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NEW YORK LESSER INCLUDED OFFENSES (AUGUST 2015)

Penal Law §, Offense Name	Potential Lesser Included Offense	LIO?	Authority [I] = Implied
100.05(1), Criminal Solicitation 4th	PL 100.00, Criminal Solicitation 5th	Yes	<i>People v Dossinger</i> , 106 AD2d 661 (2nd Dept 1984) [I]
105.10(1), Conspiracy 4th	PL 105.00, Conspiracy 6th	Yes	<i>People v Crea</i> , 126 AD2d 556 (2nd Dept 1987) <i>People v Sieteski</i> , 241 AD2d 926 (4th Dept 1997)
	PL 105.05(1), Conspiracy 5th	Yes	<i>People v Crea</i> , 126 AD2d 556 (2nd Dept 1987)
105.15, Conspiracy 2nd	PL 105.00, Conspiracy 6th	Yes	<i>People v Vizzini</i> , 183 AD2d 302 (4th Dept 1992)
	PL 105.05(1), Conspiracy 5th	Yes	<i>People v Sica</i> , 163 AD2d 541 (2nd Dept 1990) [I] <i>People v Vizzini</i> , 183 AD2d 302 (4th Dept 1992)
	PL 105.10, Conspiracy 4th	Yes	<i>People v Sica</i> , 163 AD2d 541 (2nd Dept 1990) <i>People v Vizzini</i> , 183 AD2d 302 (4th Dept 1992)
105.17, Conspiracy 1st	PL 105.10(2), Conspiracy 4th	Yes	<i>People v Theriault</i> , 75 AD2d 971 (3rd Dept 1980) (abrogated on other grounds by <i>People v Ely</i> , 68 NY2d 520 [1986])
	PL 105.13, Conspiracy 3rd	Yes	<i>People v Theriault</i> , 75 AD2d 971 (3rd Dept 1980) (abrogated on other grounds by <i>People v Ely</i> , 68 NY2d 520 [1986])
Art 120, Assault/ attempted assault, any degree, intentional	PL 240.25(1), Harassment 1st	Yes (for pleas)	CPL 220.20(1)(f) [“Where the crime charged is assault or attempted assault, in any degree, allegedly committed by intentionally causing or attempting to cause physical injury to a person by the immediate use of physical force against him ... the offense of harassment, as defined in [Penal Law 240.25(1)], is deemed to constitute a lesser included offense.”]
120.00(1), Assault 3rd (attempt)	PL 240.26, Harassment 2nd	No	<i>People v Repanti</i> , 24 NY3d 706 (2015)
120.00(1), Assault 3rd	PL 240.25, Harassment 1st	No	<i>People v Moyer</i> , 27 NY2d 252 (1970)
120.04-a(4), Aggravated Vehicular Assault 1st	PL 120.05(4), Assault 2nd	No	<i>People v Joseph</i> , 75 AD3d 1080 (4th Dept 2010)
	VTL 1192(4-a), Driving While Ability Impaired	No	<i>People v Joseph</i> , 75 AD3d 1080 (4th Dept 2010)
120.05(1), Assault 2nd	PL 120.00(1), Assault 3rd	Yes	<i>People v Snipes</i> , 112 AD2d 810 (1st Dept 1985)
	PL 120.00(2), Assault 3rd	Yes	<i>People v Funchess</i> , 284 AD2d 478 (2nd Dept 2001) [I]
	PL 120.20, Reckless Endangerment	No	<i>People v Bryant</i> , 85 AD2d 575 (1st Dept 1981)
120.05(2), Assault 2nd	PL 120.00(1), Assault 3rd	Yes	<i>People v Claramunt</i> , 121 AD2d 237 (1st Dept 1986) <i>People v Zayas</i> , 140 AD2d 395 (2nd Dept 1988)

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			<i>People v Richard</i> , 30 AD3d 750 (3rd Dept 2006)
	PL 120.00(2), Assault 3rd	Yes	<i>People v Nealy</i> , 143 AD2d 1057 (2nd Dept 1988) <i>People v Walker</i> , 151 AD2d 980 (4th Dept 1989) [I]
	PL 120.00(3), Assault 3rd	Yes	<i>People v Beckford</i> , 49 AD3d 547 (2nd Dept 2008) [I] <i>People v Winbush</i> , 165 AD2d 909 (3rd Dept 1990)
	PL 265.01(2), Criminal Possession of a Weapon 4th	No	<i>People v Mitchell</i> , 216 AD2d 863 (4th Dept 1995)
120.05(3), Assault 2nd (attempt)	PL 205.30, Resisting Arrest	No	<i>People v Roberts</i> , 99 AD2d 761 (2nd Dept 1984) [Note: attempted 120.05[3] is a legal impossibility- <i>People v Campbell</i> , 72 NY2d 602 [1988]]
120.05(3), Assault 2nd	PL 120.00(1), Assault 3rd	No	<i>People v Praetz</i> , 115 AD2d 624 (2nd Dept 1985) <i>People v Winslow</i> , 153 AD2d 965 (3rd Dept 1989)
	PL 195.05, Obstructing Governmental Administration 2nd	Yes	<i>People v Nisselbeck</i> , 85 AD3d 1206 (3rd Dept 2011) <i>People v Sullivan</i> , 284 AD2d 917 (4th Dept 2001)
	PL 205.30, Resisting Arrest	No	<i>People v Winslow</i> , 153 AD2d 965 (3rd Dept 1989) <i>People v Ranieri</i> , 144 AD2d 1006 (4th Dept 1988)
120.05(4), Assault 2nd	PL 120.00(2), Assault 3rd	Yes	<i>People v Ryan</i> , 55 AD3d 960 (3rd Dept 2008) [I]
	PL 120.00(3), Assault 3rd	Yes	<i>People v Brown</i> , 17 NY3d 863 (2011)
120.05(6), Assault 2nd	PL 120.00(1), (2), Assault 3rd	No	<i>People v Miguel</i> , 53 NY2d 920 (1981) <i>People v Miller</i> , 176 AD2d 824 (2nd Dept 1991)
120.05(7), Assault 2nd	PL 120.00(1), Assault 3rd	Yes	<i>People v Diaz</i> , 175 AD2d 412 (3rd Dept 1991)
	PL 120.00(2), Assault 3rd	Yes	<i>People v Artis</i> , 63 AD3d 1174 (2nd Dept 2009) <i>People v Thomas</i> , 56 AD3d 1241 (4th Dept 2008)
120.06, Gang Assault 2nd	PL 120.00, Assault 3rd	Yes	<i>People v Terry</i> , 44 AD3d 1157 (3rd Dept 2007)
120.07, Gang Assault 1st	PL 120.00, Assault 3rd	Yes	<i>People v Sanchez</i> , 57 AD3d 1 (1st Dept 2008), <i>affd</i> 13 NY3d 554 (2009) <i>People v Corea</i> , 25 AD3d 563 (2nd Dept 2006)
	PL 120.05, Assault 2nd	Yes	<i>People v Sanchez</i> , 57 AD3d 1 (1st Dept 2008), <i>affd</i> 13 NY3d 554 (2009)
	PL 120.06, Gang Assault 2nd	Yes	<i>People v Sanchez</i> , 57 AD3d 1 (1st Dept 2008), <i>affd</i> 13 NY3d 554 (2009) <i>People v Ali</i> , 32 AD3d 522 (2nd Dept 2006)
120.10, Assault 1st (attempt)	PL 265.03, Criminal Possession of a Weapon 2nd	No	<i>People v Fournier</i> , 70 AD2d 491 (2nd Dept 1979)
120.10(1), Assault 1st	PL 120.00(2), Assault 3rd	Yes	<i>People v Ryan</i> , 55 AD3d 960 (3rd Dept 2008)
	PL 120.00(3), Assault 3rd	Yes	<i>People v Arzu</i> , 240 AD2d 217 (1st Dept 1997) [I] <i>People v Beckford</i> , 49 AD3d 547 (2nd Dept 2008) [I] <i>People v Leonardo</i> , 89 AD2d 214 (4th Dept 1982), <i>affd</i> 60 NY2d 683 (1983)
	PL 120.05(2), Assault 2nd	Yes	<i>People v Aruz</i> , 253 AD2d 592 (1st Dept 1998) <i>People v Beckford</i> , 49 AD3d 547 (2nd Dept 2008) <i>People v Ryan</i> , 55 AD3d 960 (3rd Dept 2008) [I]

