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Report of the Advisory Committee on Local Courts

to the Chief Administrative Judge of the Courts of the State of New York

January 2010

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I. INTRODUCTION

The Local Courts Advisory Committee is one of the standing advisory committees established by the Chief Administrative Judge of the Courts pursuant to section 212(1)(q) of the Judiciary Law. The Committee advises the Chief Administrative Judge on all issues relating to the operations of the New York City Civil Court, New York City Criminal Court, District Courts, City Courts outside of New York City, and Town and Village Courts. The Committee also acts as liaison with the professional associations of the judges and clerks of these courts and coordinates its actions and recommendations with other advisory committees established by the Chief Administrative Judge. During 2009, the Committee was comprised of 18 members, all judges, clerks, or attorneys of the local Courts. As in the past, the Committee considered a wide range of issues, including practice and procedure, facilities, staffing and resources. The Committee also reviews and make recommendations with respect to existing court rules.

For 2010, the Committee recommends twelve new measures for inclusion in its legislative program, including measures affecting the New York City Civil Court Act, CPLR, Criminal Procedure Law, Penal Law, and the Vehicle and Traffic Law. These measures are based on the Committee's own studies, examination of decisional law, and suggestions received from the bench and bar, as well as members of the public.

The Committee welcomes comments and suggestions concerning issues that arise in the local courts. Any comments and suggestions may be addressed to:

Hon. Joseph J. Cassata, Jr., Chair
Tonawanda City Court
City Hall
200 Niagara Street
Tonawanda, New York 14150

II. NEW LEGISLATION

1. Medical Testimony in Motor Vehicle No-Fault Insurance Actions (NYCCCA § 1308)

This measure establishes a new section 1308 of the New York City Civil Court Act to authorize the submission of a sworn statement of a party's medical expert in lieu of trial testimony on the issue of the necessity of medical treatment in motor vehicle no-fault insurance cases.

Under Article 56 of the Insurance Law, and the regulations promulgated pursuant to it, the injured beneficiary of a no-fault automobile insurance policy may bring a court action against an insurance company which fails to pay a claim for the cost of medical treatment of an injury sustained during a motor vehicle accident within 30 days of receipt of proof of the amount of the loss. In addition, the law authorizes an award to include interest of two percent per month on the amount of the claim as well as attorney's fees incurred in securing the award. See Insurance Law § 5106; 11 NYCRR §§ 65-4.5(s) and 65-4.6.

In order to prevail on such a claim, the claimant must establish (1) the existence of the insurance policy (2) standing to make the claim (3) proof that the claim was made, and (4) that the claim was not paid within 30 days of receipt of the claim. Mitchell S. Lustig & Jill Laskin Schatz, Summary Judgment Motions: Defending No-Fault Insurer, 235 N.Y. Law Journal 4, at 4 (October 26, 2005). Such claims are subject to the affirmative defense that competent medical evidence establishes that the medical treatment received by the claimant was not medically necessary. See, e.g., Prime Psychol. Serv. v. Progressive Cas. Ins. Co., 24 Misc.3d 1244(A), 2009 WL 2780152 (N.Y.C. Civ. Ct., 2009); Carothers v. Geico Indem. Co., 18 Misc.3d 1147(A), 2008 WL 650280 (N.Y.C. Civ. Ct., 2008); Citywide Soc. Work & Psy. Serv., P.L.L.C. v. Travelers Indem. Co., 3 Misc.3d 608 (N.Y.C. Civ. Ct., 2004).

For the year 2008, there were 219,000 no-fault filings in the New York City Civil Court, three-quarters of which involved the issue of medical necessity. Of these cases, 96 per cent were for claims of $5,000 or less. The problem is that in medical necessity cases both sides retain the services of a medical professional to testify as their medical expert and end up incurring expert witness costs in excess of the amount at issue due to the numerous adjournments that a no-fault case typically undergoes because of the court's congested trial calendar. The medical affidavit enables the parties to preserve the testimony of their expert and present it at trial when it is eventually held and enables the court to receive medical testimony without having to sit through the expert's testimony. The acceptance of the medical affidavit is subject to the discretion of the court which may reject the affidavit and require the expert to appear in person and give testimony.

By allowing the parties to proffer the affidavit of the medical expert on the issue of medical necessity, the acceptance of which is subject to the discretion of the court, this measure

will facilitate the expeditious adjudication on the merits of the no-fault cases, and thereby help to clear the civil court's trial calendar.

This measure has a sunset provision so that the efficacy of the proposed rule can be evaluated for continuation and possible expansion.

Proposal

AN ACT to amend the New York city civil court act, in relation to no-fault insurance claims

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The New York city civil court act is amended by adding a new section 1308 to read as follows:

§ 1308. Medical proof in no-fault actions. Any party to an action for money, not in excess of five thousand dollars, exclusive of interest and costs and attorney fees, which seeks reimbursement for medical treatment pursuant to section 5106 of the insurance law may submit the sworn statement of a licensed medical professional on the issue of the necessity of the medical treatment. Such statement shall set forth the opinion of the medical professional and the material facts upon which that opinion is based. A copy of the sworn statement shall be furnished to all parties no later than the time the statement is submitted to the court. The sworn statement shall by accepted by the court in lieu of testimony by the medical professional unless, after the submission of the sworn statement, the court directs that the medical professional appear and testify in person.

§ 2. This act shall take effect on the first day of January next succeeding the date on which it shall have become law and shall apply to all actions and proceedings commenced on or

after such effective date. This act shall expire December 31, 2016.

2. Pleading Credit Card Account Number in Consumer Credit Actions (CPLR 3016)

This measure amends CPLR 3016 to require that a complaint in an action arising out of a consumer credit transaction plead the last four digits of the account number of the credit card used to incur the consumer debt at issue in the action.

An action arising out of a consumer credit transaction concerns a "a transaction wherein credit is extended to an individual and the money, property, or service which is the subject of the transaction is primarily for personal, family, or household purposes." CPLR 105(f).

Where the action arising out of a consumer credit transaction involves a credit card, resolution of the dispute and satisfaction of the outstanding debt raises the issue of closure. Because credit card debt is sold to third parties and commonly to several debt collectors serially, it is often impossible for a debtor to identify if the debt is valid or who the original creditor is. It is, therefore, not uncommon to find a debtor being sued by different debt collectors for the same debt. In addition, credit card numbers are changed by the original creditor or debt purchaser so that it appears that there may be more than one credit card issued to the debtor. As a result, a debtor who pays off a claim against the original card number will often find that he or she has a "second" card that needs to be paid.

By requiring that the last four digits of the account number of the original credit card be pled in the complaint, the consumer-debtor would be able to verify the obligation and have proof of payment when the debt is satisfied. Moreover, by having part of the account number in the complaint, the court can insist that any stipulation of settlement of the action contain that information and prevent creditors from suing on the same debt twice. This measure restricts the use of the credit account number to the last four digits in order provide enough information to obtain closure but not so much information as to make the consumer-debtor vulnerable to identity theft.

Proposal

AN ACT to amend the civil practice law and rules, in relation to consumer credit actions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Rule 3016 of the civil practice law and rules is amended by adding a new subdivision (i) to read as follows:

(i) Consumer credit transaction. In an action arising out of a consumer credit transaction

where a purchaser, borrower, or debtor is a defendant and the credit obligation being sued upon was incurred using a credit card, the complaint shall state the last four digits of the number assigned to the credit card. For the purposes of this provision, "credit card" means and includes any credit card, credit plate, charge plate, courtesy card, or other identification card or device issued by a person to another person which may be used to obtain a cash advance or a loan or credit or to purchase or lease property or services on the credit of the issuer or of the holder.

§ 2. This act shall take effect on the first day of January next succeeding the date on which it shall have become law and shall apply to all actions and proceedings commenced on or after such effective date.

3. Authorize City Courts to Set Bail for all Felonies
(CPL 530.20)

This measure amends section 530.20 of the Criminal Procedure Law to authorize the city courts to set bail when a defendant is charged with any felony.

Under CPL 530.20(2), when a defendant is charged by a felony complaint with a felony, a local criminal court may order recognizance or bail, subject to the following restriction, specifically, a city, town and village court may not order recognizance or bail when the defendant is either charged with a class A felony or if the defendant has two previous felony convictions. The other local criminal courts not expressly identified by this provision -- the New York City criminal court and the Nassau County and Suffolk County district courts -- have the authority to order recognizance or set bail without these limitations.

There is no reason for excluding the city court from exercising this authority. Like the New York City criminal court and the district courts, city courts have access to information, such as the state criminal history database, that would enable a city court to make an informed and reasoned decision about the propriety of releasing a defendant on his or her own recognizance or on bail after reviewing the defendant's criminal history or prior arrest record.

By authorizing the city court to order recognizance or bail when the defendant is charged with or convicted of any felony, this measure would ensure that the arraignment in the city court would be totally dispositive on the issue of bail on the pending felony charge and would eliminate the need for counsel for the defendant to make an application for bail in the county court.

Proposal

AN ACT to amend the criminal procedure law, in relation to authority of the city courts to order recognizance or bail for all felonies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (a) of subdivision 2 of section 530.20 of the criminal procedure law is amended to read as follows:

(a) A [city court, a] town court or a village court may not order recognizance or bail when (i) the defendant is charged with a class A felony, or (ii) it appears that the defendant has two

previous felony convictions;

§ 2. This act shall take effect immediately.

4. Authorize Remission of Bail in City Court
(CPL 540.30)

This measure amends section 540.30 of the Criminal Procedure Law to authorize the city courts to remit bail forfeitures.

CPL 540.10 provides that a criminal court may forfeit the bail posted by a defendant where the defendant fails to appear in court without sufficient cause. CPL 540.10(1) and (2). Currently, once forfeiture has occurred in a local criminal court, the only way to retrieve the bail is to make an application to a superior court, except that, when bail is forfeited by a District Court, an application for remission may be made to that court. CPL 540.30(b).

There is no reason to limit that exception to the district court and require a city court defendant to go the Supreme Court to obtain a order directing the remission of the bail. Since the information necessary to decide a remission application is usually contained in the City Court records, that court is generally best suited to determine such an application. This measure would also relieve the superior courts of the burden of deciding applications involving generally small amounts of forfeited bail.

Proposal

AN ACT to amend the criminal procedure law, in relation to the remission of bail by city courts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (b) of subdivision 1 of section 540.30 of the criminal procedure law, as amended by chapter 248 of the laws of 1980, is amended to read as follows:

(b) If the forfeiture has been ordered by a local criminal court, the application must be made to a superior court in the county, except that if the local criminal court which ordered the forfeiture was a district or city court, the application may alternatively be made to that district or city court.

§ 2. This act shall take effect immediately.

5. Sealing of Court Record of Action
Dismissed upon Motion of Prosecutor
(CPL 160.50)

This measure amends section 160.50 of the Criminal Procedure Law to authorize the sealing of the court records in a criminal action or proceeding in the event that the charges are dismissed upon motion by the prosecutor.

Currently, section 160.50 of the Criminal Procedure Law authorizes the court to seal the records of a criminal action or proceeding which has terminated in favor of the defendant. The purpose of the sealing rule is to ensure that the person charged with, but not convicted of, a criminal offense is free of the stigma of having been the subject of the charge. The records subject to this provision consist of all official records and papers, including judgments and orders of a court, but not including published court decisions or opinions or records and briefs on appeal, relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the Division of Criminal Justice Services, any court, police agency, or prosecutor's office must be sealed. CPL 160.50(1). Subdivision three of this provision sets forth the specific circumstances under which an action or proceeding will be considered terminated in favor of the defendant. See CPL 160.50(3). This class of dispositions which qualify for such treatment include acquittal and various specified dismissals and vacaturs. Id.

