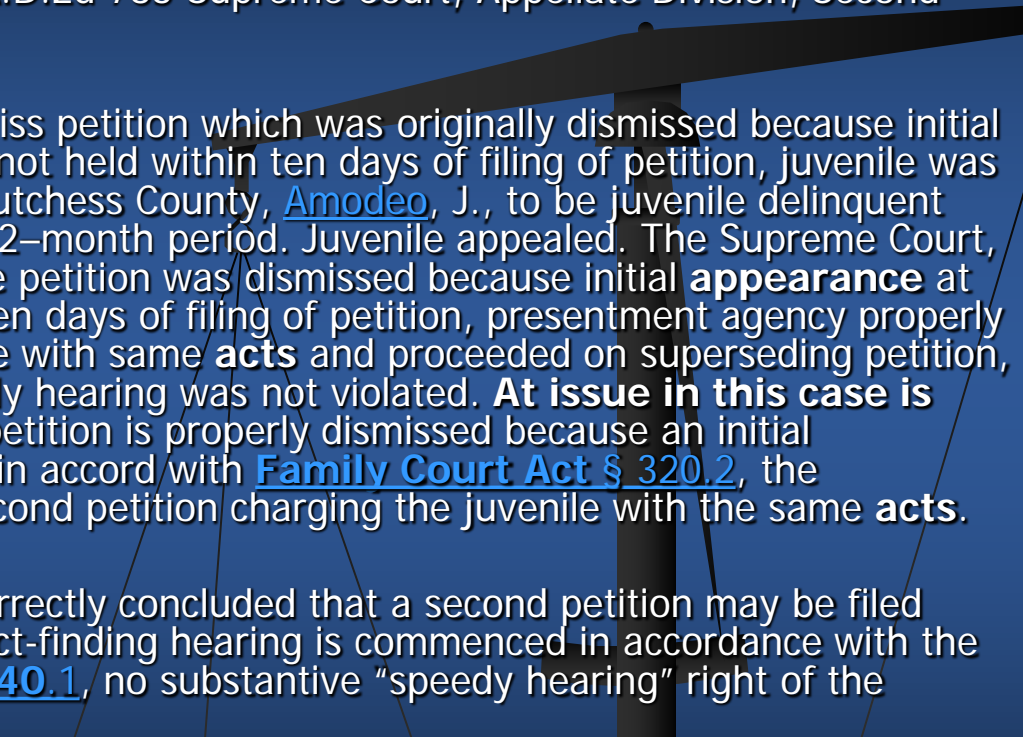
# In the Matter of Daniel VEGA & BELL

- a juvenile offender may be indicted by a Grand Jury and be brought to trial without first being afforded a hearing in a local criminal court on the issue whether the interests of justice require removal of the action to Family Court for treatment as a juvenile delinquency proceeding. A local criminal court hearing is not a jurisdictional prerequisite to indictment by a Grand Jury, and thus there exists no bar to continuation of criminal proceedings commenced by Grand Jury indictment despite the failure to hold a removal hearing in a local criminal court.
- 

# WAIT?! IF THIS IS TRUE \_ HOW CAN YOU FILE?

## Designated Felonies in Family Court

- All Designated Felonies listed in FCA 301.2(8) remain the same, however, the age is raised to 16/17
- Note that for person who commits a crime at 16 or 17, to be adjudicated a JD for a designated felony, the charge must have been originated in the Youth Part and then transferred to Family Court because no felony act committed by a person at age 16 or 17 may be initiated in Family Court.