Penal Law §, Offense Name	Potential Lesser Included Offense	LIO?	Authority [I] = Implied
			<i>People v Burnett</i> , 100 AD3d 1561 (4th Dept 2012)
	PL 120.05(4), Assault 2nd	Yes	<i>People v Moore</i> , 66 AD3d 707 (2nd Dept 2009), <i>affd on other grounds</i> 15 NY3d 811 (2010) <i>People v Ryan</i> , 55 AD3d 960 (3rd Dept 2008) [I] <i>People v Leonardo</i> , 89 AD2d 214 (4th Dept 1982), <i>affd</i> 60 NY2d 683 (1983) <i>People v Burnett</i> , 100 AD3d 1561 (4th Dept 2012)
120.10(3), Assault 1st	PL 120.00(2), Assault 3rd	Yes	<i>People v Van Norstrand</i> , 85 NY2d 131 (1995) <i>People v Swinton</i> , 7 NY3d 776 (2006)
	PL 120.05(4), Assault 2nd	No	<i>People v White</i> , 38 AD3d 320 (1st Dept 2007)
	PL 120.25, Reckless Endangerment 1st	Yes	<i>People v Macon</i> , 14 AD3d 413 (1st Dept 2005) <i>People v Gutierrez</i> , 105 AD2d 754 (2nd Dept 1984) <i>People v Cotton</i> , 214 AD2d 994 (4th Dept 1995)
120.10(4), Assault 1st	PL 120.05(1), Assault 2nd	No	<i>People v Strawder</i> , 78 AD2d 810 (1st Dept 1980)
	PL 120.05(6), Assault 2nd	Yes	<i>People v Fuller</i> , 286 AD2d 910 (4th Dept 2001)
120.14(1), Menacing 2nd	PL 240.26(1), Harassment 2nd	No	<i>People v Bartkow</i> , 96 NY2d 770 (2001)
120.15, Menacing 3rd	PL 240.25(1), Harassment 1st	Yes (for pleas)	CPL 220.20(1)(f)
120.25, Reckless Endangerment 1st	PL 120.20, Reckless Endangerment 2nd	Yes	<i>People v Corliss</i> , 51 AD3d 79 (1st Dept 2008) <i>People v Zephirin</i> , 47 AD3d 649 (2nd Dept 2008) <i>People v Mitchell</i> , 288 AD2d 622 (3rd Dept 2001) <i>People v Leonardo</i> , 89 AD2d 214 (4th Dept 1982), <i>affd</i> 60 NY2d 683 (1983)
	PL 145.05, Criminal Mischief 3rd	No	<i>People v Sicurella</i> , 149 AD2d 983 (4th Dept 1989)
120.55(2), Stalking 2nd	PL 120.45(2), Stalking 4th	No	<i>People v Brown</i> , 77 AD3d 1190 (3rd Dept 2010)
121.12, Strangulation 2nd	PL 120.00(1), Assault 3rd	No	<i>People v Peterson</i> , 118 AD3d 1151 (3rd Dept 2014)
125.10, Criminally Negligent Homicide	VTL 1190, Reckless Driving	No	<i>People v Boice</i> , 89 AD2d 33 (3rd Dept 1982)
125.12, Vehicular Manslaughter 2nd	PL 125.10, Criminally Negligent Homicide	Yes	<i>People v Grove</i> , 272 AD2d 480 (2nd Dept 2000)
	VTL 1192, Driving While Intoxicated	Yes	<i>People v Grove</i> , 272 AD2d 480 (2nd Dept 2000) <i>People v Peryea</i> , 68 AD3d 1144 (3rd Dept 2009) <i>People v Osborne</i> , 60 AD3d 1310 (4th Dept 2009)
125.15(1), Manslaughter 2nd	PL 125.10, Criminally Negligent Homicide	Yes	<i>People v Heide</i> , 84 NY2d 943 (1994)
125.20, 485.05(1), Manslaughter 1st as a hate crime	PL 125.20, Manslaughter 1st	Yes	<i>People v DeLee</i> , 24 NY3d 603 (2014)
125.20(1), Manslaughter 1st	PL 120.00, Assault 3rd	Yes	<i>People v Sanchez</i> , 182 AD2d 458 (1st Dept 1992)
	PL 125.10, Criminally Negligent Homicide	Yes	<i>People v Helliger</i> , 96 NY2d 462 (2001)

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	PL 125.15(1), Manslaughter 2nd	Yes	<i>People v Evans</i> , 232 AD2d 275 (1st Dept 1996) <i>People v James</i> , 284 AD2d 549 (2nd Dept 2001) <i>People v Shaut</i> , 261 AD2d 960 (4th Dept 1999)
125.20(2), Manslaughter 1st	PL 120.10(1), Assault 1st	No	<i>People v Reome</i> , 101 AD2d 632 (3rd Dept 1984)
125.20(4), Manslaughter 1st	PL 125.15(1), Manslaughter 2nd	No	<i>People v Leak</i> , 129 AD3d 745 (2nd Dept 2015)
125.25(1), Murder 2nd (attempt)	PL 120.00(1), Assault 3rd (attempt)	Yes	<i>People v Saunders</i> , 210 AD2d 164 (1st Dept 1994) [I]
	PL 120.05(1) Assault 2nd (attempt)	Yes	<i>People v Cabassa</i> , 79 NY2d 722 (1992) <i>People v Smith</i> , 13 AD3d 1121 (4th Dept 2004)
	PL 120.05(2), Assault 2nd (or attempt)	No	<i>People v Martinez</i> , 134 AD2d 458 (2nd Dept 1987) <i>People v Hopkins</i> , 95 AD2d 870 (3rd Dept 1983) <i>People v Smith</i> , 13 AD3d 1121 (4th Dept 2004)
	PL 120.10(1), Assault 1st (or attempt)	No	<i>People v Lind</i> , 173 AD2d 179 (1st Dept 1991), <i>affd on other grounds sub nom.</i> , <i>People v Cabassa</i> , 79 NY2d 722 (1992) <i>People v Littlejohn</i> , 141 AD2d 850 (2nd Dept 1988)
	PL 120.25, Reckless Endangerment 1st	No	<i>People v Ramirez</i> , 55 NY2d 708 (1981)
125.25(1), Murder 2nd	PL 120.05(1), Assault 2nd	Yes	<i>People v Umana</i> , 158 AD2d 492 (2nd Dept 1990)
	PL 120.10(1), Assault 1st	No	<i>People v Alvarez</i> , 38 AD3d 930 (3rd Dept 2007) <i>People v Wyant</i> , 98 AD3d 1277 (4th Dept 2012)
	PL 125.10, Criminally Negligent Homicide	Yes	<i>People v Brooks</i> , 163 AD2d 832 (4th Dept 1990)
	PL 125.15(1), Manslaughter 2nd	Yes	<i>People v Ford</i> , 66 NY2d 428 (1985) <i>People v Sullivan</i> , 68 NY2d 495 (1986)
	PL 125.20(1), Manslaughter 1st	Yes	<i>People v Ford</i> , 66 NY2d 428 (1985) <i>People v Oliveri</i> , 29 AD3d 330 (1st Dept 2006) <i>People v Faison</i> , 265 AD2d 422 (2nd Dept 1999)
	PL 125.20(2), Manslaughter 1st	Yes	<i>People v Mox</i> , 84 AD3d 1723 (4th Dept 2011), <i>affd</i> 20 NY3d 936 (2012) [affirmative defense of extreme emotional disturbance]
125.25(2), Murder 2nd	PL 120.00(1), Assault 3rd	No	<i>People v Ashraf</i> , 186 AD2d 1057 (4th Dept 1992)
	PL 125.10, Criminally Negligent Homicide	Yes	<i>People v Ducasse</i> , 273 AD2d 399 (2nd Dept 2000)
	PL 125.15(1), Manslaughter 2nd	Yes	<i>People v Atkinson</i> , 7 NY3d 765 (2006)
125.25(3), Murder 2nd	PL 115.00(1), Criminal Facilitation 2nd	No	<i>People v Cable</i> , 96 AD2d 251 (1st Dept 1983), <i>revd on other grounds sub nom.</i> , <i>Matter of Anthony M.</i> , 63 NY2d 270 (1984)
	PL 125.10, Criminally Negligent Homicide	No	<i>People v Langlois</i> , 17 AD3d 772 (3rd Dept 2005)
	PL 125.15(1), Manslaughter 2nd	No	<i>People v Langlois</i> , 17 AD3d 772 (3rd Dept 2005)