Prosecutors have the discretion not to proceed with a criminal action or proceeding. See People v. Thomas, 4 Misc.3d 57, 59 (Sup. Ct., App. Term 2004), aff'd 4 N.Y.3d 143 (2005). Despite the broad class of dispositions covered by section 160.50, however, it does not expressly authorize the sealing of court records when the prosecutor moves to dismiss the entire accusatory instrument or when the prosecutor elects not to prosecute after the accusatory instrument has been filed but prior to the arraignment. There is no reason to exclude the records associated with this class of dispositions from the sealing rule established by section 160.50 and this measure would provide that express authorization for inclusion.

By authorizing the sealing of court records upon the prosecutor's motion to dismiss or election not to proceed, this measure would extend the protections of section 160.50 to a person whose criminal case is terminated in his or her favor under these circumstances.

Proposal

AN ACT to amend the criminal procedure law, in relation to sealing of a court record upon dismissal of a criminal action upon motion of the prosecutor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (b) of subdivision 3 of section 160.50 of the criminal procedure law, as amended by chapter 518 of the laws of 2004, is amended to read as follows:

(b) an order to dismiss the entire accusatory instrument against such person pursuant to section 170.30, 170.50, 170.55, 170.56, 180.70, 210.20, 210.46 or 210.47 of this chapter or on the motion of the appropriate prosecutor was entered or deemed entered, or an order terminating the prosecution against such person was entered pursuant to section 180.85 of this chapter, and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people; or

§ 3. Paragraph (i) of subdivision 3 of section 160.50 of the criminal procedure law is amended to read as follows:

(i) prior to the filing of an accusatory instrument in a local criminal court against such person or after the filing of the accusatory instrument but prior to an arraignment, the prosecutor elects not to prosecute such person. In such event, the prosecutor shall serve a certification of such disposition upon the division of criminal justice services and upon the appropriate police department or law enforcement agency which, upon receipt thereof, shall comply with the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of this section in the same manner as is required thereunder with respect to an order of a court entered pursuant to said subdivision one.

§ 4. This act shall take effect immediately.

6. Authorize Electronic Signature in Accusatory Instruments
and Supporting Depositions
(CPL 1.20, 100.20, 100.25, 100.30, 150.10, and VTL § 207)

This measure amends various sections of the Criminal Procedure Law and the Vehicle and Traffic Law to authorize the use of electronic signatures in criminal proceedings.

Police agencies throughout the state are currently issuing simplified traffic informations and supporting depositions which are "signed" with a digitally stored signature. The Electronic Signatures and Records Act, State Technology Law (§§ 301-309 ("ESRA")), the purpose of which is "to support and encourage electronic commerce and electronic government" (see L. 1999, c. 314, § 1), expressly authorizes the use of electronic signatures and records in lieu of handwritten signatures and paper documents and sets forth the rules for their creation, protection, use, and authentication. Under ESRA, the electronic records and the electronic signatures, which execute those government records, have all the force and effect of non-electronic records and the non-electronic signatures that may be affixed to them. State Technology Law §§ 304 and 305.

The problem is that although ESRA expressly makes those electronic government records and related signatures admissible in any court where provisions of the CPLR -- such as those governing the admissibility of business records -- are applicable, this standard is inadequate for ensuring that electronic signatures are placed on the electronic version of legal instruments used in criminal court proceedings, such as simplified informations and supporting depositions, in a manner that complies with due process. See People v. Rose, 11 Misc.3d 200 (2005).

This measure seeks to comply with due process by creating a definition of an electronic signature that provides that in addition to being an electronic or digital signal assigned to and under the sole control of a specific person, the use of the electronic signature will be deemed to express the electronic signer's intent to execute the instrument with the same force and effect as a signature made by hand for the purpose of authenticating or verifying the contents of the instrument with which it is associated. This measure also amends provisions of the Criminal Procedure Law and Vehicle and Traffic Law to expressly authorize the use of an electronic signature in an accusatory instrument and a supporting deposition.

By authorizing the issuance of simplified traffic informations and supporting depositions using electronic signatures, this measure will ensure the success of electronic ticketing.

Proposal

AN ACT to amend the criminal procedure law and vehicle and traffic law,
in relation to the use of electronic signatures

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Section 1.20 of the criminal procedure law is amended by adding a new subdivision 44 to read as follows:

44."Electronic signature" means a handwritten signature which is stored digitally as a digital or electronic symbol, which is attached to or logically associated with an electronic record which has been completed except for the addition of such electronic signature and which was executed or adopted by a person with the intent to sign the record and which must be unique to the person using it, capable of verification, under the sole control of the person using it, attached to or associated with data in such a manner that authenticates the attachment of the signature to particular data and the integrity of the data transmitted, and intended by the party using it to have the same force and effect as the use of a signature affixed by hand.

§ 2. Subdivision 1 of section 1.20 of the criminal procedure law, as amended by chapter 209 of the laws of 1990, is amended to read as follows:

1. "Accusatory instrument" means an indictment, an indictment ordered reduced pursuant to subdivision one-a of section 210.20 of this chapter, an information, a simplified information, a prosecutor's information, a superior court information, a misdemeanor complaint or a felony complaint. Every accusatory instrument, regardless of the person designated therein as accuser, constitutes an accusation on behalf of the state as plaintiff and must be entitled "the people of the state of New York" against a designated person, known as the defendant. An accusatory instrument may be signed with either a handwritten signature or an electronic signature as defined in section subdivision forty-four of this section.

§ 3. Section 100.20 of the criminal procedure law, as amended by chapter 661 of the laws of 1972, is amended to read as follows:

§ 100.20. Supporting deposition; definition, form and content. A supporting deposition is a written instrument accompanying or filed in connection with an information, a simplified information, a misdemeanor complaint or a felony complaint, subscribed and verified by a person other than the complainant of such accusatory instrument, and containing factual allegations of an evidentiary character, based either upon personal knowledge or upon information and belief, which supplement those of the accusatory instrument and support or tend to support the charge or charges contained therein. A supporting deposition may be signed with either a handwritten signature or an electronic signature as defined in subdivision forty-four of section 1.20 of this chapter.

§ 4. Subdivision 1 of section 100.25 of the criminal procedure law, as amended by chapter 707 of the laws of 1974, is amended to read as follows:

1. A simplified information must be substantially in the form prescribed by the commissioner of motor vehicles, the commissioner of parks and recreation, or the commissioner of environmental conservation, as the case may be. The simplified information may be signed with either a handwritten signature or an electronic signature as defined in subdivision forty-four of section 1.20 of this chapter.

§ 5. Section 100.30 of the criminal procedure law is amended by adding a new subdivision 3 to read as follows:

3. The signature accompanying a verification specified in subdivision one may be signed with either a handwritten signature or an electronic signature as prescribed in subdivision forty-

four of section 1.20 of this chapter.

§ 6. Subdivision 1 of section 150.10 of the criminal procedure law is amended to read as follows:

1. An appearance ticket is a written notice issued and subscribed by a police officer or other public servant authorized by state law or local law enacted pursuant to the provisions of the municipal home rule law to issue the same, directing a designated person to appear in a designated local criminal court at a designated future time in connection with his or her alleged commission of a designated offense. A notice conforming to such definition constitutes an appearance ticket regardless of whether it is referred to in some other provision of law as a summons or by any other name or title. The appearance ticket may be signed with either a handwritten signature or an electronic signature as defined in subdivision forty-four of section 1.20 of this chapter.

§ 7. Subdivision 1 of section 207 of the vehicle and traffic law, as amended by chapter 173 of the laws of 1990, is amended to read as follows:

1. Except as otherwise provided, the commissioner shall be authorized consistent with the applicable provisions of the criminal procedure law to prescribe the form of summons and complaint or simplified information in all cases involving a violation of any provision of this chapter, including section twelve hundred three-c, or of any provision of the tax law or of the transportation law regulating traffic, or of any ordinance, rule or regulation relating to traffic, and to establish procedures for proper administrative controls over the disposition thereof. The commissioner is not authorized to prescribe the form of summons and complaint for parking, stopping or standing violations or a violation of article forty-seven or forty-eight of this chapter.

§ 8. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law and shall apply to all actions and proceedings commenced on or after such effective date.

7. Single Judge Trials in Certain Misdemeanor Cases
(CPL 340.40(2))

This measure amends section 340.40 of the Criminal Procedure Law to authorize single judge trials in all local criminal courts where the term of imprisonment for the offense is less than six months.

Section 340.40(2) of the Criminal Procedure Law now provides that a defendant charged by information with a misdemeanor must be accorded a jury trial, except that, in the New York City Criminal Court, a defendant must be accorded a single judge trial where the authorized term of imprisonment for the charged misdemeanor is not more than six months.

This measure would extend the exception now applicable only in the New York City Criminal Court to all local criminal courts. Thus, in local criminal courts located outside of New York City, trials of class B misdemeanors would be nonjury trials only. This measure does not infringe on a defendant's right to a jury trial because under the Constitution the right to a jury trial attaches only when charged with a crime for which the maximum penalty is more than six months' incarceration. See Baldwin v. New York, 399 U.S. 66 (1970). Moreover, this measure would enlarge the misdemeanor trial capacity of the State's other local criminal courts.

By authorizing single judge trials for offenses less than six months, this measure would shorten the time from arraignment to trial, reduce the costs associated with empaneling a jury, and insure an adequate supply of jurors for the trial of more serious misdemeanors and felony charges.

Proposal

AN ACT to amend the criminal procedure law, in relation to trial in certain local criminal courts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 2 of section 340.40 of the criminal procedure law, as amended by chapter 673 of the laws of 1984, is amended to read as follows:

2. In any local criminal court a defendant who has entered a plea of not guilty to an information which charges a misdemeanor must be accorded a jury trial, conducted pursuant to article three hundred sixty, except that [in the New York city criminal court,] the trial of an

information which charges a misdemeanor for which the authorized term of imprisonment is not more than six months must be a single judge trial. The defendant may at any time before trial waive a jury trial in the manner prescribed in subdivision two of section 320.10, and consent to a single judge trial.

§ 2. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law.

8. Authorizing Judicial Hearing Officers to Hear and Report on Motion to Vacate a Criminal Judgment or Sentence (CPL 440.30)

This measure amends section 440.30 of the criminal procedure law to authorize a judicial hearing officer to hear and report on a motion to vacate a judgment or set aside a sentence in a criminal proceeding.

Section 440.30 of the criminal procedure law sets forth the procedure for commencing and disposing of a motion to vacate a judgment, authorized by CPL 440.10, and a motion to set aside a sentence, authorized by CPL 440.20. A motion under section 440.30, which must be in writing and made upon notice to the office of the prosecutor, is often time-consuming in that it requires a careful examination of voluminous records and, when an issue of fact presents itself, an evidentiary hearing. See CPL 440.30.

Judicial hearing officers constitute a resource appropriately matched to the task of hearing this type of application. Persons holding this office are retired judges appointed to perform certain designated judicial functions in civil and criminal courts pursuant to Article 22 of the Judiciary Law and serve in that capacity for the purpose of freeing judges to conduct more trials. People v. Scalza, 76 N.Y.2d 604, 608 (1990). The Criminal Procedure Law authorizes a judicial hearing officer to perform a judicial function in certain circumstances, depending on the court. For example, in a superior criminal court, a judicial hearing officer is authorized, upon a reference from the court, to hear a pre-trial motion and report his or her findings of fact and law (CPL 255.20(4)). In a local criminal court, a judicial hearing officer is authorized, provided the parties consent, to try issues of fact and preside over bench trials of class B and unclassified misdemeanors (CPL 350.20). Currently, there are approximately 300 judicial hearing officers serving in all trial courts throughout the state, including courts which exercise criminal jurisdiction.

This measure would authorize a criminal court to refer a motion under section 440.30 to a judicial hearing officer for a report of his or her findings of fact and law. In connection with such an application, the judicial hearing officer would have the same authority as a judge of the criminal court to hear the application, including holding a an evidentiary hearing. The judicial hearing officer, however, would not have the authority to decide the application. Instead, the judicial hearing officer would be required to report to the referring court his or her findings of fact and conclusions of law. After reviewing the submissions of the parties, the record created by the judicial hearing officer, and his or her report and recommendation, the referring court would then issue a decision.