- 
- In the Matter of ROBERT O. 207 A.D.2d 783 Supreme Court, Appellate Division, Second Department, New York. 1994.
  - **Synopsis**
  - Following denial of motion to dismiss petition which was originally dismissed because initial **appearance** at arraignment was not held within ten days of filing of petition, juvenile was adjudged in the **Family Court**, Dutchess County, [Amodeo, J.](#), to be juvenile delinquent and was placed on probation for 12-month period. Juvenile appealed. The Supreme Court, Appellate Division, held that where petition was dismissed because initial **appearance** at arraignment was not held within ten days of filing of petition, presentment agency properly filed new petition charging juvenile with same **acts** and proceeded on superseding petition, given that juvenile's right to speedy hearing was not violated. **At issue in this case is whether**, in a situation where a petition is properly dismissed because an initial **appearance** was not timely held in accord with [Family Court Act § 320.2](#), the presentment agency may file a second petition charging the juvenile with the same **acts**.
  - 
  - In our view, the **Family Court** correctly concluded that a second petition may be filed and, so long as the subsequent fact-finding hearing is commenced in accordance with the dictates of [Family Court Act § 340.1](#), no substantive "speedy hearing" right of the juvenile will be violated.
  -

# “Interest of Justice” Test (CPL 722.22(2))

In order to remove *ALL* JO and certain AO Felonies to Family Court, The Judge of the Youth Part will be required to find that removal would be in the interest of justice after considering the factors below (*CPL 722.22(2)*):

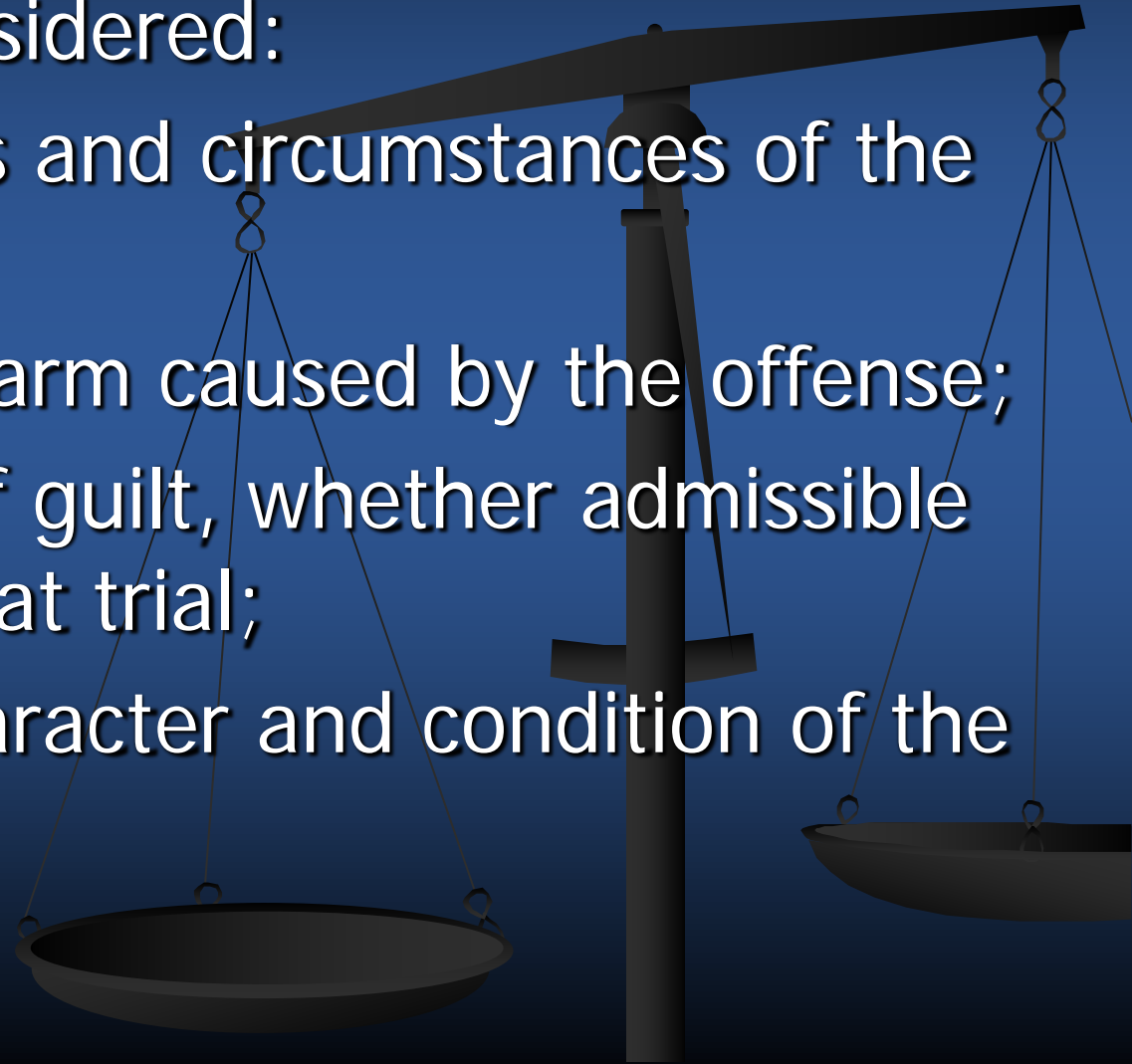
- Seriousness and circumstances of the offense
- Extent of harm
- Evidence of guilt (admissible or inadmissible)
- History, character, condition of defendant
- Purpose and affect of imposing an authorized sentence
- Impact of removal on safety or welfare of community
- Impact of removal on public confidence in criminal justice system
- Where appropriate, attitude of victim of the action
- Any other facts showing conviction would serve no useful purpose