Penal Law §, Offense Name	Potential Lesser Included Offense	LIO?	Authority [I] = Implied
	Underlying felony	Yes (for pleas)	CPL 220.20(1)(g)
125.25(4), Murder 2nd	PL 125.10, Criminally Negligent Homicide	Yes	<i>People v Rodriguez</i> , 69 AD3d 143 (2nd Dept 2009)
	PL 125.15(1), Manslaughter 2nd	No	<i>People v Mora</i> , 57 AD3d 571 (2nd Dept 2008) <i>People v Heslop</i> , 48 AD3d 190 (3rd Dept 2007) <i>People v Robinson</i> , 278 AD2d 798 (4th Dept 2000)
	PL 125.20(4), Manslaughter 1st	No	<i>People v Baker</i> , 14 NY3d 266 (2010)
125.27 (1)(a), Murder 1st (attempt)	PL 120.05(2), Assault 2nd (attempt)	No	<i>People v Carter</i> , 38 AD3d 1291 (4th Dept 2007)
	PL 120.10(1), Assault 1st (attempt)	No	<i>People v Carter</i> , 38 AD3d 1291 (4th Dept 2007)
125.27 (1)(a)(vi), Murder 1st	PL 115.00, Criminal Facilitation 4th	No	<i>People v Powell</i> , 304 AD2d 410 (1st Dept 2003)
125.27(1)(a)(vii), Murder 1st	PL 125.25(3), Murder 2nd	Yes	<i>People v Miller</i> , 6 NY3d 295 (2006)
130.25(2), Rape 3rd	PL 130.20(1), Sexual Misconduct	Yes	<i>People v Aglio</i> , 112 AD2d 440 (2nd Dept 1985) [I]
130.30, Rape 2nd	PL 130.65, Sexual Abuse 1st	No	<i>People v Holt</i> , 8 AD3d 1044 (4th Dept 2004)
130.30(1), Rape 2nd	PL 130.60, Sexual Abuse 2nd	No	<i>People v Gibson</i> , 2 AD3d 969 (3rd Dept 2003)
	PL 260.10, Endangering the Welfare of a Child	No	<i>People v Scott</i> , 67 AD3d 1052 (3rd Dept 2009), <i>aff'd on other grounds</i> 16 NY3d 589 (2011)
130.35, Rape 1st	PL 115.00(1), Criminal Facilitation 4th	No	<i>People v Simpson</i> , 175 AD2d 851 (2nd Dept 1991)
	PL 130.25(3), Rape 3rd	Yes/ No	CPL 300.50(6): PL 130.25(3) is not a lesser of any offense, but may be submitted as a lesser when (i) a reasonable view of the evidence supports a finding that the defendant committed the lesser and not the greater offense and (ii) both parties consent to its submission.
130.35(1), Rape 1st	PL 120.00, Assault 3rd	No	<i>People v Gillis</i> , 67 AD2d 1008 (2nd Dept 1979)
	PL 130.20, Sexual Misconduct	No	<i>People v Maxwell</i> , 260 AD2d 653 (3rd Dept 1999)
	PL 130.60(1), Sexual Abuse 2nd	No	<i>People v Shaw</i> , 115 AD2d 305 (4th Dept 1985)
	PL 130.65(1) Sexual Abuse 1st	No	<i>People v Wheeler</i> , 67 NY2d 960 (1986)
	PL 135.10, Unlawful Imprisonment	No	<i>People v Ploss</i> , 105 AD2d 1031 (3rd Dept 1984)
	PL 135.60, Coercion 2nd	No	<i>People v Tiedemann</i> , 111 AD2d 280 (2nd Dept 1985) <i>People v Catron</i> , 143 AD2d 468 (3rd Dept 1988) <i>People v Thurston</i> , 167 AD2d 964 (4th Dept 1990)
130.40(3), Criminal Sexual Act 3rd	PL 130.20(2), Sexual Misconduct (attempt)	Yes	<i>Matter of Justin D.</i> , 114 AD3d 941 (2nd Dept 2014)

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(attempt)			
130.45, Criminal Sexual Act 2nd	PL 130.40(2), Criminal Sexual Act 3rd	No	<i>People v Rivera</i> , 261 AD2d 709 (3rd Dept 1999)
	PL 130.65, Sexual Abuse 1st	No	<i>People v Holt</i> , 8 AD3d 1044 (4th Dept 2004)
130.50, Criminal Sexual Act 1st	PL 130.40(3), Criminal Sexual Act 3rd	Yes/ No	CPL 300.50(6)- PL 130.40(3) is not a lesser of any offense, but may be submitted as a lesser when (i) a reasonable view of the evidence supports a finding that the defendant committed the lesser and not the greater offense and (ii) both parties consent to its submission.
	PL 130.65, Sexual Abuse 1st	No	<i>People v Ford</i> , 76 NY2d 868 (1990)
130.50(1), Criminal Sexual Act 1st	PL 130.20(2), Sexual Misconduct	No	<i>People v Bruce</i> , 216 AD2d 913 (4th Dept 1995) (finding the elements of the offenses are identical)
	PL 130.40(2), Criminal Sexual Act 3rd	No	<i>People v Thompson</i> , 132 AD2d 885 (3rd Dept 1987), <i>revd on other grounds</i> 72 NY2d 410 (1988)
	PL 130.45(1), Criminal Sexual Act 2nd	No	<i>People v Bacchus</i> , 175 AD2d 248 (2nd Dept 1991)
130.65(1), Sexual Abuse 1st	PL 130.55, Sexual Abuse 3rd	Yes	<i>People v Del Campo</i> , 281 AD2d 279 (1st Dept 2001) [I] <i>Matter of Justin D.</i> , 114 AD3d 941 (2nd Dept 2014) <i>People v Fuller</i> , 50 AD3d 1171 (3rd Dept 2008) <i>People v Felton</i> , 145 AD2d 969 (4th Dept 1988)
	PL 130.60(2), Sexual Abuse 2nd	No	<i>People v Hughes</i> , 220 AD2d 529 (2nd Dept 1995)
	PL 130.60(2), Sexual Abuse 2nd	No	<i>People v Beecher</i> , 225 AD2d 943 (3rd Dept 1996)
130.65(3), Sexual Abuse 1st	PL 260.10(1), Endangering the Welfare of Child	No	<i>People v Berlin</i> , 39 AD3d 351 (1st Dept 2007)
130.75(1)(a), Course of Sexual Conduct against a Child 1st	PL 130.65(3), Sexual Abuse 1st	No	<i>People v Baker</i> , 123 AD3d 1378 (3rd Dept 2014)
130.75(1)(b), Course of Sexual Conduct against a Child 1st	PL 260.10(1), Endangering the Welfare of Child	No	<i>People v Beauharnois</i> , 64 AD3d 996 (3rd Dept 2009)
130.91, Sexually Motivated Felony	Underlying felony (e.g., PL 140.25, Burglary 2nd; PL 120.10, Assault 1st)	Yes	<i>People v Judware</i> , 75 AD3d 841 (3rd Dept 2010) <i>People v Dallas</i> , 119 AD3d 1362 (4th Dept 2014)
130.95, Predatory Sexual Assault	Underlying felony (e.g., PL 130.35(1), Rape 1st; PL 130.50(1), Criminal Sexual Act 1st)	Yes	<i>People v Ortiz</i> , 95 AD3d 1140 (2nd Dept 2012)
130.96, Predatory Sexual Assault against a Child	PL 130.35, Rape 1st	Yes	<i>People v Perez</i> , 87 AD3d 930 (1st Dept 2011) <i>People v Lawrence</i> , 81 AD3d 1326 (4th Dept 2011)
	PL 130.75(1)(a), Course of	Yes	<i>People v Alford</i> , 65 AD3d 1392 (3rd Dept 2009),