By authorizing a judicial hearing officer to hear, but not determine, these time-consuming post-trial motions, this measure would enable more judges to try cases and thereby lessen delay, which the Court of Appeals has described as "a recognized evil to the fair administration of the criminal justice system." People v. Scalza, 76 N.Y.2d at 610.

Proposal

AN ACT to amend the criminal procedure law, in relation to authorizing a judicial hearing officer to hear and report a motion to vacate a criminal judgment or sentence

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 440.30 of the criminal procedure law is amended by adding a new subdivision (8) to read as follows:

(8) Any motion, pursuant to either section 440.10 or 440.20 in accordance with the procedure specified in subdivision one of this section, may be referred by the court to a judicial hearing officer who shall entertain it in the same manner as a court. In the discharge of this responsibility, the judicial hearing officer shall have the same powers as a judge of the court making the assignment, except that the judicial hearing officer shall not determine the motion but shall file a report with the court setting forth findings of fact and conclusions of law. The rules of evidence shall be applicable at any hearing conducted hereunder by a judicial hearing officer. A transcript of any testimony taken, together with the exhibits or copies thereof, shall be filed with the report. The court shall determine the motion on the motion papers, affidavits and other documents submitted by the parties thereto, the record of the hearing before the judicial hearing officer, and the judicial hearing officer's report.

§ 2. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law.

9. Probation for Endangering the Welfare of a Child
(Penal Law § 65.00)

This measure amends section 65.00 of the penal law to authorize the imposition of a term of probation of three to five years for the offense of endangering the welfare of a child.

The sentence of probation seeks to provide an offender with an opportunity to rehabilitate him- or herself, without institutional confinement, subject to conditions imposed by the sentencing court and enforced by the probation officer under whose supervision the offender is placed. See CPL 65.00(1).

A person is guilty of endangering the welfare of a child if he or she knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old or directs or authorizes the child to engage in an occupation involving a substantial risk of danger to his or her life or health. Penal Law § 260.10(1). In addition, a person is guilty of this offense if, being a parent, guardian or other person legally charged with the care or custody of a child less than eighteen years old, he or she fails or refuses to exercise reasonable diligence in the control of such child to prevent him or her from becoming an "abused child," a "neglected child," or juvenile delinquent" or a "person in need of supervision," as those terms are defined by the Family Court Act. Penal Law § 260.10(2). Endangering the welfare of a child is a class A misdemeanor (Penal Law § 260.10) and subject to a probation period of three years. CPL 65.00(3)(ii).

The problem is that, although convictions for this offense cover a wide range of factual scenarios, many of these convictions are compromise solutions to more serious cases of child endangerment, including child abuse, for which a period of court-supervised probation greater than three years would be appropriate. The maximum period of probation for this offense is capped at five years in order to provide for a probation period that is consistent with the sentencing scheme set forth in section 65.00(3), which authorizes a sentence of probation of six years for a class A misdemeanor sexual assault. See CPL 65.00(3)(i). A sexual assault is defined as a conviction for an offense defined in Penal Law Article 130 (sexual offenses), section 263 (sexual performance by a child), and sections 255.255, 25.26, or 255.27 (incest). A period of probation that is greater than three but less than six years for endangering the welfare of a child is appropriate because in some instances the conviction for this offense may be the result of plea bargain down from an offense that could constitute a sexual assault.

By enabling a court to exercise some discretion, particularly with respect to how it supervises the interaction between family members in a case resulting in a conviction for endangering the welfare of a child, this measure would enable the sentencing court to impose a sentence that more appropriately applies to the facts of the case.

Proposal

AN ACT to amend the criminal procedure law, in relation to authorizing a term of probation for the offense of endangering the welfare of a child

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraph (ii) of paragraph (b) of subdivision 3 of section 65.00 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

(ii) For a class A misdemeanor sexual assault, the period of probation shall be six years[.];

(iii) For the class A misdemeanor of endangering the welfare of a child, the period of probation shall be from three years to five years.

§ 2. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law.

10. Fingerprinting of Defendant Charged with Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree (CPL 160.10)

This measure amends section 160.10 of the Criminal Procedure Law to authorize the taking of the fingerprints of a defendant charged with aggravated unlicensed operation of a motor vehicle in the second degree.

Fingerprinting is the means by which the criminal justice system identifies persons who have been charged with or previously convicted of a criminal offense. Information concerning a defendant's prior criminal convictions is extremely useful to a court seeking to determine the appropriate order for securing the return of the defendant to answer a criminal charge. In addition, information concerning a defendant's prior criminal convictions may become relevant when determining a defendant's sentence. Section 160.10 of the Criminal Procedure Law lists the offenses for which the fingerprints of the person who is arrested and charged with any one of those offenses must be taken. Aggravated unlicensed operation of a motor vehicle in the second degree is not listed in section 160.10

Aggravated unlicensed operation of a motor vehicle is a frequently charged offense which involves persons who are driving a motor vehicle after their authority to do so have been revoked or suspended. Section 511 of the Vehicle and Traffic Law sets forth the degrees of guilt and the corresponding penalties for this category of offenses. A person is guilty of aggravated unlicensed operation of a motor vehicle in the second degree when that person operates a motor vehicle upon a public highway while knowing or having reason to know that his or her license is suspended, revoked or otherwise withdrawn by the commissioner, and where one of the following predicates is also established: (i) the defendant has been previously convicted for operating a motor vehicle with knowledge that his or her license was suspended or revoked; or (ii) the suspension or revocation of the license is based upon the defendant's refusal to submit to test to determine if the defendant was driving under the influence of alcohol or drugs or is based on a conviction for driving while under the influence of alcohol or drugs; or (iii) the suspension was a mandatory suspension for being charged with driving while intoxicated or impaired by drugs; or (iv) the defendant's license has been suspended three or more times for either failing to answer or appear in response to a charge of violating the traffic or tax laws or for failing to pay any fine imposed by a court. Vehicle and Traffic Law § 511(2).

This measure seeks to make aggravated unlicensed operation of a motor vehicle in the second degree a fingerprintable offense. In the absence of fingerprint information concerning a person who has been convicted of this offense -- an offense which demonstrates a propensity for engaging in conduct that not only undermines road safety but the authority of a court -- the court is without access to information vital to determining the appropriate securing order for that person when he or she is before the court on another charge of criminal conduct. The absence of this fingerprint information also undermines the court's ability to impose the appropriate penalty

particularly where the law authorizes the imposition of a higher penalty because a prior conviction for the fingerprintable offense is a predicate for the violation of another provision of the law. Here, a conviction for aggravate unlicensed operation of a motor vehicle in the second degree is the predicate for aggravated unlicensed operation of a motor vehicle in the first degree. Vehicle and Traffic Law § 511(3).

Proposal

AN ACT to amend the criminal procedure law, in relation to the fingerprinting of a defendant charged with aggravated unlicensed operation of a motor vehicle in the second degree

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (1) of section 160.10 of the criminal procedure law is amended by adding a new paragraph (f) to read as follows:

(f) Aggravated unlicensed operation of a motor vehicle in the second degree as defined by subdivision 2 of section 511 of the vehicle and traffic law.

§ 2. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law.

11. Fingerprinting of Defendant Charged with Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree (CPL 160.10)

This measure amends section 160.10 of the Criminal Procedure Law to authorize the taking of the fingerprints of a defendant charged with aggravated unlicensed operation of a motor vehicle in the third degree.

Fingerprinting is the means by which the criminal justice system identifies persons who have been charged with or previously convicted of a criminal offense. Information concerning a defendant's prior criminal convictions is extremely useful to a court seeking to determine the appropriate order for securing the return of the defendant to answer a criminal charge. In addition, information concerning a defendant's prior criminal convictions may become relevant when determining a defendant's sentence. Section 160.10 of the Criminal Procedure Law lists the offenses for which the fingerprints of a person who is arrested and charged with any one of those offenses must be taken. Aggravated unlicensed operation of a motor vehicle in the third degree is not listed by section 160.10

Aggravated unlicensed operation of a motor vehicle is a frequently charged offense which involves persons who are driving a motor vehicle after their authority to do so have been revoked or suspended. Section 511 of the Vehicle and Traffic Law sets forth the degrees of guilt and the corresponding penalties for this category of offenses. A person is guilty of aggravated unlicensed operation of a motor vehicle in the third degree when that person operates a motor vehicle upon a public highway while knowing or having reason to know that his or her license is suspended, revoked or otherwise withdrawn by the commissioner. Vehicle and Traffic Law § 511(1).

This measure seeks to make aggravated unlicensed operation of a motor vehicle in the second degree a fingerprintable offense. In the absence of fingerprint information for a person who has been convicted of this offense -- an offense which demonstrates a propensity for engaging in conduct that undermines road safety -- the court is without access to information vital to determining the appropriate securing order for that person when he or she is before the court on another charge of criminal conduct. The absence of this fingerprint information also undermines the court's ability to impose the appropriate penalty particularly where the law authorizes the imposition of a higher penalty because a prior conviction for the fingerprintable offense is a predicate for the violation of another provision of the law. Here, a conviction for aggravated unlicensed operation of a motor vehicle in the second degree is the predicate for aggravated unlicensed operation of a motor vehicle in the second and first degrees. Vehicle and Traffic Law § 511 (2) and (3).

This measure limits fingerprinting under section 160.10 to persons arrested or arraigned in New York City because the New York City Police Department has the resources to fingerprint persons charged with this offense.

Proposal

AN ACT to amend the criminal procedure law, in relation to the fingerprinting of a defendant charged with aggravated unlicensed operation of a motor vehicle in the third degree

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (1) of section 160.10 of the criminal procedure law is amended by adding a new paragraph (f) to read as follows:

(f) Aggravated unlicensed operation of a motor vehicle in the third degree as defined by subdivision 1 of section 511 of the vehicle and traffic law where the arrest or arraignment occurs in New York City.

§ 2. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law.

12. Fingerprinting of Defendant Charged with
Driving Ability Impaired
(CPL 160.10)

This measure amends section 160.10 of the Criminal Procedure Law to authorize the taking of the fingerprints of a defendant charged with driving while ability impaired.

Fingerprinting is the means by which the criminal justice system identifies persons who have been charged with or previously convicted of a criminal offense. Information concerning a defendant's prior criminal convictions is extremely useful to a court seeking to determine the appropriate order for securing the return of the defendant to answer a criminal charge. In addition, information concerning a defendant's prior criminal convictions may become relevant when determining a defendant's sentence. Section 160.10 of the Criminal Procedure Law lists the offenses for which the fingerprints of a person who is arrested and charged with any one of those offenses must be taken. Driving while ability impaired is not listed in section 160.10.

A person is guilty of driving while impaired when that person operates a motor vehicle when his or her ability to operate such motor vehicle is impaired by the consumption of alcohol. This offense is a traffic infraction punishable by a fine of not less than three hundred dollars nor more than five hundred dollars or imprisonment of not more than fifteen days, or both a fine and imprisonment. Vehicle and Traffic Law § 1193(1).

This measure seeks to make driving while impaired a fingerprintable offense. In the absence of fingerprint information for a person who has been convicted of this offense -- an offense which demonstrates a propensity for engaging in conduct that undermines road safety -- the court is without access to information vital to determining the appropriate securing order for that person when her or she is before the court on another criminal charge. The absence of this fingerprint information also undermines the court's ability to impose the appropriate penalty particularly where the law authorizes the imposition of a higher penalty because the prior conviction for the fingerprintable offense is a predicate for the violation of another provision of the law. Here, two or more convictions for driving while impaired is the predicate for being convicted of a misdemeanor. Vehicle and Traffic Law § 1193(1).