# Criminal Court Removal

Factors to be considered:

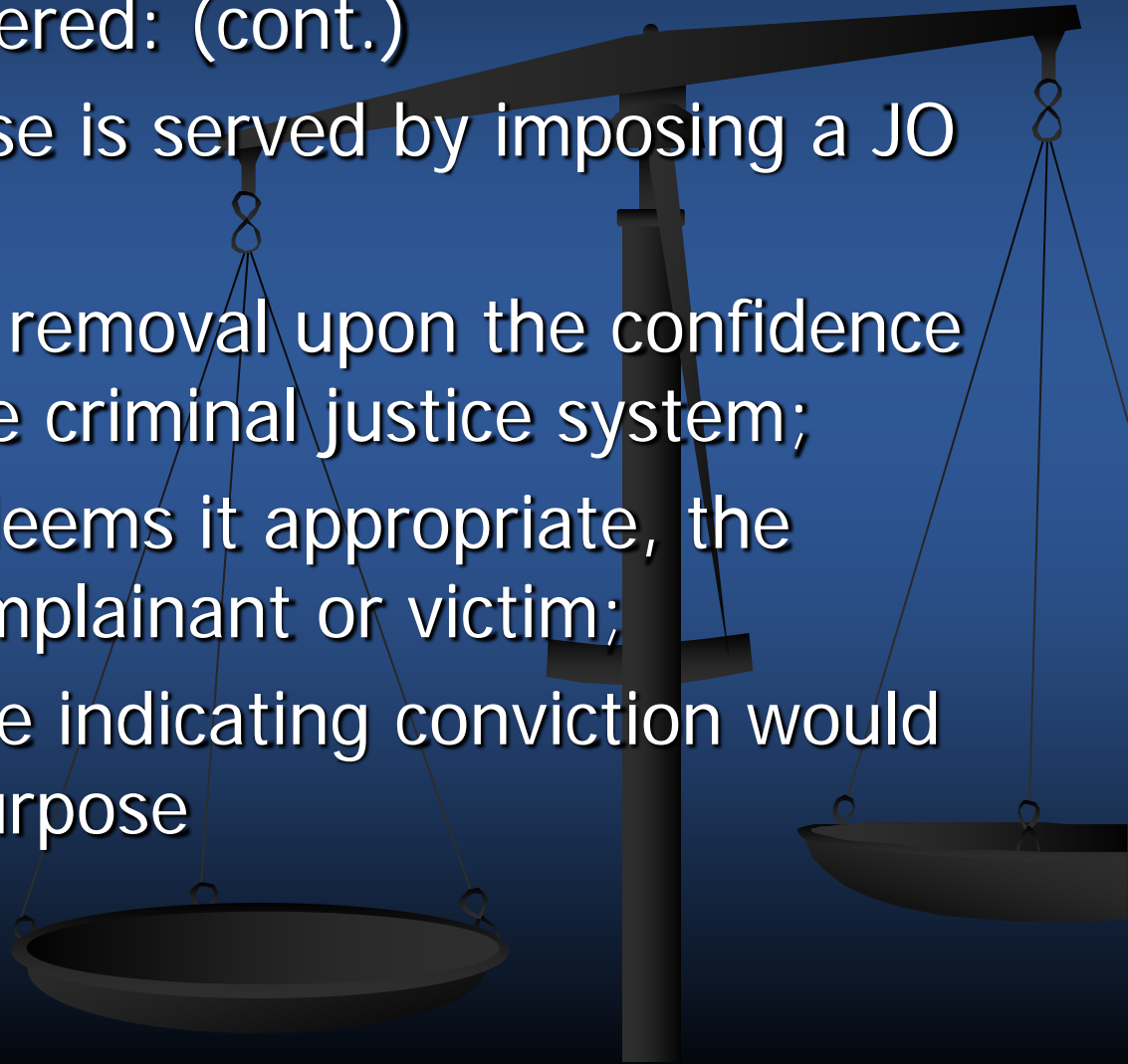
- The seriousness and circumstances of the crime;
- The extent of harm caused by the offense;
- The evidence of guilt, whether admissible or inadmissible at trial;
- The history, character and condition of the Defendant;