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	Sexual Conduct Against a Child 1st		<i>affd</i> 14 NY3d 846 (2010)
	PL 130.75(1)(b), Course of Sexual Conduct Against a Child 1st	Yes	<i>People v Reynolds</i> , 81 AD3d 1166 (3rd Dept 2011) <i>People v Slishevsky</i> , 97 AD3d 1148 (4th Dept 2012)
	PL 130.50, Criminal Sexual Act 1st	Yes	<i>People v Perez</i> , 87 AD3d 930 (1st Dept 2011)
	PL 130.50(3), Criminal Sexual Act 1st	Yes	<i>People v Alford</i> , 65 AD3d 1392 (3rd Dept 2009) , <i>affd</i> 14 NY3d 846 (2010)
	PL 260.10(1), Endangering the Welfare of Child	No	<i>People v Beauharnois</i> , 64 AD3d 996 (3rd Dept 2009)
135.10, Unlawful Imprisonment 1st	PL 130.05, Unlawful Imprisonment 2nd	Yes	<i>People v Logan</i> , 198 AD2d 439 (2nd Dept 1993)
135.20, Kidnapping 2nd	PL 135.05, Unlawful Imprisonment 2nd	Yes	<i>People v Sanford</i> , 48 AD3d 221 (1st Dept 2008) [I] <i>People v Saunders</i> , 261 AD2d 718 (3rd Dept 1999) [I]
	PL 135.10, Unlawful Imprisonment 1st	No	<i>People v Player</i> , 17 AD3d 701 (2nd Dept 2005)
		Yes	<i>People v Tillman</i> , 69 AD2d 975 (4th Dept 1979) [Note: decided pre- <i>People v Glover</i> , 57 NY2d 61 (1982)]
135.25, Kidnapping 1st	PL 135.05, Unlawful Imprisonment 2nd	Yes	<i>People v Saunders</i> , 261 AD2d 718 (3rd Dept 1999) [I]
135.25(1), Kidnapping 1st	PL 135.10, Unlawful Imprisonment 1st	No	<i>People v Ahedo</i> , 229 AD2d 588 (2nd Dept 1996)
	PL 135.20, Kidnapping 2nd	Yes	<i>People v Mauleon</i> , 266 AD2d 66 (1st Dept 1999)
135.25(2)(a), Kidnapping 1st	PL 135.20, Kidnapping 2nd	Yes	<i>People v Jorge</i> , 1 AD3d 121 (1st Dept 2003) [I] <i>People v Singh</i> , 191 AD2d 470 (2nd Dept 1993) [I]
135.65, Coercion 1st	PL 135.60, Coercion 2nd	Yes	<i>People v Pereau</i> , 99 AD2d 591 (3rd Dept 1984), <i>affd</i> 64 NY2d 1055 (1985)
	PL 240.25, Harassment 1st	No	<i>People v Zuziela</i> , 98 AD2d 161 (3rd Dept 1983)
140.17(2), Criminal Trespass 1st	PL 140.15, Criminal Trespass 2nd	Yes	<i>People v White</i> , 31 AD3d 273 (1st Dept 2006)
140.20, Burglary 3rd (attempt)	PL 140.10, Criminal Trespass 3rd	Yes	<i>People v Henderson</i> , 41 NY2d 233 (1976) [Note: decided pre- <i>People v Glover</i> , 57 NY2d 61 (1982)] <i>People v Scoggins</i> , 167 AD2d 321 (1st Dept 1990)
		No	<i>People v LaMountain</i> , 249 AD2d 584 (3rd Dept 1998)
140.20, Burglary 3rd	PL 140.05, Trespass	Yes	<i>People v Grant</i> , 132 AD2d 929 (4th Dept 1987)
	PL 140.10(a), Criminal Trespass 3rd	Yes	<i>People v Blim</i> , 63 NY2d 718 (1984)
	PL 140.15, Criminal Trespass 2nd	Yes	<i>People v Springs</i> , 58 AD3d 541 (1st Dept 2009) [I] <i>People v Torres</i> , 56 AD2d 640 (2nd Dept 1977)
	PL 145.00, Criminal Mischief 4th	No	<i>People v Locke</i> , 122 AD2d 77 (2nd Dept 1986)

Penal Law §, Offense Name	Potential Lesser Included Offense	LIO?	Authority [I] = Implied
140.25, Burglary 2nd (attempt)	PL 140.10, Criminal Trespass 3rd	Yes	<i>People v Brown</i> , 270 AD2d 495 (2nd Dept 2000)
140.25, Burglary 2nd	PL 140.10, Criminal Trespass 3rd	Yes	<i>People v Camacho</i> , 134 AD2d 441 (2nd Dept 1987) [I]
	PL 140.15, Criminal Trespass 2nd	Yes	<i>People v Rickett</i> , 94 NY2d 929 (2000)
	PL 165.40, Criminal Possession of Stolen Property 5th	No	<i>People v Harrison</i> , 151 AD2d 778 (2nd Dept 1989)
	PL 165.54, Criminal Possession of Stolen Property 1st	No	<i>People v Perez</i> , 156 AD2d 7 (1st Dept 1990)
140.25(1)(a), Burglary 2nd	PL 265.02(1), Criminal Possession of a Weapon 3rd	No	<i>People v Franklin</i> , 137 AD2d 710 (2nd Dept 1988)
140.25(1)(b), Burglary 2nd	PL 115.00, Criminal Facilitation 4th	No	<i>People v Cable</i> , 96 AD2d 251 (1st Dept 1983), <i>revd on other grounds sub nom., Matter of Anthony M.</i> , 63 NY2d 270 (1984)
	PL 140.20, Burglary 3rd	Yes	<i>People v Best</i> , 120 AD3d 707 (2nd Dept 2014)
140.25(2), Burglary 2nd	PL 140.10(a), Criminal Trespass 3rd	Yes	<i>Matter of Richard M.</i> , 89 AD3d 849 (2nd Dept 2011)
	PL 140.17, Criminal Trespass 1st	No	<i>People v Calandrillo</i> , 134 AD2d 271 (2nd Dept 1987)
	PL 140.20, Burglary 3rd	Yes	<i>People v Barney</i> , 99 NY2d 367 (2003) <i>People v Best</i> , 120 AD3d 707 (2nd Dept 2014)
	PL 155.40, Grand Larceny 2nd	No	<i>People v Gilbert</i> , 122 AD2d 454 (3rd Dept 1986)
	PL 165.45(2), Criminal Possession of Stolen Property 4th	No	<i>People v Kohl</i> , 19 AD3d 1155 (4th Dept 2005)
140.30, Burglary 1st	PL 140.15, Criminal Trespass 2nd	Yes	<i>People v Greene</i> , 291 AD2d 410 (2nd Dept 2002)
140.30(1), Burglary 1st	PL 140.17(1), Criminal Trespass 1st	No	<i>People v Dodson</i> , 96 AD2d 1116 (3rd Dept 1983)
140.30(2), Burglary 1st	PL 120.05(6), Assault 2nd	No	<i>People v Ali</i> , 89 AD3d 1417 (4th Dept 2011)
	PL 140.15, Criminal Trespass 2nd	Yes	<i>People v Slaughter</i> , 138 AD2d 835 (3rd Dept 1988)
	PL 140.20, Burglary 3rd	Yes	<i>People v Johnson</i> , 112 AD2d 1 (4th Dept 1985) [I]
	PL 140.25(2), Burglary 2nd	Yes	<i>People v Ali</i> , 89 AD3d 1416 (4th Dept 2011)
140.30(3), Burglary 1st	PL 140.25, Burglary 2nd	Yes	<i>People v Kindred</i> , 263 AD2d 672 (3rd Dept 1999) [I]
140.30(4), Burglary 1st (attempt)	PL 140.25(1)(d), Burglary 2nd (attempt)	Yes	<i>People v Morales</i> , 36 AD3d 957 (3rd Dept 2007) [I]
140.30(4), Burglary 1st	PL 140.25(1) Burglary 2nd	Yes	<i>People v Skinner</i> , 211 AD2d 979 (3rd Dept 1995)
	PL 140.25(2), Burglary 2nd	Yes	<i>People v Boone</i> , 269 AD2d 459 (2nd Dept 2000) <i>People v Skinner</i> , 211 AD2d 979 (3rd Dept 1995)
145.05(2), Criminal Mischief 3rd	PL 145.00(1), Criminal Mischief 4th	Yes	<i>People v Cammorto</i> , 185 AD2d 986 (2nd Dept 1992)
145.10, Criminal Mischief 2nd	PL 145.05(2), Criminal Mischief 3rd	Yes	<i>People v Klos</i> , 190 AD2d 754 (2nd Dept 1993)