Proposal

AN ACT to amend the criminal procedure law, in relation to the fingerprinting of a defendant charged with driving while ability impaired

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (1) of section 160.10 of the criminal procedure law is amended by

adding a new paragraph (f) to read as follows:

(f) Driving while impaired as defined by subdivision 1 of section 1192 of the vehicle and traffic law.

§ 2. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law.

III. PREVIOUSLY ENDORSED LEGISLATION

1. Entry of Civil Judgment for
Supplemental Sex Offender Victim Fee
(CPL 420.35 and 420.40)

This measure amends sections 420.35 and 420.40 of the Criminal Procedure Law to authorize a court to reduce the supplemental sex offender victim fee to a civil judgment in order to facilitate the collection of that fee.

Section 60.35 of the Penal Law requires a court to impose fees and surcharges as part of the sentence of a person convicted of a crime with the fee determined by the offense that is the basis for the conviction. It authorizes the imposition of a mandatory surcharge, the amount of which is based upon the classification of the offense; the crime victim assistance fee; the DNA data bank fee, which is imposed upon persons required to provide material for DNA identification typing and inclusion in the state DNA identification index; the sex offender registration fee, which is imposed upon persons convicted of a sex offense or sexually violent offense; and the supplemental sex offender victim fee, which is imposed upon persons convicted of a sex offense under the Penal Law, promoting or possessing the sexual performance by a child, or incest. The supplemental sex offender fee is $1,000.

Section 420.10 of the Criminal Procedure Law establishes the procedure for collecting money payments -- such as fines, restitutions, or reparations -- imposed on persons convicted of an offense and authorizes a court to reduce the fine, restitution, or reparation to a civil judgment in order to facilitate its collection. Sections 420.35 and 420.40 make the procedures set forth in section 420.10 applicable to the surcharges and fees identified in the Penal Law. Section 420.35 expressly makes the procedures that are set forth in section 420.10 available for collecting mandatory surcharges and fees authorized by Penal Law § 60.35. Section 420.40 establishes a procedure for deferring, where appropriate, the collection of these same surcharges and fees and entering a civil judgment for future execution to secure payment.

The problem is that while both sections 420.35 and 420.40 of the Criminal Procedure Law expressly refer to the mandatory surcharge, the crime victim assistance fee, the DNA data bank fee, and the sex offender registration fee, neither provision mentions the supplemental sex offender victim fee. In light of the fact that Penal Law § 60.35 requires the court to impose this fee wherever applicable, there is no reason for excluding the supplemental sex offender fee from the collection procedures established by sections 420.35 and 420.40.

By authorizing a court to enter a civil judgment upon the supplemental sex offender victim fee, this proposal will provide for the consistent application of the law with respect to the collection of mandatory surcharges and fees.

AN ACT to amend the criminal law, in relation to the collection of the supplemental sex offender victim fee

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 420.35 of the criminal procedure law, as amended by chapter 56 of the laws of 2004, is amended to read as follows:

§ 420.35. Mandatory surcharge and crime victim assistance fee; applicability to sentences mandating payment of fines. 1. The provisions of section 420.10 of this article governing the collection of fines and the provisions of section 420.40 of this article governing deferral of mandatory surcharges, sex offender registration fees, supplemental sex offender victim fees, DNA databank fees and financial hardship hearings and the provisions of section 430.20 of this chapter governing the commitment of a defendant for failure to pay a fine shall be applicable to a mandatory surcharge, sex offender registration fee, supplemental sex offender victim fee, DNA databank fee and a crime victim assistance fee imposed pursuant to subdivision one of section 60.35 of the penal law, subdivision twenty-a of section three hundred eighty-five of the vehicle and traffic law, subdivision nineteen-a of section four hundred one of the vehicle and traffic law, or a mandatory surcharge imposed pursuant to section eighteen hundred nine of the vehicle and traffic law or section 27.12 of the parks, recreation and historic preservation law. When the court directs that the defendant be imprisoned until the mandatory surcharge, sex offender registration fee, supplemental sex offender victim fee or DNA databank fee is satisfied, it must specify a maximum period of imprisonment not to exceed fifteen days; provided, however, a court may not

direct that a defendant be imprisoned until the mandatory surcharge, sex offender registration fee, supplemental sex offender victim fees, or DNA databank fee is satisfied or otherwise for failure to pay the mandatory surcharge, sex offender registration fee, supplemental sex offender victim fee or DNA databank fee unless the court makes a contemporaneous finding on the record, after according defendant notice and an opportunity to be heard, that the payment of the mandatory surcharge, sex offender registration fee, supplemental sex offender victim fee or DNA databank fee upon defendant will not work an unreasonable hardship upon him or her or his or her immediate family.

2. Under no circumstances shall the mandatory surcharge, sex offender registration fee, supplemental sex offender victim fee, DNA databank fee or the crime victim assistance fee be waived provided, however, that a court may waive the crime victim assistance fee if such defendant is an eligible youth as defined in subdivision two of section 720.10 of this chapter, and the imposition of such fee would work an unreasonable hardship on the defendant, his or her immediate family, or any other person who is dependent on such defendant for financial support.

3. It shall be the duty of a court of record or administrative tribunal to report to the division of criminal justice services on the disposition and collection of mandatory surcharges, sex offender registration fees, supplemental sex offender victim fees, or DNA databank fees and crime victim assistance fees. Such report shall include, for all cases, whether the surcharge, sex offender registration fee, supplemental sex offender victim fee, DNA databank fee or crime victim assistance fee levied pursuant to subdivision one of section 60.35 of the penal law or section eighteen hundred nine of the vehicle and traffic law has been imposed pursuant to law, collected, or is to be collected by probation or corrections or other officials. The form, manner

and frequency of such reports shall be determined by the commissioner of the division of criminal justice services after consultation with the chief administrator of the courts and the commissioner of the department of motor vehicles.

§ 2. Section 420.40 of the criminal procedure law, as amended by chapter 62 of the laws of 2003, is amended to read as follows:

§ 420.40. Deferral of a mandatory surcharge; financial hardship hearings. 1. Applicability. The procedure specified in this section governs the deferral of the obligation to pay all or part of a mandatory surcharge, sex offender registration fee, supplemental sex offender victim fee, or DNA databank fee imposed pursuant to subdivision one of section 60.35 of the penal law and financial hardship hearings relating to mandatory surcharges.

2. On an appearance date set forth in a summons issued pursuant to subdivision three of section 60.35 of the penal law, section eighteen hundred nine of the vehicle and traffic law or section 27.12 of the parks, recreation and historic preservation law, a person upon whom a mandatory surcharge, sex offender registration fee, supplemental sex offender victim fee, or DNA databank fee was levied shall have an opportunity to present on the record credible and verifiable information establishing that the mandatory surcharge, sex offender registration fee, supplemental sex offender victim fee, or DNA databank fee should be deferred, in whole or in part, because, due to the indigence of such person the payment of said surcharge, sex offender registration fee, supplemental sex offender victim fee, or DNA databank fee would work an unreasonable hardship on the person or his or her immediate family.

3. In assessing such information the superior court shall be mindful of the mandatory nature of the surcharge, sex offender registration fee, supplemental sex offender victim fee, and

DNA databank fee, and the important criminal justice and victim services sustained by such fees.

4. Where a court determines that it will defer part or all of a mandatory surcharge, sex offender registration fee, supplemental sex offender victim fee, or DNA databank fee imposed pursuant to subdivision one of section 60.35 of the penal law, a statement of such finding and of the facts upon which it is based shall be made part of the record.

5. A court which defers a person's obligation to pay a mandatory surcharge, sex offender registration fee, supplemental sex offender victim fee, or DNA databank fee imposed pursuant to subdivision one of section 60.35 of the penal law shall do so in a written order. Such order shall not excuse the person from the obligation to pay the surcharge, sex offender registration fee, supplemental sex offender victim fee, or DNA databank fee. Rather, the court's order shall direct the filing of a certified copy of the order with the county clerk of the county in which the court is situate except where the court which issues such order is the supreme court in which case the order itself shall be filed by the clerk of the court acting in his or her capacity as the county clerk of the county in which the court is situate. Such order shall be entered by the county clerk in the same manner as a judgment in a civil action in accordance with subdivision (a) of rule five thousand sixteen of the civil practice law and rules. The order shall direct that any unpaid balance of the mandatory surcharge, sex offender registration fee, supplemental sex offender victim fee, or DNA databank fee may be collected in the same manner as a civil judgment. The entered order shall be deemed to constitute a judgment-roll as defined in section five thousand seventeen of the civil practice law and rules and immediately after entry of the order, the county clerk shall docket the entered order as a money judgment pursuant to section five thousand eighteen of such law and rules.

§ 3. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law.

2. Issuance of an Arrest Warrant
Based Upon a Simplified Traffic Information
(CPL 120.20)

This measure amends section 120.20 of the Criminal Procedure Law to authorize the issuance of a warrant of arrest upon a simplified traffic information which charges a misdemeanor.

The simplified traffic information was designed to facilitate the expeditious processing of many vehicle and traffic offenses and can be used to charge petty offenses as well as misdemeanors. Prieser, Practice Commentary, McKinney's Cons Laws of NY, Book 11A, CPL 100.25, at 366. Where the offense charged is a misdemeanor, such as driving while intoxicated, which is a violation of section 1194 of the Vehicle and Traffic Law, and the motorist fails to appear in court on the designated court date, the court may wish to issue an arrest warrant to compel the motorist to appear and answer. Due to advances in technology, it is becoming increasingly common for police officers when issuing traffic tickets to issue to a motorist both the simplified traffic information and the supporting deposition, and then file both instruments on the court date designated on the simplified traffic information. Taken together, both the simplified traffic information and the supporting deposition will furnish sufficient allegations to establish reasonable cause for the charges that are the subject of the simplified information and thereby for issuing the arrest warrant. See CPL 140.40; People v. Boback, 23 N.Y.2d 189, 195 (1969)(stating that while a simplified traffic information alone will not support the issuance of an arrest warrant, a court may issue an arrest warrant upon an affidavit which proffers facts establishing reasonable cause that the respondent committed the charged offense)

The problem is that while section 120.20(1) provides that the court may issue a warrant for a defendant's arrest if a criminal action has been commenced with the filing of an accusatory instrument that is sufficient on its face, it expressly excludes a simplified traffic information from serving as the basis for an arrest warrant.

This proposal seeks to amend section 120.20(1) by restricting the prohibition against the issuance of an arrest warrant to those simplified traffic informations alleging only a traffic infraction, and thereby provide authorization for the issuance of an arrest warrant for a charge of a more serious offense.

By amending section 120.20(1) to authorize the issuance of an arrest warrant upon a simplified traffic information which alleges a traffic misdemeanor, the proposal provides the local criminal courts with the means for effectively addressing criminal conduct that impacts road safety.

AN ACT to amend the criminal law, in relation to the issuance of an arrest warrant for a person charged with a traffic misdemeanor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 120.20 of the criminal procedure law, as amended by chapter 506 of the laws of 2000, is amended to read as follows:

1. When a criminal action has been commenced in a local criminal court by the filing therewith of an accusatory instrument, other than a simplified traffic information alleging only a traffic infraction, against a defendant who has not been arraigned upon such accusatory instrument and has not come under the control of the court with respect thereto:

(a) such court may, if such accusatory instrument is sufficient on its face, issue a warrant for such defendant's arrest; or

(b) if such accusatory instrument is not sufficient on its face as prescribed in section 100.40, and if the court is satisfied that on the basis of the available facts or evidence it would be impossible to draw and file an accusatory instrument that is sufficient on its face, the court must dismiss the accusatory instrument.

§ 2. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law.

3. Sealing of Court Record of Person Convicted of a Violation (CPL 160.57)

This measure creates a new section 160.57 of the Criminal Procedure Law which would authorize the sealing of the court records relating to convictions for petty offenses.