# Criminal Court Removal

Factors to be considered: (cont.)

- Whether a purpose is served by imposing a JO sentence;
- The impact of the removal upon the confidence of the public in the criminal justice system;
- Where the court deems it appropriate, the attitude of the complainant or victim;
- Any other evidence indicating conviction would serve no useful purpose



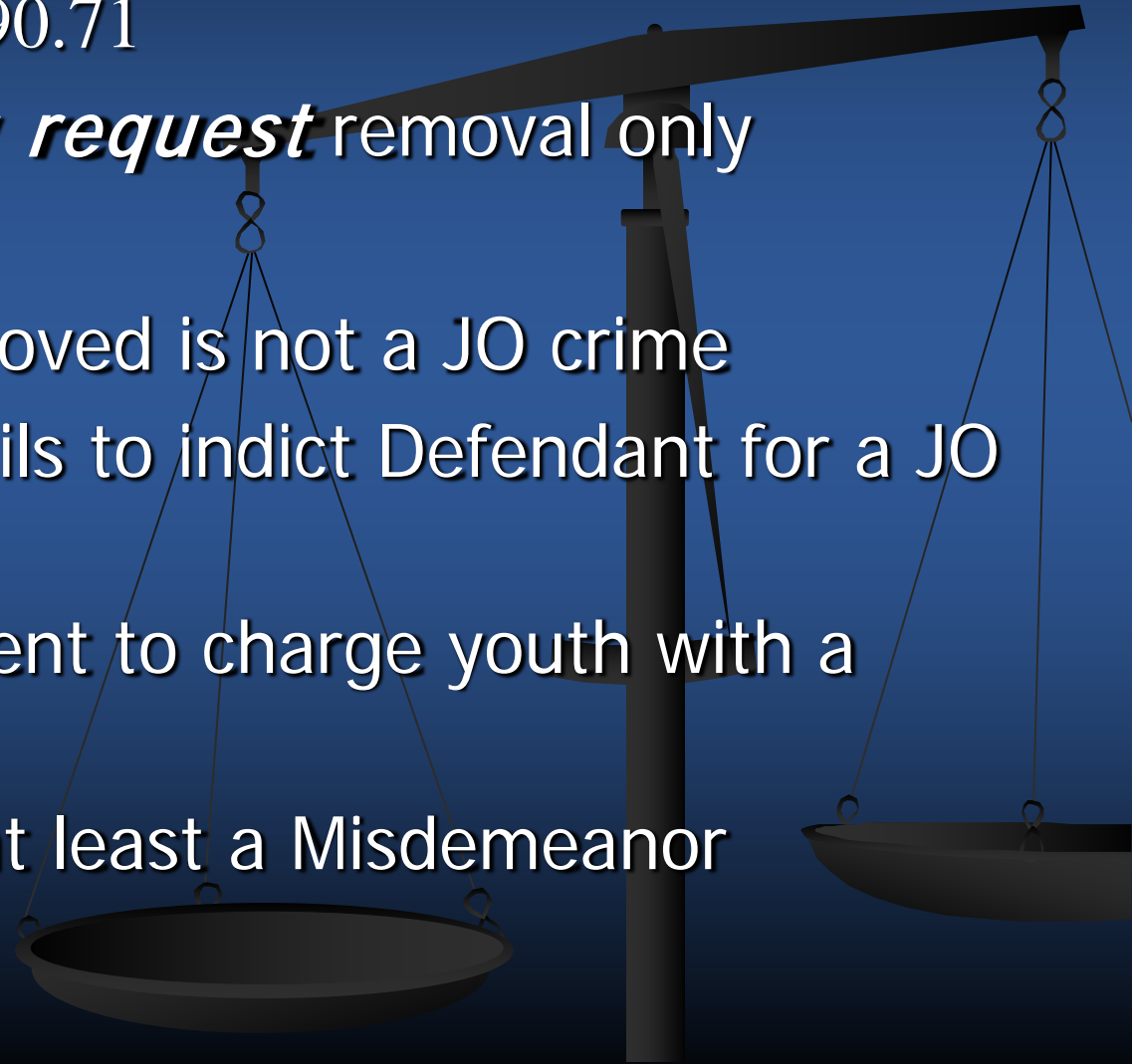
# Grand Jury Removal

Pursuant to CPL § 190.71

The Grand Jury may *request* removal only

When:

- The act to be removed is not a JO crime
- The Grand Jury fails to indict Defendant for a JO crime
- Evidence is sufficient to charge youth with a non-JO crime
- The act must be at least a Misdemeanor