Penal Law §, Offense Name	Potential Lesser Included Offense	LIO?	Authority [I] = Implied
150.10, Arson 3rd	PL 150.05, Arson 4th	Yes	<i>People v Borst</i> , 232 AD2d 727 (3rd Dept 1996)
150.15, Arson 2nd	PL 150.05, Arson 4th	Yes	<i>People v Clinkscales</i> , 134 AD2d 889 (4th Dept 1987) [I]
	PL 150.10, Arson 3rd	Yes	<i>People v Cushner</i> , 46 AD3d 1121 (3rd Dept 2007) <i>People v Piccione</i> , 78 AD3d 1518 (4th Dept 2010)
155.30(1), Grand Larceny 4th	PL 155.25, Petit Larceny	Yes	<i>People v Walker</i> , 119 AD3d 1402 (4th Dept 2014)
155.30(5), Grand Larceny 4th	PL 155.25, Petit Larceny	Yes	<i>People v Haynes</i> , 240 AD2d 162 (1st Dept 1997) [I], <i>affd on other grounds</i> 91 NY2d 966 (1998)
155.35, Grand Larceny 3rd	PL 145.10, Criminal Mischief 2nd	No	<i>People v Gammons</i> , 106 AD3d 1287 (3rd Dept 2013)
155.35(1), Grand Larceny 3rd	PL 155.30(1), Grand Larceny 4th	Yes	<i>People v Versage</i> , 48 AD3d 254 (1st Dept 2008) <i>People v Riess</i> , 168 AD2d 787 (3rd Dept 1990)
	PL 155.30(5), Grand Larceny 4th	No	<i>People v Reynolds</i> , 240 AD2d 210 (1st Dept 1997)
	PL 155.30(8), Grand Larceny 4th	No	<i>People v Brown</i> , 259 AD2d 985 (4th Dept 1999)
	PL 165.05, Unauthorized Use of Vehicle 3rd	Yes	<i>People v Palmer</i> , 193 AD2d 888 (3rd Dept 1993)
	PL 165.45, Criminal Possession of Stolen Property 4th	No	<i>People v Robinson</i> , 90 AD2d 249 (4th Dept 1982), <i>affd</i> 60 NY2d 982 (1983)
155.40, Grand Larceny 2nd	PL 190.60, Scheme to Defraud 2nd	No	<i>People v Omrami</i> , 155 AD2d 369 (1st Dept 1989)
158.15, Welfare Fraud 3rd	PL 158.10, Welfare Fraud 4th	Yes	<i>People v Niver</i> , 45 AD3d 1051 (3rd Dept 2007) [I]
160.05, Robbery 3rd	PL 155.25, Petit Larceny	Yes	<i>People v Brown</i> , 269 AD2d 539 (2nd Dept 2000)
	PL 155.30(5), Grand Larceny 4th	No	<i>People v Cintron</i> , 199 AD2d 526 (2nd Dept 1993)
	PL 155.30(6), Grand Larceny 4th	No	<i>People v Adams</i> , 266 AD2d 831 (4th Dept 1999)
160.10, Robbery 2nd	PL 155.25, Petit Larceny (attempt)	Yes	<i>People v Bethea</i> , 24 AD3d 685 (2nd Dept 2005)
160.10(1), Robbery 2nd	PL 115.00, Criminal Facilitation 4th	Yes	<i>People v Cable</i> , 96 AD2d 251 (1st Dept 1983), <i>revd on other grounds sub nom., Matter of Anthony M.</i> , 63 NY2d 270 (1984)
	PL 120.00(1), (2), Assault 3rd	No	<i>People v Miguel</i> , 53 NY2d 920 (1981)
	PL 120.05(6), Assault 2nd	No	<i>People v Ramos</i> , 232 AD2d 433 (2nd Dept 1996)
	PL 155.25, Petit Larceny	Yes	<i>People v Bowman</i> , 79 AD3d 1368 (3rd Dept 2010)
	PL 155.30(5), Grand Larceny 4th	No	<i>People v Buster</i> , 122 AD2d 525 (4th Dept 1986)
	PL 160.05, Robbery 3rd	Yes	<i>People v Camara</i> , 44 AD3d 492 (1st Dept 2007) [I]
	PL 165.50, Criminal Possession of Stolen Property 3rd	No	<i>People v Brown</i> , 70 NY2d 857 (1987)
160.10(2)(a), Robbery	PL 120.00(1), (2), Assault 3rd	No	<i>People v Miguel</i> , 53 NY2d 920 (1981)

Penal Law §, Offense Name	Potential Lesser Included Offense	LIO?	Authority [I] = Implied
2nd	PL 120.05(6), Assault 2nd	Yes	<i>People v Martin</i> , 136 AD2d 509 (1st Dept 1988) <i>People v Tucker</i> , 221 AD2d 670 (2nd Dept 1995)
	PL 155.30(5), Grand Larceny 4th	No	<i>People v Vaught</i> , 258 AD2d 602 (2nd Dept 1999)
	PL 160.05, Robbery 3rd	Yes	<i>People v Diggs</i> , 60 AD3d 459 (1st Dept 2009) [I] <i>People v Best</i> , 120 AD3d 707 (2nd Dept 2014)
160.10(2)(b), Robbery 2nd	PL 160.05, Robbery 3rd	Yes	<i>People v Whitfield</i> , 287 AD2d 393 (1st Dept 2001) [I]
	PL 155.40, Grand Larceny 2nd	No	<i>People v Bryant</i> , 85 AD2d 575 (1st Dept 1981)
160.15, Robbery 1st	PL 120.14, Menacing 2nd	No	<i>People v Mercer</i> , 214 AD2d 343 (1st Dept 1995)
	PL 155.25, Petit Larceny	Yes	<i>People v Monroe</i> , 30 AD3d 616 (2nd Dept 2006) <i>People v Agha</i> , 239 AD2d 930 (4th Dept 1997)
	PL 155.30(5), Grand Larceny 4th	No	<i>People v Garcia</i> , 219 AD2d 669 (2nd Dept 1995)
	PL 160.10(1), Robbery 2nd	No	<i>People v Acevedo</i> , 40 NY2d 701 (1976)
	PL 165.15, Theft of Services	No	<i>People v Shortley</i> , 269 AD2d 254 (1st Dept 2000) <i>People v Polite</i> , 300 AD2d 681 (2nd Dept 2002) [I]
	PL 265.01(2), Criminal Possession of a Weapon 4th	No	<i>People v Perez</i> , 45 NY2d 204 (1978)
160.15(1), Robbery 1st (attempt)	PL 120.05(1), Assault 2nd	No	<i>People v Strawder</i> , 78 AD2d 810 (1st Dept 1980)
	PL 120.05(6), Assault 2nd	Yes	<i>People v Strawder</i> , 78 AD2d 810 (1st Dept 1980)
		No	<i>People v Ali</i> , 89 AD3d 1417 (4th Dept 2011) [I]; see also <i>People v Abrew</i> , 95 NY2d 806 (2000)
160.15(1), Robbery 1st	PL 115.00(1), Criminal Facilitation 4th	No	<i>People v Cable</i> , 96 AD2d 251 (1st Dept 1983) <i>revd on other grounds sub nom., Matter of Anthony M.</i> , 63 NY2d 270 (1984)
	PL 120.10(4), Assault 1st	No	<i>People v Abrew</i> , 95 NY2d 806 (2000)
	PL 160.10(2)(a), Robbery 2nd	Yes	<i>People v Rivera</i> , 123 AD2d 295 (1st Dept 1986) <i>People v Fuller</i> , 286 AD2d 910 (4th Dept 2001)
160.15(2), Robbery 1st	PL 155.25, Petit Larceny	Yes	<i>People v Lowery</i> , 127 AD3d 1109 (2nd Dept 2015)
	PL 160.05, Robbery 3rd	Yes	<i>People v Kilpatrick</i> , 143 AD2d 1 (1st Dept 1988) (<i>abrogated on other grounds by People v Gray</i> , 86 NY2d 10 [1995]) <i>People v Ferguson</i> , 255 AD2d 598 (2nd Dept 1998)
			<i>People v Kilpatrick</i> , 143 AD2d 1 (1st Dept 1988) (<i>abrogated on other grounds by People v Gray</i> , 86 NY2d 10 [1995])
	PL 165.50, Criminal Possession of Stolen Property 3rd	No	<i>People v Brown</i> , 70 NY2d 857 (1987)
160.15(3), Robbery 1st	PL 120.05(6), Assault 2nd	No	<i>People v Solomon</i> , 141 AD2d 579 (2nd Dept 1988)
	PL 155.25, Petit Larceny	Yes	<i>People v Robertson</i> , 53 AD3d 791 (3rd Dept 2008)
	PL 160.05, Robbery 3rd	Yes	<i>People v Grant</i> , 17 NY3d 613 (2011) <i>People v Rivera</i> , 262 AD2d 17 (1st Dept 1999) [I] <i>People v Blair</i> , 148 AD2d 767 (3rd Dept 1989)
	PL 160.10(2)(a), Robbery 2nd (attempt)	No	<i>People v Edwards</i> , 39 AD3d 875 (2nd Dept 2007)