Currently, section 160.55 of the Penal Law authorizes the sealing of records relating to the convictions for non-criminal petty offenses such as disorderly conduct or trespass, except for the petty offenses of loitering (Penal Law § 240.35(3)), loitering for the purpose of engaging in prostitution (Penal Law § 240.37(2)), and driving while ability impaired (Vehicle and Traffic Law § 1192(1)), which are expressly exempt from the scope of this provision. The records that are sealed under this provision of the law are the files of the police department, the District Attorney's Office, and the fingerprints on file with the Division of Criminal Justice Services. The official records and papers of such cases on file with the court, however, are not sealed.

The availability to the public of the court records of a conviction for a petty offense can have an adverse collateral consequence for the defendant, who having pled guilty to the petty offense as part of a plea bargain that avoids a conviction for a crime and who is otherwise living a law-abiding life, finds that he or she cannot secure employment or purchase a home because of the conviction for a petty offense.

The sealing procedure authorized by this proposal is as follows: A person who has been convicted of a petty offense must wait one year from the date of sentence before he or she can apply to the court, with notice to the District Attorney, for an order sealing his or her court record. In connection with the application, the District Attorney may consent to the sealing or oppose it, whereupon the court must hold a summary hearing to determine whether the application should be granted. The District Attorney does not have wait for the defendant's application and can apply for an order keeping the court record unsealed. In the absence of an application by the defendant or the District Attorney, the court records are automatically sealed 36 months from the date of sentence.

The procedure authorized by this proposal seeks to address the public safety concern of the prosecutor that a particular defendant should not have the benefit of a sealing and the operational concerns of the courts facing the prospect of having to process numerous sealing applications. First, unlike the automatic sealing requirements currently in place under the Criminal Procedure Law, this proposal would allow the sealing procedure to proceed unless the District Attorney's Office objects and has an opportunity to be heard. Second, the 12- and 36-month deadlines are intended to create cooling off periods that would prevent a deluge of sealing applications to the local criminal court that would otherwise be made were applications to seal permitted at the time of sentence. The 12- and 36- month periods also would provide adequate time for the District Attorney to determine whether the defendant has fully complied with the terms of his or her sentence.

AN ACT to amend the criminal procedure law, in relation to sealing court records involving convictions for certain petty offenses

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The criminal procedure law is amended by adding a new section 160.57 to read as follows:

§ 160.57. Application for sealing of court records following termination of criminal action by conviction for noncriminal offense. 1. A person convicted of a traffic infraction or a violation, other than loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this chapter or operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, and whose case was sealed pursuant to section 160.55 of this article, may move in accordance with the provisions of this section for an order sealing the court record of such action or proceeding. In the absence of an earlier application for an order to seal, the record of a conviction of a traffic infraction or a violation pursuant to this subdivision shall be automatically sealed by operation of law thirty-six months from the date of sentence, unless the people file a notice of opposition upon notice to the defendant, no less than twenty days prior to the sealing date and no later than ninety days prior to the expiration of thirty-six months.

2. A motion to seal may be filed in writing with the local criminal court or superior court in which the conviction and sentence occurred not earlier than twelve months following the date of sentence. Such motion must be made upon not less than twenty days notice to the district attorney.

3. Upon motion to seal the court record pursuant to this section, where both parties consent to such sealing, the court shall enter an order sealing the court record unless the interest of justice require otherwise. For purposes of this subdivision, a party who is given written notice of a motion to seal pursuant to this section shall be deemed to consent to such application unless, prior to the return date of such motion, such party files a notice of opposition thereto with the court.

4. Where the people file a notice of opposition prior to the return date or the proposed sealing date pursuant to subdivision one, the court shall conduct a hearing on the return date in which it may receive any relevant evidence. Upon request, the court must grant a reasonable adjournment to either party to enable such party to prepare for the hearing. Following such hearing, an order to seal pursuant to this section shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise. Where the court has determined that sealing pursuant to this section is not in the interests of justice, the court shall put forth its reasons on the record.

5. Upon entry of an order to seal, the court record of such action or proceeding shall be sealed and the clerk of the court wherein such criminal action or proceeding was terminated shall immediately notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that the action shall be sealed as if it had been terminated in favor of the accused and that the record of such action or proceeding shall be sealed.

6. Upon the entry of an order to seal or the expiration of thirty-six months from the date of sentence without opposition by the people, all official records and papers, including judgments

and orders of a court but not including published court decisions or opinions or records and briefs on appeal, relating to the arrest or prosecution, including all duplicates and copies thereof, on file with any court shall be sealed and not made available to any person or public or private agency.

7. Upon the granting of a motion to seal pursuant to this section, or upon the expiration of thirty-six months from the date of sentencing without opposition, such records shall be made available to the person accused or to such person's designated agent, and shall be made available to:

(i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this chapter, or

(ii) a law enforcement agency upon ex parte motion in any superior court, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or

(iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license, or

(iv) the New York state division of parole when the accused is on parole supervision as a result of conditional release or a parole release granted by the New York state board of parole, and the arrest which is the subject of the inquiry is one which occurred while the accused was under supervision, or

(v) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer of peace officer shall be furnished

with a copy of all records obtained under this paragraph and afforded an opportunity to make an explanation thereto, or

(vi) the probation department responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision.

8. The chief administrator of the courts, in consultation with the director of the division of criminal justice services and representatives of appropriate prosecutorial and criminal defense organizations in the state, shall adopt forms for the motion to seal, the notice of opposition to sealing, and the order granting sealing pursuant to this section.

§ 2. Subdivision three of section 160.50 of the criminal procedure law is amended by adding a new subsection (m) to read as follows:

(m) A sealing order pursuant to section 160.57 of this chapter was entered.

§ 3. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law, and shall apply to all qualifying criminal actions for which the sentence date occurred after such effective date.

4. Submission of Request for Supporting Deposition
Directly to Traffic Ticket-Issuing Agency
(CPL 100.25)

This measure would amend section 100.25 of the Criminal Procedure Law by requiring the recipient of a simplified traffic information or appearance ticket to submit a request for a supporting deposition to the law enforcement agency that issued the traffic ticket.

Currently, a defendant charged by a simplified information is entitled to have filed in court and served upon him or her a supporting deposition alleging facts that establish reasonable cause for the charges that are the subject of the simplified information. Under the procedure set forth in CPL 100.25, in order to obtain the supporting deposition, the defendant must request it from the court within the time-frame defined by the statute -- specifically, before a plea of guilty or the commencement of trial, but no later than 30 days after the court appearance date set forth on the simplified information. See CPL 100.25(2). Upon receipt of the request, the court orders the police officer to supply the supporting deposition. The police officer then has 30 days from the court's receipt of the request to serve and file the supporting deposition. Id. Failure to serve the supporting deposition within 30 days constitutes sufficient cause for dismissal of the case. See CPL 170.30(1)(a) and 100.40(2).

This proposal would streamline the process by which the request for the supporting deposition is transmitted to the law enforcement agency by removing the court -- which currently receives and then forwards the deposition request -- from the route of transmission and thereby provide the law enforcement more time to serve the supporting deposition.

By requiring the recipient of a simplified information or appearance ticket to make his or request for a supporting deposition directly to the law enforcement agency, this measure assures that the case will be decided on the merits by enabling a police officer to file a supporting deposition in a timely fashion.

AN ACT to amend the criminal procedure law, in relation to request for a supporting deposition

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions (2) and (4) of section 100.25 of the criminal procedure law, as amended by chapter 67 of the laws of 1996, are amended to read as follows:

2. A defendant charged by a simplified information is, upon a timely request, entitled as a

matter of right to have filed with the court and served upon him or her, or if [he] such defendant is represented by an attorney, upon his or her attorney, a supporting deposition of the complainant police officer or public servant, containing allegations of fact, based either upon personal knowledge or upon information and belief, providing reasonable cause to believe that the defendant committed the offense or offenses charged. To be timely, such a request must, except as otherwise provided herein and in subdivision three of this section, be made before entry of a plea of guilty to the charge specified and before commencement of a trial thereon, but not later than thirty days after the date the defendant is directed to appear in court as such date appears upon the simplified information and upon the appearance ticket issued pursuant thereto. [If the defendant's request is mailed to the court, the] Such request must be mailed within such thirty day period to the agency which employs the complainant police officer or public servant. Upon such a request, [the court must order the] such complainant police officer or public servant [to] shall serve a copy of such supporting deposition upon the defendant or his or her attorney, within thirty days of the date such request is received by the [court] agency, or at least five days before trial, whichever is earlier, and to file such supporting deposition with the court together with proof of service thereof. Notwithstanding any provision to the contrary, where a defendant is issued an appearance ticket in conjunction with the offense charged in the simplified information and the appearance ticket fails to conform with the requirements of subdivision two of section 150.10, a request is timely when made not later than thirty days after (a) entry of the defendant's plea of not guilty when he or she has been arraigned in person, or (b) written notice to the defendant of his or her right to receive a supporting deposition when a plea of not guilty has been submitted by mail.

4. Notwithstanding any provision of law to the contrary, where a person is charged by a simplified information and is served with an appearance ticket as defined in section 150.10, such appearance ticket shall contain the following language: "NOTICE: YOU ARE ENTITLED TO RECEIVE A SUPPORTING DEPOSITION FURTHER EXPLAINING THE CHARGES PROVIDED YOU REQUEST SUCH SUPPORTING DEPOSITION WITHIN THIRTY DAYS FROM THE DATE YOU ARE DIRECTED TO APPEAR IN COURT AS SET FORTH ON THIS APPEARANCE TICKET. [DO YOU REQUEST A SUPPORTING DEPOSITION? [ ] YES [ ] NO] ANY SUCH REQUEST MUST BE MAILED TO THE AGENCY WHICH EMPLOYS THE POLICE OFFICER OR AGENT WHO ISSUED THIS SIMPLIFIED INFORMATION BEFORE ENTRY OF A PLEA OF GUILTY TO THE CHARGE AND BEFORE COMMENCEMENT OF A TRIAL THEREON, BUT NOT LATER THAN THIRTY DAYS AFTER THE DATE YOU ARE DIRECTED TO APPEAR IN COURT AS SUCH DATE APPEARS UPON THE SIMPLIFIED INFORMATION/APPEARANCE TICKET.

§ 2. This act shall take effect on the first day of January next succeeding the date on which it shall have become law and shall apply to all actions and proceedings commenced on or after such effective date.

5. Vacatur of Guilty Plea After Successful Completion of Drug Court or Mental Health Court Treatment Program (CPL 340.20)

This measure would amend the Criminal Procedure Law to authorize the vacatur of a guilty plea for a defendant who successfully completes a drug treatment or mental health treatment court program.

Drug or mental health treatment courts are specialized courts that seek to address the behavioral or psychiatric issues that may underlie some criminal conduct. Drug courts address a drug offender's addiction to drugs. Mental health courts address an offender's mental illness. In either court, qualified non-violent offenders agree to enter a court-supervised program which provides the defendant, depending on the type of treatment court, with treatment and counseling for substance abuse or for mental illness, as well as educational and vocational assistance.

The rules and conditions of participation in a drug or mental health court treatment program are set forth in a contract that is entered into by the defendant, the defendant's attorney, the prosecutor, and the court. Under the terms of the contract, among other things, the defendant agrees to plead guilty to certain charges and, in the event of his or her violation of the contract, to the imposition of a sentence based on the conviction. The court agrees that in event that the defendant complies with the terms of the contract as well as the treatment plan, it will dispose of the convictions in the manner it stipulated in the contract.

A drug or mental health treatment court may agree to vacate a guilty plea upon a defendant's successful completion of a treatment program. The problem is there is no provision of the law that authorizes a court to take this action. See CPL 220.60 (which sets forth all circumstances wherein a guilty plea can be changed in superior court); 340.20 (which states how a plea may be entered in a local criminal court).

This proposal provides explicit authorization for a court, sitting as a drug or mental health treatment court, to vacate a guilty plea and, by doing so, enables the court to achieve the program's aim of assisting a defendant with the task of overcoming the causes of his or her criminal behavior.