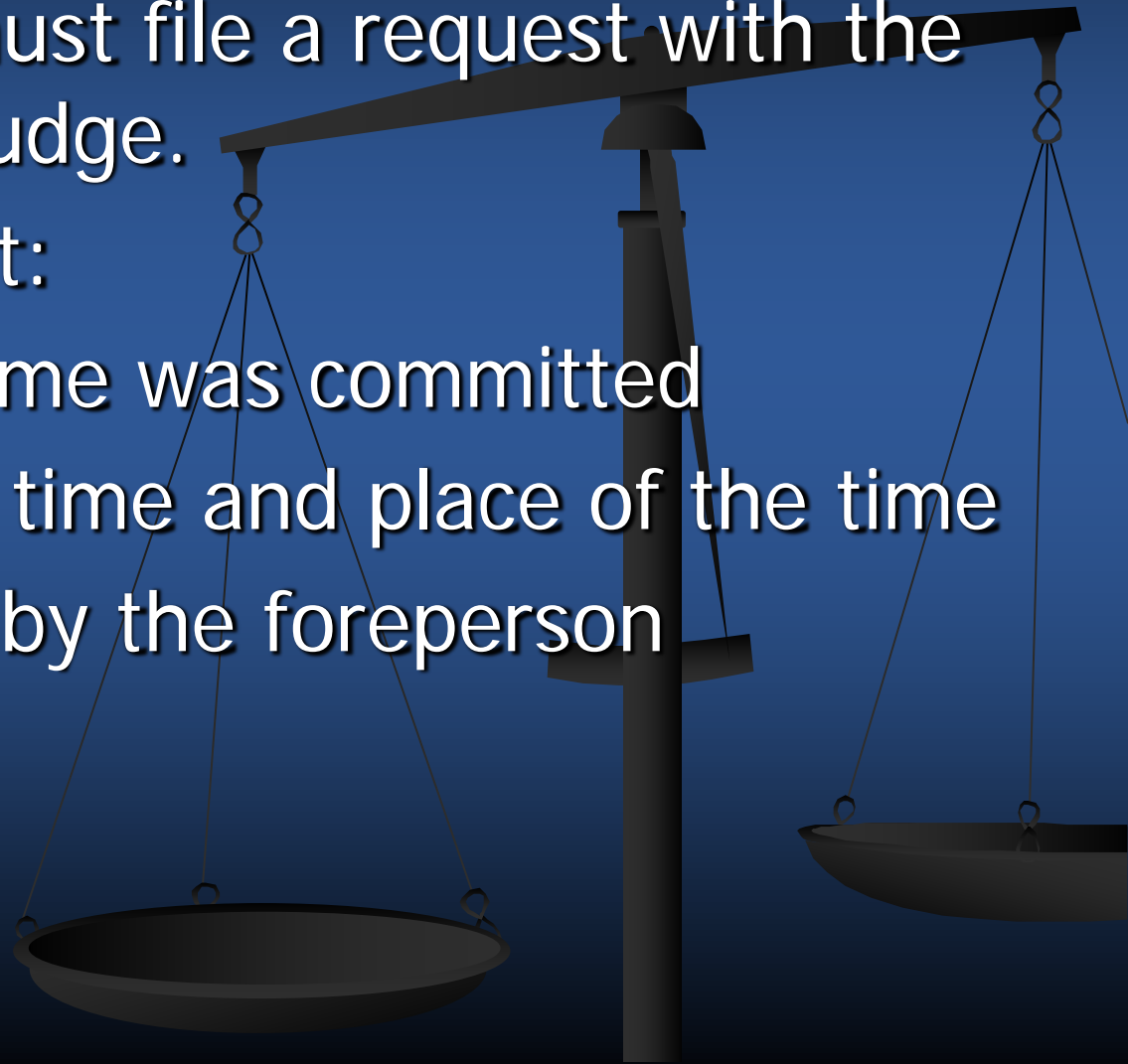


# Grand Jury Removal

The foreperson must file a request with the superior court judge.

That request must:

- Allege that a crime was committed
- Specify the act, time and place of the time
- Must be signed by the foreperson



# Grand Jury Removal



Upon the filing of such Grand Jury request, the court *must*, unless the request is improper or insufficient on its face, issue an order approving such request and direct that the charge be removed to Family Court

**Note: the court (and DA) must annex to the Order as part thereof a certified copy (with the seal) of the grand jury request**



# Superior Court Removal



A Defendant may move in the superior court which would exercise the trial jurisdiction of the offense to family Court.

Conditions required:

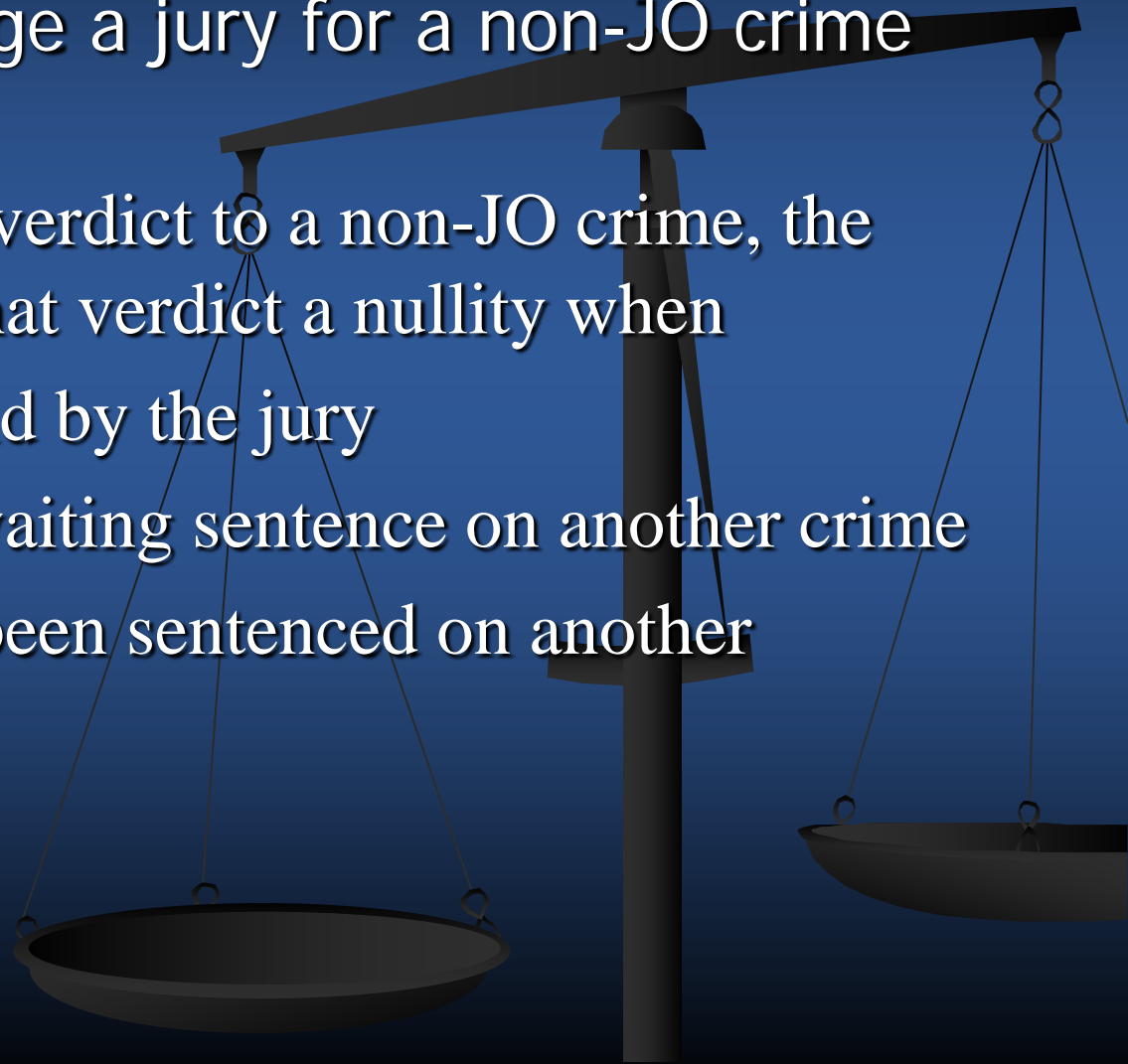
- A felony complaint must be pending
- Defendant cannot have waived a preliminary hearing pursuant to CPL 180.75(2)
- All factors of CPL 210.43 must be considered

# Verdict Following Trial

The Court may charge a jury for a non-JO crime (see CPL §300.50).

When the Jury with a verdict to a non-JO crime, the court must render that verdict a nullity when

- A JO charge is found by the jury
- The defendant is awaiting sentence on another crime
- The defendant has been sentenced on another conviction