Penal Law §, Offense Name	Potential Lesser Included Offense	LIO?	Authority [I] = Implied
	PL 160.10(1) Robbery 2nd	No	<i>People v McFadden</i> , 100 AD2d 520 (2nd Dept 1984)
	PL 165.30(1), Fraudulent Accosting	No	<i>People v Lee</i> , 50 AD3d 1603 (4th Dept 2008)
160.15(4), Robbery 1st	PL 155.25, Petit Larceny	Yes	<i>People v Smith</i> , 214 AD2d 971 (4th Dept 1995)
	PL 155.30(5), Grand Larceny 4th	No	<i>People v Velilla</i> , 285 AD2d 565 (2nd Dept 2001)
	PL 155.35, Grand Larceny 3rd	No	<i>People v Acevedo</i> , 40 NY2d 701 (1976)
	PL 160.05, Robbery 3rd	Yes	<i>People v James</i> , 11 NY3d 886 (2008)
	PL 160.10(2)(b), Robbery 2nd	Yes	<i>People v Rivera</i> , 77 AD3d 483 (1st Dept 2010) <i>People v Morales</i> , 36 AD3d 957 (3rd Dept 2007) <i>People v Bell</i> , 265 AD2d 813 (4th Dept 1999) [Note: must assert as an affirmative defense]
	PL 160.10(3), Robbery 2nd	No	<i>People v Sterling</i> , 11 AD3d 932 (4th Dept 2004)
	PL 165.50, Criminal Possession of Stolen Property 3rd	No	<i>People v Brown</i> , 70 NY2d 857 (1987)
165.40-.54, Criminal Possession of Stolen Property	PL 165.05, Unauthorized Use of Vehicle 3rd	No	<i>Matter of Raul M.</i> , 248 AD2d 336 (1st Dept 1998) (UUV is not a LIO of “stolen property crimes that do not, in the abstract, rather than under the particular facts, necessarily involve vehicles”) <i>People v Edwards</i> , 104 AD2d 448 (2nd Dept 1984)
165.45(2), Criminal Possession of Stolen Property 4th	PL 165.40, Criminal Possession of Stolen Property 5th	Yes	<i>People v Nicholas</i> , 106 AD3d 1026 (2nd Dept 2013) <i>People v Berry</i> , 78 AD3d 1226 (3rd Dept 2010)
165.45(5), Criminal Possession of Stolen Property 4th	PL 165.40, Criminal Possession of Stolen Property 5th	Yes	<i>Matter of Michael S.</i> , 262 AD2d 6 (1st Dept 1999) <i>People v Berry</i> , 78 AD3d 1226 (3rd Dept 2010)
165.50, Criminal Possession of Stolen Property 3rd	PL 165.45(5), Criminal Possession of Stolen Property 4th	No	<i>People v Frick</i> , 77 AD3d 677 (2nd Dept 2010) <i>People v Quarcini</i> , 4 AD3d 864 (4th Dept 2004)
	PL 165.05, Unauthorized Use of a Motor Vehicle 3rd	No	<i>People v Singh</i> , 35 AD3d 633 (2nd Dept 2006)
170.10(1), Forgery 2nd	PL 170.05, Forgery 3rd	Yes	<i>People v Gause</i> , 2 AD3d 1449 (4th Dept 2003)
	PL 170.25, Criminal Possession of a Forged Instrument 2nd	Yes	<i>People v Black</i> , 253 AD2d 984 (3rd Dept 1998); <i>see also</i> PL 170.35 (“[A] person may not be convicted of both criminal possession of a forged instrument and forgery with respect to the same instrument.”)
170.25, Criminal Possession of a Forged Instrument 2nd	PL 170.20, Criminal Possession of a Forged Instrument 3rd	Yes	<i>People v Hayes</i> , 133 AD2d 934 (3rd Dept 1987)
170.30, Criminal Possession of a Forged Instrument 1st	PL 170.20, Criminal Possession of a Forged Instrument 3rd	Yes	<i>People v Bell</i> , 286 AD2d 931 (4th Dept 2001) [I]
175.10, Falsifying	PL 175.05(1), Falsifying	Yes	<i>People v Reyes</i> , 69 AD3d 537 (1st Dept 2010)

Penal Law §, Offense Name	Potential Lesser Included Offense	LIO?	Authority [I] = Implied
Business Records 1st	Business Records 2nd		
175.35, Offering a False Instrument for Filing 1st	PL 175.30, Offering a False Instrument for Filing 2nd	Yes	<i>People v Vanderbush</i> , 300 AD2d 1126 (4th Dept 2002) [I]
176.20, Insurance Fraud 3rd	PL 176.10, Insurance Fraud 5th	Yes	<i>People v Hade</i> , 255 AD2d 768 (3rd Dept 1998) [I]
	PL 176.15, Insurance Fraud 4th	Yes	<i>People v Hade</i> , 255 AD2d 768 (3rd Dept 1998) [I]
190.26(1), Criminal Impersonation 1st	PL 190.25(3), Criminal Impersonation 2nd	Yes	<i>People v Archer</i> , 238 AD2d 183 (1st Dept 1997) [I]
190.65, Scheme to Defraud 1st	PL 155.25, Petit Larceny	Yes	<i>People v Lasek</i> , 94 Misc 2d 1007 (County Ct, Jefferson Co 1978) [Note: decided pre- <i>People v Glover</i> , 57 NY2d 61 (1982)]
	PL 190.25(2), Criminal Impersonation 2nd	Yes	<i>People v Lasek</i> , 94 Misc 2d 1007 (County Ct, Jefferson Co 1978) [Note: decided pre- <i>People v Glover</i> , 57 NY2d 61 (1982)]
	PL 190.60, Scheme to Defraud 2nd	Yes	<i>People v Lasek</i> , 94 Misc 2d 1007 (County Ct, Jefferson Co 1978) [Note: decided pre- <i>People v Glover</i> , 57 NY2d 61 (1982)]
205.10, Escape 2nd	PL 205.05, Escape 3rd	Yes	<i>People v Montanez</i> , 78 AD3d 1198 (2nd Dept 2010) <i>People v Berard</i> , 142 AD2d 927 (4th Dept 1988)
	PL 205.30, Resisting Arrest	No	<i>People v Becoats</i> , 88 AD2d 766 (4th Dept 1982)
	PL 205.05, Escape 3rd	Yes	<i>People v Walker</i> , 19 Misc 3d 444 (Supreme Ct, Monroe Co 2008)
205.25(1), Promoting Prison Contraband 1st	PL 205.20(1), Promoting Prison Contraband 2nd	Yes	<i>People v Hernandez</i> , 42 AD3d 657 (3rd Dept 2007)
205.25(2), Promoting Prison Contraband 1st	PL 205.20(2), Promoting Prison Contraband 2nd	Yes	<i>People v Finley</i> , 10 NY3d 647 (2008)
210.15, Perjury 1st	PL 210.05, Perjury 3rd	Yes	<i>People v Perino</i> , 76 AD3d 456 (1st Dept 2010), <i>aff'd</i> 19 NY3d 85 (2012)
215.13, Witness Tampering 1st	PL 215.12, Witness Tampering 2nd	Yes	<i>People v Drakes</i> , 263 AD2d 514 (2nd Dept 1999)
215.51, Criminal Contempt 1st	PL 215.50, Criminal Contempt 2nd	Yes	<i>People v Kennerly</i> , 20 AD3d 491 (2nd Dept 2005)
215.51(b)(v), Criminal Contempt 1st	PL 215.50(3), Criminal Contempt 2nd	Yes	<i>People v Mingo</i> , 66 AD3d 1043 (2nd Dept 2009) <i>People v Sullivan</i> , 284 AD2d 917 (4th Dept 2001) [I]
215.51(c), Criminal Contempt 1st	PL 215.50(3), Criminal Contempt 2nd	Yes	<i>People v Dewall</i> , 15 AD3d 498 (2nd Dept 2005)
215.52, Aggravated Criminal Contempt	PL 215.51(b)(v), Criminal Contempt 1st	No	<i>People v Wilmore</i> , 305 AD2d 117 (1st Dept 2003)
220.03-.21, Criminal Possession of a	PL article 220 possession offenses, generally	Yes (for	CPL 220.20(1)(i) ["Where the crime charged is criminal possession of a controlled substance, any