AN ACT to amend the criminal procedure law, in relation to the vacatur of the guilty plea of a defendant who successfully completes a drug or mental health court treatment program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 340.20 of the criminal procedure law is amended by adding a new

subdivision 5 to read as follows:

5. Where parties to a proceeding in a drug or mental health treatment court agree, a plea of guilty may be vacated whether such plea was to a felony or to a misdemeanor and notwithstanding the defendant's prior felony conviction, provided the district attorney consents on the record to the vacatur and the defendant has successfully completed the requirements of the court's treatment program. The drug or mental health treatment court may, in accordance with the agreement of the parties, allow the entry of a plea to a reduced charge or permit a dismissal of the charge.

§ 2. This act shall take effect on the first day of January next succeeding the date on which it shall have become law and shall apply to all actions and proceedings commenced on or after such effective date.

6. Compelling Court Appearance and Compliance with Penalty for Unlawful Possession of Alcoholic Beverage (ABCL § 65-c)

This measure amends section 65-c of the Alcoholic Beverage Control Law to provide courts with the means to insure that persons under the age of 21 years who are charged with violating this provision appear and answer the charge and comply with any order issued by the court.

Section 65-c(3) authorizes a law enforcement official to summon a person under the age of 21 to answer a charge of possession of an alcoholic beverage with intent to consume and authorizes a court, where the charge is sustained, to fine the individual and direct him or her to complete an alcoholic awareness program or community service. The problem is that the subdivision's express prohibition against the use of the power of arrest against an individual so charged -- ostensibly to avoid marring the minor's reputation with the stigma of an arrest -- renders the court unable to insure that individual's appearance before the court to answer the charge or that individual's compliance with any penalty that the court may issue after the charge has been sustained.

While the need to avoid creating the stigma of arrest is a legitimate reason for expressly precluding the arrest of a person under the age of 21 who is initially charged with violation of section 65-c of the Alcoholic Beverage Control Law, there is no reason to continue to limit a court's ability to compel the attendance of a defendant who unlawfully refuses to appear in court and answer a charge of unlawful possession or who, after having appeared and submitted to the jurisdiction of the court, refuses to return to court when directed to do so by the court.

By authorizing a court to suspend the driver's license of an underaged respondent in a section 65-c proceeding, this measure will provide the court with an effective means of assuring a respondent's compliance with his or her obligations under section 65-c. In addition to amending section 65-c of the Alcoholic Beverage Control Law, this measure also amends license suspension provisions of the Vehicle and Traffic Law in order to assure consistency between the two titles.

AN ACT to amend the alcoholic beverage control law and the vehicle and traffic law, in relation to the imposition of driver's license suspensions upon persons who fail to appear or to pay fines or participate in alcohol awareness programs or community service upon a determination by the court of unlawful possession of an alcoholic beverage with the intent to consume by persons under the age of twenty-one years

The People of the State of New York, represented in Senate and Assembly,

do enact as follows:

Section 1. Subdivision 3 of section 65-c of the alcoholic beverage control law, as amended by chapter 137 of the laws of 2001, is amended to read as follows:

3. Any person who unlawfully possesses an alcoholic beverage with intent to consume may be summoned before and examined by a court having jurisdiction of that charge; provided, however, that nothing contained herein shall authorize, or be construed to authorize, a peace officer as defined in subdivision thirty-three of section 1.20 of the criminal procedure law or a police officer as defined in subdivision thirty-four of section 1.20 of such law to arrest a person who unlawfully possesses an alcoholic beverage with intent to consume. If a determination is made sustaining such charge the court may impose a fine not exceeding fifty dollars and/or completion of an alcohol awareness program established pursuant to section 19.25 of the mental hygiene law and/or an appropriate amount of community service not to exceed thirty hours. In addition to any fine, alcohol awareness program and/or community service imposed by the court pursuant to this section, the court may suspend the driver's license of any person who fails to appear before the court, pay a fine, complete an alcohol awareness program or complete community service pursuant to this section within the period of time established by such court. Such suspension shall be made upon notice to such person and shall remain in effect until such person appears in court, such fine has been paid or such program or community service has been completed to the satisfaction of the court.

§ 2. Paragraph (k) of subdivision 3 of section 510 of the vehicle and traffic law, as added by chapter 173 of the laws of 1990, is amended to read as follows:

k. for a period of up to ninety days because of the conviction of the holder of the offenses

of menacing as defined in section 120.15 of the penal law, where such offense was committed against a traffic enforcement agent employed by the city of New York or the city of Buffalo while such agent was enforcing or attempting to enforce the traffic regulations of such city;

l. for failing to appear before the court or pay a fine or to complete an alcohol awareness program or complete community service imposed by the court pursuant to subdivision three of section sixty-five-c of the alcoholic beverage control law.

§ 3. Paragraph (a) of subdivision 4-a of section 510 of the vehicle and traffic law, as added by section 62 of the laws of 2003, is amended to read as follows:

(a) Upon receipt of a court notification of the failure of a person to appear within sixty days of the return date or new subsequent adjourned date, pursuant to an appearance ticket charging said person with a violation of any of the provisions of this chapter (except one for parking, stopping, or standing), of any violation of the tax law or of subdivision three of section sixty-five-c of the alcoholic beverage control law or of the transportation law regulating traffic or of any lawful ordinance or regulation made by a local or public authority, relating to traffic (except one for parking, stopping, or standing) or the failure to pay a fine imposed by a court the commissioner or his or her agent may suspend the driver's license or privileges of such person pending receipt of notice from the court that such person has appeared in response to such appearance ticket or has paid such fine. Such suspension shall take effect no less than thirty days from the day upon which notice thereof is sent by the commissioner to the person whose driver's license or privileges are to be suspended. Any suspension issued pursuant to this paragraph shall be subject to the provisions of paragraph (j-l) of subdivision two of section five hundred three of this chapter.

§ 4. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law.

7. Compelling Court Appearance and Payment of
Fine for Unlawful Possession of Marijuana
(PL § 221.05 and VTL § 510)

This measure amends section 221.05 of the Penal Law to provide courts with the means to insure that persons who are charged with possession of marijuana appear and answer the charge and pay the fine imposed by the court for violation of this provision.

Section 221.05 makes it unlawful, and punishable by a fine of $100, to knowingly and unlawfully possess 25 grams or less of marijuana. In addition, because this provision was originally enacted as part of the Marijuana Reform Act of 1977, L.1977, ch. 360, which sought to decriminalize the possession of small amounts of marijuana, the law expressly limits the means by which to compel an individual's appearance in court to the issuance of an appearance ticket. See CPL 150.75. The problem with this limitation is that the local criminal court is powerless to compel that individual's appearance before the court to answer the charge of unlawful possession of marijuana. Moreover, because the local criminal court is unable to ensure compliance with sentencing, the local criminal court is also powerless to collect a fine.

By authorizing a court to suspend the driver's license of a person who has failed to appear in court to answer a charge of violation of, or failed to pay a fine imposed under, Penal Law § 221.05, this proposal will provide the court with an effective means of assuring a respondent's compliance with his or her obligations under the Penal Law

AN ACT to amend the penal law, in relation to the suspension of the driver's license of persons who fail to appear when summoned or pay fines upon conviction of unlawful possession of marihuana

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The closing paragraph of section 221.05 of the penal law, as added by chapter 360 of the laws of 1977, is amended to read as follows:

Unlawful possession of marihuana is a violation punishable only by a fine of not more than one hundred dollars. However, where the defendant has previously been convicted of an offense defined in this article or article [220] two hundred twenty of this chapter, committed within the three years immediately preceding such violation, it shall be punishable (a) only by a

fine of not more than two hundred dollars, if the defendant was previously convicted of one such offense committed during such period, and (b) by a fine of not more than two hundred fifty dollars or a term of imprisonment not in excess of fifteen days or both, if the defendant was previously convicted of two such offenses committed during such period. In addition to any fine or term of imprisonment imposed by the court pursuant to this section, the court may suspend the driver's license of any person who fails to appear before the court or who fails to pay a fine imposed by the court pursuant to this section within the period of time established by such court for the payment of such fine. Such suspension shall be made upon notice to such person and shall remain in effect until such person appears in court or such fine has been paid to the satisfaction of the court.

§ 2. Paragraph (k) of subdivision 3 of section 510 of the vehicle and traffic law, as added by chapter 173 of the laws of 1990, is amended to read as follows:

k. for a period of up to ninety days because of the conviction of the holder of the offenses of menacing as defined in section 120.15 of the penal law, where such offense was committed against a traffic enforcement agent employed by the city of New York or the city of Buffalo while such agent was enforcing or attempting to enforce the traffic regulations of such city;

l. for failing to appear before the court or pay a fine imposed by the court pursuant to section 221.05 the penal law.

§ 3. Paragraph a of subdivision 4-a of section 510 of the vehicle and traffic law, as added by section 62 of the laws of 2003, is amended to read as follows:

(a) Upon receipt of a court notification of the failure of a person to appear within sixty days of the return date or new subsequent adjourned date, pursuant to an appearance ticket

charging said person with a violation of any of the provisions of this chapter (except one for parking, stopping, or standing), of any violation of the tax law or of section 221.05 of the penal law or of the transportation law regulating traffic or of any lawful ordinance or regulation made by a local or public authority, relating to traffic (except one for parking, stopping, or standing) or the failure to pay a fine imposed by a court the commissioner or his or her agent may suspend the driver's license or privileges of such person pending receipt of notice from the court that such person has appeared in response to such appearance ticket or has paid such fine. Such suspension shall take effect no less than thirty days from the day upon which notice thereof is sent by the commissioner to the person whose driver's license or privileges are to be suspended. Any suspension issued pursuant to this paragraph shall be subject to the provisions of paragraph (j-l) of subdivision two of section five hundred three of this chapter.

§ 4. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law and apply to offenses committed on or after such effective date.

8. Filing of Proof of Service in Landlord-Tenant Proceeding
(RPAPL § 735)

This measure would amend RPAPL § 735 to require that in a proceeding to recover property only the proof of service must be filed with the court after the petition has been served.

Prior to September 8, 2005, a proceeding to recover real property under Article 7 of the Real Property Actions and Proceedings Law was commenced by service of the notice of petition, or order to show cause, and petition upon the respondent, see, e.g., UDCA § 400 (2004); RPAPL §§ 731 and 735(1), with the notice of petition and petition filed with the court at a later date. See RPAPL § 735(2). The current language of RPAPL § 735(2), which requires the filing of the notice of petition and petition with proof of service after service has been made, reflects the procedure prior to September 2005. Effective September 8, 2005, the New York City Civil Court, the District Court, the City Court, and Town and Village Courts became commencement-by filing-courts. L.2005, ch. 452, §§ 1-9. All actions and special proceedings, including RPAPL proceedings, are commenced by the filing of the summons and complaint or notice of petition and petition.

The problem is that RPAPL § 735(2) was not amended to reflect this change. As a result, a petitioner in an RPAPL Article 7 proceeding is required to file the notice of petition and petition twice - - first, when commencing the proceeding and, again, when filing the proof of service of the petition. No purpose is served by having two sets of identical papers in the file.

Amending RPAPL § 735(2) will eliminate the unnecessary filing of a second notice of petition, or order to show cause, and petition.

Proposal

AN ACT to amend the real property actions and proceedings law, in relation to the filing of proof of the service of a petition in a proceeding to recover real property

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 2 of section 735 of the real property actions and proceedings law, as added by chapter 910 of the laws of 1965, is amended to read as follows:

2. [The notice of petition, or order to show cause, and petition together with proof] Proof of service [thereof] of the notice of petition, or order to show cause, and petition shall be filed

with the court or clerk thereof within three days after:

(a) personal delivery to respondent, when service has been made by that means, and such service shall be complete immediately upon such personal delivery; or

(b) mailing to respondent, when service is made by the alternatives above provided, and such service shall be complete upon the filing of proof of service.