# Verdict Following Trial



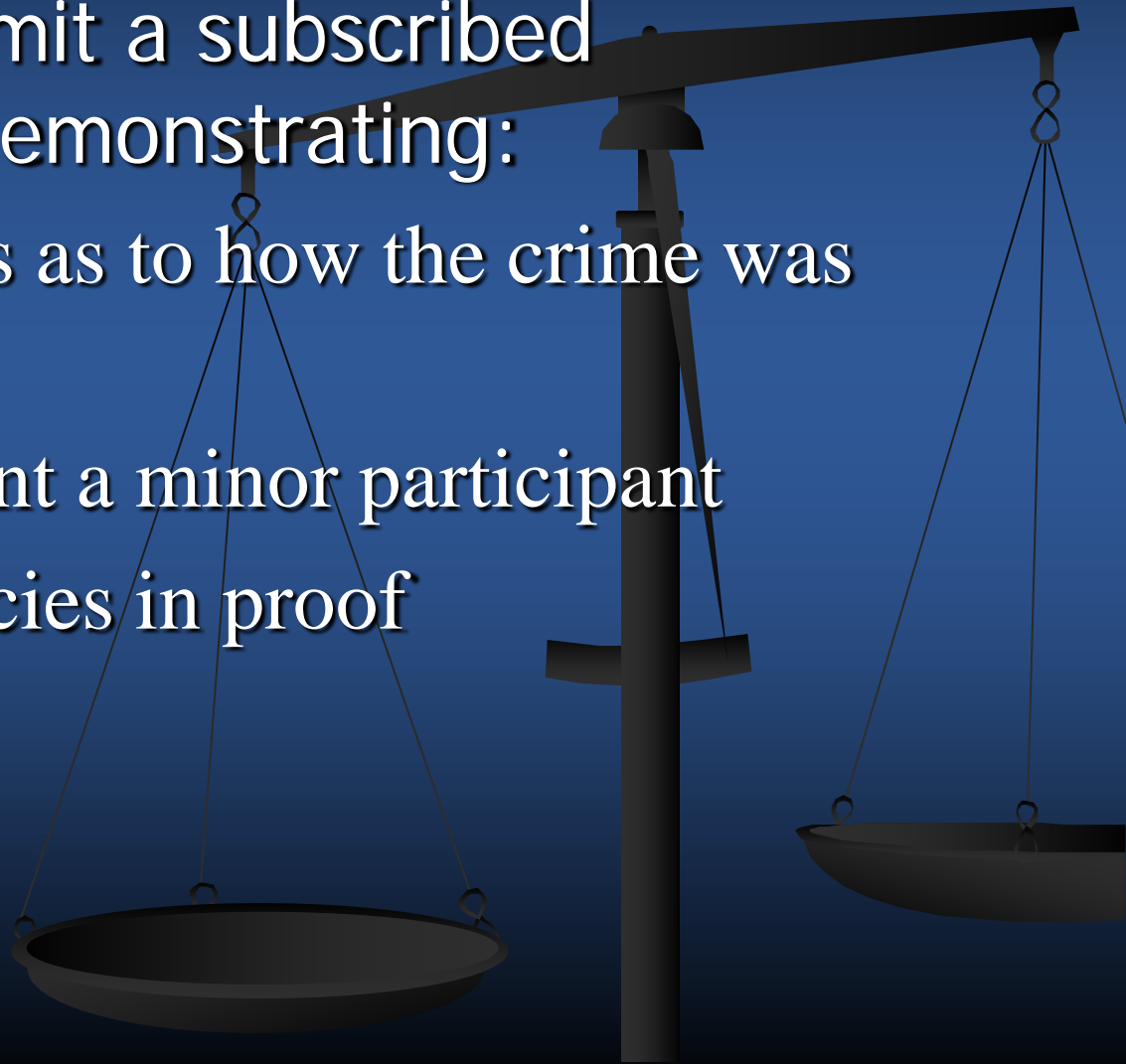
When a verdict is not set aside pursuant to CPL 310.85(2), then the verdict must be vacated and replaced by a juvenile delinquency fact determination

The matter must be removed to the Family Court for Disposition [CPL 310.85(3)]

# Plea Bargain Removals

The DA must submit a subscribed memorandum demonstrating:

- Mitigating factors as to how the crime was committed
- Was the Defendant a minor participant
- Possible deficiencies in proof



# Order of Removal



## A Personal Note

- The Presentment Agency is limited to the Petition (in this case the Order of Removal)
- Each and every act must be included in the Order
- Do not assume we can get a lesser included crime  
(as Nick would say "charge more stuff")



# Order of Removal



Practical issues:

- Contact the County Attorney's office as soon as possible.
- Draft the Order in advance for review
- Provide all supporting depositions and other information
- Insure the arresting Police Department is available (Depo's are frequently needed)