Penal Law §, Offense Name	Potential Lesser Included Offense	LIO?	Authority [I] = Implied
Controlled Substance		pleas)	offense of criminal possession of a controlled substance, in any degree, is deemed to constitute a lesser included offense.”]
220.06, Criminal Possession of a Controlled Substance 5th	PL 220.03, Criminal Possession of a Controlled Substance 7th	Yes	<i>People v Smith</i> , 209 AD2d 557 (2nd Dept 1994)
220.06 (1), Criminal Possession of a Controlled Substance 5th	PL 220.03, Criminal Possession of a Controlled Substance 7th	Yes	<i>People v Harrison</i> , 139 AD2d 422 (1st Dept 1988)
220.09, Criminal Possession of a Controlled Substance 4th	PL 220.03, Criminal Possession of a Controlled Substance 7th	Yes	<i>People v Gomez</i> , 178 AD2d 432 (2nd Dept 1991) <i>People v Davis</i> , 170 AD2d 1006 (4th Dept 1991)
220.16, Criminal Possession of a Controlled Substance 3rd	PL 220.03, Criminal Possession of a Controlled Substance 7th	Yes	<i>People v Biggs</i> , 280 AD2d 484 (2nd Dept 2001) <i>People v Berry</i> , 5 AD3d 866 (3rd Dept 2004)
	PL 220.09, Criminal Possession of a Controlled Substance 4th	No	<i>People v Lee</i> , 196 AD2d 509 (2nd Dept 1993)
220.16 (1), Criminal Possession of a Controlled Substance 3rd	PL 220.03, Criminal Poss. Controlled Substance 7th	Yes	<i>People v McFadden</i> , 20 NY3d 260 (2012) <i>People v Olivera</i> , 45 AD3d 154 (1st Dept 2007) <i>People v Fairley</i> , 63 AD3d 1288 (3rd Dept 2009) <i>People v Palmer</i> , 216 AD2d 883 (4th Dept 1995)
220.16 (12), Criminal Possession of a Controlled Substance 3rd	PL 220.03, Criminal Poss. Controlled Substance 7th	Yes	<i>People v Walker</i> , 300 AD2d 417 (2nd Dept 2002) [I]
	PL 220.16(1), Criminal Possession of a Controlled Substance 3rd (attempt)	No	<i>People v Nemnom</i> , 123 AD3d 740 (2nd Dept 2014)
220.18, Criminal Possession of a Controlled Substance 2nd	PL 220.16, Criminal Possession of a Controlled Substance 3rd	Yes	<i>People v Campbell</i> , 230 AD2d 636 (1st Dept 1996)
220.18 (1), Criminal Possession of a Controlled Substance 2nd	PL 220.03, Criminal Possession of a Controlled Substance 7th	Yes	<i>People v Palmer</i> , 216 AD2d 883 (4th Dept 1995)
220.21, Criminal Possession of a Controlled Substance 1st	PL 220.18, Criminal Possession of a Controlled Substance 2nd	Yes	<i>People v Young</i> , 271 AD2d 263 (1st Dept 2000)
220.31-.44, Criminal Sale of a Controlled Substance	PL article 220 possession offenses, generally	No Yes (for pleas)	<i>People v Davis</i> , 14 NY3d 20 (2009) <i>People v Teixeira</i> , 101 AD2d 818 (2nd Dept 1984) <i>People v Cogle</i> , 94 AD2d 158 (3rd Dept 1983) CPL 220.20(1)(h)

Penal Law §, Offense Name	Potential Lesser Included Offense	LIO?	Authority [I] = Implied
	PL article 220 sale offenses, generally	Yes (for pleas)	CPL 220.20(1)(h)
220.39, Criminal Sale of a Controlled Substance 3rd	PL article 115, Criminal Facilitation	No	<i>People v Mills</i> , 308 AD2d 386 (1st Dept 2003) <i>People v Brown</i> , 193 AD2d 751 (2nd Dept 1993)
	PL 220.03, Criminal Possession of a Controlled Substance 7th	Yes	<i>People v Johnson</i> , 45 NY2d 546 (1978)
		No	<i>People v Davis</i> , 14 NY3d 20 (2009); <i>see also People v Alvarez</i> , 51 AD3d 167 (1st Dept 2008) (noting the split of authority post- <i>People v Glover</i> on whether CPCS 7th is a LIO of any CPCS offense)
	PL 220.06, Criminal Possession of a Controlled Substance 5th	No	<i>People v Ayoub</i> , 289 AD2d 413 (2nd Dept 2001)
	PL 220.16, Criminal Possession of a Controlled Substance 3rd	No	<i>People v Biggs</i> , 280 AD2d 484 (2nd Dept 2001)
	PL 220.31, Criminal Sale of a Controlled Substance 5th	Yes	<i>People v Nimmons</i> , 43 AD3d 1232 (3rd Dept 2007)
	PL 220.34, Criminal Sale of a Controlled Substance 4th	No	<i>People v Torres</i> , 300 AD2d 221 (1st Dept 2002)
220.41, Criminal Sale of a Controlled Substance 2nd	PL 115.05, Criminal Facilitation 2nd	No	<i>People v Glover</i> , 57 NY2d 61 (1982)
220.43, Criminal Sale of a Controlled Substance 1st	PL 115.00, Criminal Facilitation 2nd	No	<i>People v Fischer</i> , 94 AD2d 706 (2nd Dept 1983)
	PL 115.00, Criminal Facilitation 4th	No	<i>People v Fischer</i> , 94 AD2d 706 (2nd Dept 1983)
	PL 115.08, Criminal Facilitation 1st	No	<i>People v Parks</i> , 99 AD2d 537 (2nd Dept 1984)
	PL 220.39, Criminal Sale of a Controlled Substance 3rd	Yes	<i>People v Flores</i> , 84 NY2d 957 (1994) [I]
	PL 220.41, Criminal Sale of a Controlled Substance 2nd	Yes	<i>People v Bobb</i> , 207 AD2d 458 (2nd Dept 1994)
220.44, Criminal Sale of a Controlled Substance in/near School Grounds	PL 220.34, Criminal Sale of a Controlled Substance 4th	No	<i>People v Torres</i> , 300 AD2d 221 (1st Dept 2002)
221.30, Criminal Possession of Marihuana 1st	PL 221.05, Unlawful Possession of Marihuana	Yes	<i>People v Morgridge</i> , 85 AD3d 822 (2nd Dept 2011)
225.10, Promoting Gambling 1st	PL 225.05, Promoting Gambling 2nd	Yes	<i>People v Giordano</i> , 87 NY2d 441 (1995)
230.25, Promoting Prostitution 3rd	PL 230.20, Promoting Prostitution 4th	Yes	<i>People v Rodriguez</i> , 104 AD2d 547 (1st Dept 1984)
230.30, Promoting Prostitution 2nd	PL 230.20, Promoting Prostitution 4th	Yes	<i>People v Pan</i> , 245 AD2d 149 (1st Dept 1997) [I]
	PL 230.25, Promoting Prostitution 3rd	Yes	<i>People v Garner</i> , 15 AD3d 190 (1st Dept 2005)

Penal Law §, Offense Name	Potential Lesser Included Offense	LIO?	Authority [I] = Implied
240.05, Riot 2nd	PL 240.20, Disorderly Conduct	Yes	<i>People v Bollander</i> , 156 AD2d 456 (2nd Dept 1989)
240.06, Riot 1st	PL 240.05, Riot 2nd	Yes	<i>People v Oliveras</i> , 204 AD2d 226 (1st Dept 1994)
240.30, Aggravated Harassment 2nd	PL 240.26, Harassment 2nd	Yes	<i>People v Garrand</i> , 22 AD3d 959 (3rd Dept 2005) [I]
240.62, Placing a False Bomb or Hazardous Substance 1st	PL 240.61, Placing a False Bomb or Hazardous Substance 2nd	Yes	<i>People v Lettley</i> , 64 AD3d 901 (3rd Dept 2009)
265.02(1), Criminal Possession of a Weapon 3rd	PL 265.01(2), Criminal Possession of a Weapon 4th	Yes	<i>People v Smith</i> , 183 AD2d 653 (1st Dept 1992) <i>People v Capra</i> , 20 AD3d 824 (3rd Dept 2005)
265.02(3), Criminal Possession of a Weapon 3rd	PL 265.01, Criminal Possession of a Weapon 4th	Yes	<i>People v Butler</i> , 192 AD2d 543 (2nd Dept 1993)
265.03, Criminal Possession of a Weapon 2nd	PL 265.02(4), Criminal Possession of a Weapon 3rd [Note: 265.02(4) was repealed and moved to 265.03(3) in 2006]	No	<i>People v Okafore</i> , 72 NY2d 81 (1988) <i>People v Johnson</i> , 24 AD3d 958 (3rd Dept 2005) <i>People v Rosado</i> , 36 AD3d 965 (3rd Dept 2007) <i>People v Paul</i> , 298 AD2d 849 (4th Dept 2002)
265.03(1)(b), Criminal Possession of a Weapon 2nd	PL 265.01(1), Criminal Possession of a Weapon 4th	Yes	<i>People v Rivera</i> , 15 NY3d 844 (2010)
265.03(3), Criminal Possession of a Weapon 2nd	PL 265.01(1), Criminal Possession of a Weapon 4th	Yes	<i>People v Menchetti</i> , 76 NY2d 473 (1990) [charge was former 265.02(4), which was repealed and moved to CPW 2nd, PL 265.03(3)] <i>People v Verni</i> , 127 AD3d 887 (2nd Dept 2015) <i>People v Laing</i> , 66 AD3d 1353 (4th Dept 2009)
265.09, Criminal Use of a Firearm 1st	PL 265.03, Criminal Possession of a Weapon 2nd	Yes	<i>People v Rogers</i> , 94 AD3d 1152 (2nd Dept 2012) <i>People v Fowler</i> , 45 AD3d 1372 (4th Dept 2007)
265.09(1)(a), Criminal Use of a Firearm 1st	PL 265.03, Criminal Possession of a Weapon 2nd	Yes	<i>People v Dinsio</i> , 286 AD2d 517 (3rd Dept 2001) <i>People v Lott</i> , 55 AD3d 1274 (4th Dept 2008)