§ 2. This act shall take effect immediately.

9. Unsealing Youthful Offender Case File
(CPL 720.35)

This measure would amend CPL 720.35 to authorize a criminal court which did not adjudicate a youthful offender case to unseal the records of that case when the youthful offender, whose failure to comply with his or her sentence has resulted in his or her arrest pursuant to a bench warrant issued by the sentencing court, appears before the non-sentencing criminal court seeking to be released on his or her own recognizance or on bail prior to appearing before the court that issued the bench warrant.

Article 720 of the Criminal Procedure Law sets forth the Youthful Offender procedure which authorizes a court to seal the records of a criminal proceeding brought against persons, between the ages of 13 and 19, for the purpose of preventing such youths from being stigmatized "with criminal records triggered by hasty or thoughtless acts which, although crimes, may not have been the serious deeds of hardened criminals." Capital Newspapers Division of the Hearst Corporation v. Moynihan, 71 N.Y.2d 263, 267-268 (1988)(quoting People v. Drayton, 39 N.Y.2d 580, 584 (1976)).

Under this procedure, eligible youths are tried as any criminal defendant would be. Upon conviction, the court must determine whether the defendant should be treated as a youthful offender. If a "youthful offender" finding is made, the court must direct that the conviction be deemed vacated and replaced by the youthful offender finding, and it must sentence the defendant pursuant to Penal Law § 60.02, which permits a maximum indeterminate term of imprisonment of four years. CPL 720.20 [1]; 720.10 [4]. Upon a youthful offender adjudication, all official records and papers must be sealed. CPL 720.35. CPL 720.35(2), however, permits portions of the youthful offender record to be unsealed and disclosed to officials and other persons under conditions specified by the statute, such as when the state division of parole or the probation department "requires such official records and papers for the purpose of carrying out duties specifically authorized by law."

It is common for a court to issue a bench warrant to compel the appearance of a youthful offender who has failed to appear in that court to answer for the violation of his or her sentence of probation or conditional discharge. Where the bench warrant is issued by a court whose process can be executed outside the county where the court is located, see, e.g., CPL 120.70(1), the youthful offender may be arrested in another jurisdiction. Where that occurs, the youthful offender must be brought before the local criminal court in the foreign county so the court can determine whether the youthful offender should be released on his or her own recognizance or on bail pending his or her appearance before the issuing court to answer for the violation of his or her sentence. See CPL 120.90(3); CPL 410.40(b). In order to determine the type of securing order that should be issued for the probation violator, the foreign criminal court requires access to the violator's criminal history available on the state criminal record database.

The problem is that since the criminal history necessarily encompasses information

concerning the youthful offender adjudication that resulted in the sentence of probation or conditional discharge, that portion of the violator's history is sealed and therefore not available. See CPL 735.35(2). The foreign criminal court is therefore hampered in its ability to issue a securing order that is appropriate for the youthful offender.

Amending CPL 720.35 to permit the criminal record of an adjudicated youthful offender to be unsealed and disclosed to a court seeking to enforce the arrest warrant that has been issued against that youthful offender for violating his or her sentence will facilitate the administration of the youthful offender procedure.

Proposal

AN ACT to amend the criminal procedure law, in relation to the sealing of the accusatory instrument

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 2 of section 720.35 of the criminal procedure law, as amended by chapter 412 of the laws of 2001, is amended to read as follows:

2. Except where specifically required or permitted by statute or upon specific authorization of the court, all official records and papers, whether on file with the court, a police agency or the division of criminal justice services, relating to a case involving a youth who has been adjudicated a youthful offender, are confidential and may not be made available to any person or public or private agency, other than the designated educational official of the public or private elementary or secondary school in which the youth is enrolled as a student provided that such local educational official shall only have made available a notice of such adjudication and shall not have access to any other official records and papers, such youth or such youth's designated agent (but only where the official records and papers sought are on file with a court and request therefor is made to that court or to a clerk thereof), an institution to which such youth

has been committed, the division of parole [and], a probation department of this state that requires such official records and papers for the purpose of carrying out duties specifically authorized by law, and a court determining the appropriate securing order for a youthful offender who has been brought before the court in connection with a warrant of arrest pursuant to section 410.40 or 530.70 of this chapter for violation of a sentence of conditional discharge or probation imposed pursuant to section 60.02 of the penal law; provided, however, that information regarding an order of protection or temporary order of protection issued pursuant to section 530.12 of this chapter or a warrant issued in connection therewith may be maintained on the statewide automated order of protection and warrant registry established pursuant to section two hundred twenty-one-a of the executive law during the period that such order of protection or temporary order of protection is in full force and effect or during which such warrant may be executed. Such confidential information may be made available pursuant to law only for purposes of adjudicating or enforcing such order of protection or temporary order of protection and, where provided to a designated educational official, as defined in section 380.90 of this chapter, for purposes related to the execution of the student's educational plan, where applicable, successful school adjustment and reentry into the community. Such notification shall be kept separate and apart from such student's school records and shall be accessible only by the designated educational official. Such notification shall not be part of such student's permanent school record and shall not be appended to or included in any documentation regarding such student and shall be destroyed at such time as such student is no longer enrolled in the school district. At no time shall such notification be used for any purpose other than those specified in this subdivision.

§ 2. This act shall take effect on the first day of January next succeeding the date on which it shall have become law and shall apply to all actions and proceedings commenced on or after such effective date.

10. Dismissal of Default Judgment
Applications in New York City Civil Court
(NYCCCA § 1402)

This measure would authorize the New York City Civil Court to deny an application for a default judgment because the Civil Court does not have personal jurisdiction over the defendant.

Under CPLR 3215, which is made applicable to the Civil Court pursuant to NYCCCA § 1402, in order to obtain a default judgment, the applicant must submit proof that the underlying claim has merit, that the defendant was served with the summons and complaint, and that the defendant defaulted. See CPLR 3215(f). Aside from demonstrating that defendant was served with the summons and complaint, the applicant need not show that the court has personal jurisdiction over the defendant who does not reside in the jurisdiction.

Because it is a court of limited jurisdiction which is authorized to serve its process statewide, the Civil Court frequently vacates default judgments that it issues against a defendant in a dispute which has no contact with New York City. In addition to defendants who reside or are found in New York City, under NYCCCA § 404, the Civil Court has personal jurisdiction over non-resident defendants who transact business within New York City; who commit a tortious act within New York City; or who own, use or possess any real property in New York City. Default judgments issued by the Civil Court against non-resident defendants over which the Court does not have jurisdiction are subject to vacatur under CPLR 5015(a)(4). In short, due to the limits on the jurisdiction of the Civil Court, the default judgment process creates an administrative burden unique to the Civil Court.

Amending the Civil Court Act so as to require a showing on an application for a default judgment that the Civil Court has jurisdiction over a non-resident defendant and authorizing the Civil Court to deny an application where an inadequate showing has been made will result in a larger number of Civil Court default judgments able to withstand a collateral attack under CPLR 5015 and encourage greater care in the decision to commence an action in the Civil Court.

Proposal

AN ACT to amend the New York city civil court act, in relation to default judgments

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1402 of the New York city civil court act is amended by adding a new last paragraph to read as follows:

In addition to the proof required by subdivision (f) of said section, the applicant shall file an affidavit of the facts establishing that the court has jurisdiction of the person of the defendant who was not served with a summons and complaint within the city of New York. The application for a judgment by default shall be denied if the applicant fails to establish that the court has jurisdiction of the person of the defendant.

§ 2. This act shall take effect thirty days after it shall have become law.

11. Protecting Court Proceedings from being Improperly Influenced by Public Protests and Demonstrations Held In Vicinity of Courthouse (PL § 215.50)

This measure would protect all adjudicative proceedings -- not just jury trials -- being held in a courthouse against being improperly influenced by protests and demonstrations concerning that proceeding that are conducted on the public streets and sidewalks outside of a courthouse.

Subdivision 7 of section 215.50 of the Penal Law already makes it punishable as a contempt of court in the second degree for a person on a public street or sidewalk within 200 feet of a courthouse to call aloud, hold or display "placards or signs containing written or printed matter" concerning proceedings within the courthouse. The purpose of these restrictions is to prevent judges, jurors, and other court officials from being influenced by the demonstrations at or near the courtroom at or prior to the proceeding. The problem however is that section 215.70 expressly applies to protests and demonstrations that concern the conduct of a jury trial. While it is important to limit the influence of public protests and demonstrations concerning a court case outside of a courthouse upon the judge, jury and witnesses participating in that very case, there is no reason to limit this protection only to jury trials, and their participants. There are other non-jury adjudicative proceedings, such as motions and special proceedings, which warrant the same protection afforded to jury trials by section 215.50 of the Penal Law.

Amending section 215.50 of the Penal Law to apply to protests and demonstrations held in the vicinity of a courthouse concerning all proceedings -- both jury trials and non-jury hearings and adjudications -- conducted in the courthouse will protect the fair and impartial administration of justice in all court proceedings.

Proposal

AN ACT to amend the penal law, in relation to criminal contempt in the second degree

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 7 of section 215.50 of the penal law is amended to read as follows:

7. On or along a public street or sidewalk within a radius of two hundred feet of any building established as a courthouse, he or she calls aloud, shouts, holds or displays placards or signs containing written or printed matter, concerning the conduct of [a trial] an action or

proceeding being held in such courthouse or the character of the court or jury engaged in such [trial] action or proceeding or calling for or demanding any specified action or determination by such court or jury in connection with such [trial] action or proceeding.

§ 2. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law and shall apply to all actions and proceedings commenced on or after such effective date.

12. Increasing Number of Commercial Small Claims that a Single Applicant May File in a Month (NYCCCA §§ 1803-A and 1809-A and 22 NYCRR § 208.41-a)

This measure would increase the number of commercial claims that the New York City Civil Court is authorized to accept for filing from an applicant during a calendar month.

Currently, the Civil Court Act limits the number of commercial small claims filed by a commercial claimant to five filings per calendar month. The capacity of the Civil Court to process commercial claims has increased due to the decrease in the number of small claims filed in that court. In 2008, for example, the number of small claims filings has dropped to approximately 28,000 from 60,000 filings made in 2004.

Amending the Civil Court Act and a related provision of the Uniform Civil Rules for the New York City Civil Court to increase the number of commercial claims that a claimant is authorized to file from five claims to fifty claims per month would enable the Civil Court to use existing capacity to process additional commercial claims.

Proposal

AN ACT to amend the New York city civil court act, in relation to the filing of commercial claims

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions (a) and (b) of section 1803-A of the New York city civil court act, as amended by chapter 62 of the laws of 2003, are amended to read as follows:

(a) Commercial claims other than claims arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty-five dollars and the cost of mailings as herein provided, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required certification verified as to its truthfulness by the claimant on a form prescribed by the state office of court administration and filed with the clerk, that no more than [five] fifty such actions or proceedings (including the

instant action or proceeding) have been instituted during that calendar month, and a required statement of its cause of action by the claimant or someone in its behalf to the clerk, who shall reduce the same to a concise, written form and record it in a docket kept especially for such purpose. Such procedure shall provide that the commercial claims part of the court shall have no jurisdiction over, and shall dismiss, any case with respect to which the required certification is not made upon the attempted institution of the action or proceeding. Such procedure shall provide for the sending of notice of such claim by ordinary first class mail and certified mail with return receipt requested to the party complained against at his or her residence, if he or she resides within the city of New York, and his or her residence is known to the claimant, or at his or her office or place of regular employment within the city of New York if he or she does not reside therein or his or her residence within the city of New York is not known to the claimant. If, after the expiration of twenty-one days, such ordinary first class mailing has not been returned as undeliverable, the party complained against shall be presumed to have received notice of such claim. Such notice shall include a clear description of the procedure for filing a counterclaim, pursuant to subdivision (d) of this section.