Vehicle and Traffic Law §, Offense Name	Potential Lesser Included Offense	LIO?	Authority
511(3), Aggravated Unlicensed Operation of a Motor Vehicle	VTL 509(1), Unlicensed Operation of a Motor Vehicle	Yes	<i>People v Pacer</i> , 6 NY3d 504 (2006)
600(2), Leaving the Scene of a Personal Injury Accident	VTL 600(1), Leaving the Scene of a Property Damage Accident	No	<i>People v Cordisco</i> , 68 AD3d 565 (1st Dept 2009)
600(2), Leaving the Scene of a Fatal Motor Vehicle Accident	VTL 600(2), Leaving Scene of Motor Vehicle Accident	Yes	<i>People v Markidis</i> , 142 AD2d 990 (4th Dept 1988)
1192, Driving While Intoxicated (misdemeanor)	VTL 1212, Reckless Driving	No	<i>People v Crandall</i> , 39 AD3d 1077 (3rd Dept 2007) (noting, however, that under VTL 1192[10][a], the defendant may enter a plea other than to VTL 1192(2), (3), (4), or (4-a) where the prosecution determines that the charges laid were not warranted and the basis for the proposed disposition is set forth on the record)
1192(2), Driving While Intoxicated	VTL 1192(1), Driving While Ability Impaired	Yes	<i>People v Litto</i> , 8 NY3d 692 (2007) (DWAI is a lesser of 1192[2] and [3]); <i>see</i> VTL 1192(9); <i>but see</i> <i>People v Brown</i> , 53 NY2d 979 (1981) (holding DWAI is not a LIO of 1192[2])
1192(3), Driving While Intoxicated	VTL 1192(1), Driving While Ability Impaired	Yes	<i>People v Litto</i> , 8 NY3d 692 (2007)
1192(3), Driving While Intoxicated (misdemeanor)	VTL 1192(1), Driving While Ability Impaired (misdemeanor under 1193(1)(a))	No	<i>People v Harris</i> , 23 Misc 3d 250 (County Ct, Monroe Co 2008) <i>People v Jamison</i> , 170 Misc 2d 974 (Rochester City Ct 1996)
1192(3), Driving While Intoxicated (felony)	VTL1192(1), Driving While Ability Impaired	Yes	<i>People v Carota</i> , 93 AD3d 1072 (3rd Dept 2012)
1192(4), Driving While Ability Impaired- Drugs	VTL 1192(1), Driving While Ability Impaired	No	<i>People v Lehman</i> , 183 Misc 2d 97 (Watertown City Ct 2000)

Key Resources

People v Glover, 57 NY2d 61 (1982)

To establish entitlement to a lesser included offense charge, the defendant must make two showings. First, it must be shown that the additional offense that he desires to have charged is a "lesser included offense", i.e., that it is an offense of lesser grade or degree and that in all circumstances, not only in those presented in the particular case, it is impossible to commit the greater crime without concomitantly, by the same conduct, committing the lesser offense. That established, the defendant must then show that there is a reasonable view of the evidence in the particular case that would support a finding that he committed the lesser offense but not the greater.

The first requirement -- that it is theoretically impossible to commit the greater crime without at the same time committing the lesser -- is mandated by the provisions of CPL 1.20 (subd 37) and is determined by a comparative examination of the statutes defining the two crimes, in the abstract. The second, sequential requirement, prescribed by CPL 300.50 (subd 1), calls for an assessment of the evidence of the particular criminal transaction in the individual case and a determination that there is a reasonable view of such evidence which would support a finding that, while the defendant did commit the lesser offense, he did not commit the greater.

People v Ford, 62 NY2d 275 (1984): "Any error by the trial court in considering or submitting to the jury a lesser crime arising out of the same criminal transaction as an indicted crime, that is not in fact a lesser included offense, is waived unless defendant makes timely objection." *See also* CPL 300.50(1).

People v Colville, 20 NY3d 20 (2012): "We hold that the decision whether to seek a jury charge on lesser-included offenses is a matter of strategy and tactics which ultimately rests with defense counsel."

Statutes

- CPL 1.20(37). Definitions
- CPL 210.20. Motion to dismiss or reduce indictment
- CPL 220.10. Plea; kinds of pleas
- CPL 220.20. Plea; meaning of lesser included offenses for plea purposes
- CPL 290.10. Trial order of dismissal
- CPL 300.10. Court's charge; in general
- CPL 300.30. Court's charge; submission of indictment to jury; definition of terms
- CPL 300.40. Court's charge; submission of indictment to jury; counts to be submitted
- CPL 300.50. Court's charge; submission of lesser included offenses
- CPL 320.20. Non-jury trial; nature and conduct thereof
- CPL 350.10. Conduct of single judge trial
- CPL 360.50. Court's submission of information to jury; counts and offenses to be submitted

Definition of Lesser Included Offense (CPL 1.20[37])

When it is impossible to commit a particular crime without concomitantly committing, by the same conduct, another offense of lesser grade or degree, the latter is, with respect to the former, a "lesser included offense." In any case in which it is legally possible to attempt to commit a crime, an attempt to commit such crime constitutes a lesser included offense with respect thereto.

Lesser included offenses for plea purposes (CPL 220.20[1])

- (a) Where the only culpable mental state required for the crime charged is that the proscribed conduct be performed intentionally, any lesser offense consisting of reckless or criminally negligent, instead of intentional, performance of the same conduct is deemed to constitute a lesser included offense;
- (b) Where the only culpable mental state required for the crime charged is that the proscribed conduct be performed recklessly, any lesser offense consisting of criminally negligent, instead of reckless, performance of the same conduct is deemed to constitute a lesser included offense;
- (c) Where according to the allegations of a count a defendant's participation in the crime charged consisted in whole or in part of solicitation of another person to engage in the proscribed conduct, the offense of criminal solicitation, in any appropriate degree, is, with respect to such defendant, deemed to constitute a lesser included offense;
- (d) Where according to the allegations of a count a defendant's participation in the crime charged consisted in whole or in part of conspiratorial agreement or conduct with another person to engage in the proscribed conduct, the crime of conspiracy, in any appropriate degree, is, with respect to such defendant, deemed to constitute a lesser included offense;
- (e) Where according to the allegations of a count charging a felony a defendant's participation in such felony consisted in whole or in part of providing another person with means or opportunity for engaging in the proscribed conduct, the crime of criminal facilitation, in any appropriate degree, is, with respect to such defendant, deemed to constitute a lesser included offense;
- (f) Where the crime charged is assault or attempted assault, in any degree, allegedly committed by intentionally causing or attempting to cause physical injury to a person by the immediate use of physical force against him, or where the crime charged is menacing, as defined in section 120.15 of the penal law, the offense of harassment, as defined in subdivision one of section 240.25 of the penal law, is deemed to constitute a lesser included offense;
- (g) Where the crime charged is murder in the second degree as defined in subdivision three of section 125.25 of the penal law, allegedly committed in the course of the commission or attempted commission of a designated one of the underlying felonies enumerated in said subdivision, or during immediate flight therefrom, such designated underlying felony or attempted felony is deemed to constitute a lesser included offense. If such designated underlying felony is alleged to be robbery, burglary, kidnapping, or arson, without specification of the degree thereof, or an attempt to commit the same, a plea of guilty may be entered to the lowest degree thereof only, or as the case may be to attempted commission of such felony in its lowest degree, unless the allegations of the count clearly indicate the existence of all the elements of a higher degree;
- (h) Where the crime charged is criminal sale of a controlled substance, any offense of criminal sale or possession of a controlled substance, in any degree, is deemed to constitute a lesser included offense.
- (i) Where the crime charged is criminal possession of a controlled substance, any offense of criminal possession of a controlled substance, in any degree, is deemed to constitute a lesser included offense.
- (j) Where the offense charged is unlawful disposal of hazardous wastes in violation of section 27-0914 of the environmental conservation law, any offense of unlawful disposal or possession of hazardous wastes as set forth in sections 71-2707, 71-2709, 71-2711 and 71-2713 of such law, in any degree, is deemed to constitute a lesser included offense;
- (k) Where the offense charged is unlawful possession of hazardous wastes in violation of section 27-0914 of the environmental conservation law, any offense of unlawful possession of hazardous wastes as set forth in sections 71-2707 and 71-2709 of such law, in any degree, is deemed to constitute a lesser included offense.

*** This chart was prepared by Susan Bryant, NYSDA Staff Attorney, with the assistance of the Office of the Appellate Defender [Anita Aboagye-Agyeman and Samantha L. Stern, with the assistance of Anant Kumar, Scott McAbee, and Leila Tabbaa].**