Such procedure shall further provide for an early hearing upon and determination of such claim. The hearing shall be scheduled in a manner which, to the extent possible, minimizes the time the party complained against must be absent from employment.

Either party may request that the hearing be scheduled during evening hours, provided that the hearing shall not be scheduled during evening hours if it would cause unreasonable hardship to either party. The court shall not unreasonably deny requests for evening hearings if such requests are made by the claimant upon commencement of the action or by the party

complained against within fourteen days of receipt of the notice of claim.

(b) Commercial claims in actions arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty-five dollars and the cost of mailings as herein provided, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required statement of the cause of action by the claimant or someone on its behalf of the clerk, who shall reduce the same to a concise written form including the information required by subdivision (c) of this section, denominate it conspicuously as a consumer transaction, and record it in the docket marked as a consumer transaction, and by filing with the clerk a required certificate verified as to its truthfulness by the claimant on forms prescribed by the state office of court administration.

Such verified certificate shall certify (i) that the claimant has mailed by ordinary first class mail to the party complained against a demand letter, no less than ten days and no more than one hundred eighty days prior to the commencement of the claim, and (ii) that, based upon information and belief, the claimant has not instituted more than [five] <u>fifty</u> actions or proceedings (including the instant action or proceeding) during the calendar month.

A form for the demand letter shall be prescribed and furnished by the state office of court administration and shall require the following information: the date of the consumer transaction; the amount that remains unpaid; a copy of the original debt instrument or other document underlying the debt and an accounting of all payments, and, if the claimant was not a party to the original transaction, the names and addresses of the parties to the original transaction; and a statement that the claimant intends to use this part of the court to obtain a judgment, that further notice of a hearing date will be sent, unless payment is received by a specified date, and that the

party complained against will be entitled to appear at said hearing and present any defenses to the claim.

In the event that the verified certificate is not properly completed by the claimant, the court shall not allow the action to proceed until the verified certificate is corrected. Notice of such claim shall be sent by the clerk by both ordinary first class mail and certified mail with return receipt requested to the party complained against at his or her residence, if he or she resides within the city of New York, and his or her residence is known to the claimant, or at his or her office or place of regular employment within the city of New York if he or she does not reside therein or his or her residence within the city of New York is not known to the claimant. If, after the expiration of thirty days, such ordinary first class mailing has not been returned as undeliverable, the party complained against shall be presumed to have received notice of such claim.

Such procedure shall further provide for an early hearing upon and determination of such claim. The hearing shall be scheduled in a manner which, to the extent possible, minimizes the time the party complained against must be absent from employment. Either party may request that the hearing be scheduled during evening hours, provided that the hearing shall not be scheduled during evening hours if it would cause unreasonable hardship to either party. The court shall not unreasonably deny requests for evening hearings if such requests are made by the claimant upon commencement of the action or by the party complained against within fourteen days of receipt of the notice of claim.

§ 2. Subdivision (c) of section 1809-A of the New York city civil court act, as added by chapter 653 of the laws of 1987, is amended to read as follows:

(c) A corporation, partnership or association, which institutes an action or proceeding under this article shall be limited to [five] fifty such actions or proceedings per calendar month. Such corporation, partnership or association shall complete and file with the clerk the required certification, provided it is true and verified as to its truthfulness, as a prerequisite to the institution of an action or proceeding in this part of the court.

§ 3. This act shall take effect on the thirtieth day after it shall have become a law.

Proposed Rule

§ 208.41-a(a) Commercial Claims Procedure

(a) A commercial claims action may be brought by a claimant that is: (1) a corporation, including a municipal or public benefit corporation, partnership, or association, which has its principal office in the State of New York, or (2) an assignee of any commercial claim, subject to the restrictions set forth in NYCCCA § 1809-A. The action shall be instituted by the claimant or someone on its behalf by paying the filing fee and the cost of sending the notice of claim as provided in NYCCCA § 1803-A and by filing and signing a written application containing the following information:

(1) claimant's name and principal office address;

(2) defendant's name and place of residence or place of business or employment;

(3) the nature and amount of the claim, including dates, and other relevant information; where the claim arises out of a consumer transaction (for the purposes of this rule, to be deemed one where the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes), information showing that the transaction is a consumer

transaction;

(4) a certification that not more than [five] fifty claims have been instituted in the courts of this State in the calendar month; and,

(5) in the case of a commercial claim arising out of a consumer transaction, a certification that the claimant has mailed a demand letter, containing the information set forth in NYCCCA § 1803-A, no less than 10 days and no more than 180 days prior to the commencement of the claim.

13. Authorizing a Corporation with an Office Anywhere in State to Commence a Commercial Small Claims Proceeding in New York City Civil Court
(NYCCCA §§ 1801-A and 1809-A and 22 NYCRR § 208.41-a)

This measure would authorize a corporation which has an office anywhere in the State to file a commercial claim in the New York City Civil Court.

Sections 1801-A and 1809-A of the New York City Civil Court Act authorize only corporations that maintain a principal office in the State to file commercial claims with the Civil Court. There is no reason to limit the right to commence a commercial claim proceeding to only those corporate plaintiffs that have a principal or main office located in New York State.

Amending the Civil Court Act and the related provision of the Uniform Civil Rules for the New York City Civil Court to remove the term "principal" would enable a corporation that has any office in the state to commence a commercial claim.

Proposal

AN ACT to amend the New York City civil court act, in relation to the filing of commercial claims

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (a) of section 1801-A of the New York city civil court act, as amended by chapter 435 of the laws of 1992, is amended to read as follows:

(a) The term "commercial claim" or "commercial claims" as used in this article shall mean and include any cause of action for money only not in excess of the maximum amount permitted for a small claim in the small claims part of the court, exclusive of interest and costs, provided that subject to the limitations contained in section eighteen hundred nine-A of this article, the claimant is a corporation, partnership or association, which has [its principal] an office in the state of New York and provided that the defendant either resides, or has an office for

the transaction of business or a regular employment, within the city of New York.

§ 2. Subdivision (a) of section 1809-A of the New York city civil court act, as added by chapter 653 of the laws of 1987, is amended to read as follows:

(a) Any corporation, including a municipal corporation or public benefit corporation, partnership, or association, which has [its principal] an office in the [city] state of New York and an assignee of any commercial claim may institute an action or proceeding under this article.

§ 3. This act shall take effect on the thirtieth day after it shall have become a law.

Proposed Rule

§ 208.41-a(a) Commercial Claims Procedure

(a) A commercial claims action may be brought by a claimant that is: (1) a corporation, including a municipal or public benefit corporation, partnership, or association, which has [its principal] an office in the State of New York, or (2) an assignee of any commercial claim, subject to the restrictions set forth in NYCCCA § 1809-A. The action shall be instituted by the claimant or someone on its behalf by paying the filing fee and the cost of sending the notice of claim as provided in NYCCCA § 1803-A and by filing and signing a written application containing the following information:

(1) claimant's name and [principal] office address;

(2) defendant's name and place of residence or place of business or employment;

(3) the nature and amount of the claim, including dates, and other relevant information; where the claim arises out of a consumer transaction (one where the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes),

information showing that the transaction is a consumer transaction;

(4) a certification that not more than five claims have been instituted in the courts of this State in the calendar month; and,

(5) in the case of a commercial claim arising out of a consumer transaction, a certification that the claimant has mailed a demand letter, containing the information set forth in NYCCCA § 1803-A, no less than 10 days and no more than 180 days prior to the commencement of the claim.

14. Mandatory Arbitration of No-Fault Insurance Claims
(Insurance Law § 5106)

This measure amends the Insurance Law to require mandatory arbitration of no fault motor vehicle insurance claims and to lower the interest rate on overdue insurance claims from two percent to one percent per month.

Section 5106(a) of the Insurance Law authorizes the commencement of either an arbitration proceeding or a civil court action to recover a no-fault personal injury claim not paid within 30 days of submission of proof of the claim to an insurer, and authorizes an award to include interest of two percent per month on the amount of the claim as well as attorney's fees incurred in securing the award. Arbitration proceedings, which are governed by the procedures set forth in 11 NYCRR Sub Part 65-4, are subject to limited review by the courts. An arbitration award is binding on all parties to the arbitration, unless vacated or modified by a master arbitrator. The award of a master arbitrator in turn is also binding on the parties to the proceeding, unless vacated or modified by a court on any of the grounds set forth in Article 75 of the Civil Practice Law and Rules. Moreover, where the amount of the award of a master arbitrator is $5,000 or more, exclusive of interest or attorney's fees, a claimant may obtain a *de novo* court review of his or her claim.

Despite the availability of arbitration, and the fact that almost all overdue payment claims fall far below $5,000, most claimants proceed by court action. As a result, the case dockets of courts where these claims have been filed have experienced a dramatic increase in size. In the New York City Civil Court, for example, no-fault cases have been primarily responsible for the rise of the caseload of that court from 212,000 filings in 2000 to over 620,000 filings in 2008. The rise in the number of case filings has placed a significant administrative burden on the courts.

Amending the Insurance Law to provide for mandatory arbitration of overdue insurance claims will assure the competent disposition of these claims by arbitrators, qualified to review issues involved in no-fault insurance disputes, while achieving the important objective of reducing the administrative burden that these claims place on the courts. The courts will continue to have the authority to review the award of master arbitrators, in accordance with Article 75 of the CPLR, and conduct a *de novo* review of such awards in excess of $5,000. Moreover, amending the Insurance Law to reduce the interest on an overdue insurance claim will make it less lucrative to file a large number of such claims and reduce the burden on the arbitration panel.

<u>Proposal</u>

AN ACT to amend the insurance law, in relation to the arbitration of no-fault insurance claims

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subsections (a) and (b) of section 5106 of the insurance law, subsection (b) as amended by chapter 452 of the laws of 2005, are amended to read as follows:

(a) Payments of first party benefits and additional first party benefits shall be made as the loss is incurred. Such benefits are overdue if not paid within thirty days after the claimant supplies proof of the fact and amount of loss sustained. If proof is not supplied as to the entire claim, the amount which is supported by proof is overdue if not paid within thirty days after such proof is supplied. All overdue payments shall bear interest at the rate of [two] one percent per month. If a valid claim or portion was overdue, the claimant shall also be entitled to recover his or her attorney's reasonable fee, for services necessarily performed in connection with securing payment of the overdue claim, subject to limitations promulgated by the superintendent in regulations.

(b) [Every insurer shall provide a claimant with the option of submitting any dispute] All disputes involving the insurer's liability to pay first party benefits, or additional first party benefits, the amount thereof or any other matter which may arise pursuant to subsection (a) of this section shall be submitted to arbitration pursuant to simplified procedures to be promulgated or approved by the superintendent. Such simplified procedures shall include an expedited eligibility hearing option, when required, to designate the insurer for first party benefits pursuant to subsection (d) of this section. The expedited eligibility hearing option shall be a forum for eligibility disputes only, and shall not include the submission of any particular bill, payment or claim for any specific benefit for adjudication, nor shall it consider any other defense to payment.

§ 2. This act shall take effect one year after it shall have become a law and shall apply to all claims made on or after such effective date.

15. Statewide Service of a Criminal Summons
(Constitution Art. VI, § 1, CPL 130.40,
UJCA § 2005 and UCCA § 2005)

We propose amendments to the State Constitution, and the Criminal Procedure Law, the Uniform Justice Court Act and the Uniform City Court Act to authorize the service of a criminal summons issued by a City, Town, and Village Court anywhere in the state.

A criminal summons is a process that directs a defendant to appear in a local criminal court for arraignment on a charge alleged in an accusatory instrument filed with that court. CPL 130.10(1). Unlike an arrest warrant, which ensures a defendant's appearance by authorizing a police officer to physically take the defendant into custody and deliver him or her to the court, see CPL 120.10(1), the criminal summons merely notifies the defendant of the criminal proceeding. CPL 130.10(1). Moreover, since a criminal summons can be served by either a police officer, the complainant, or any person over the age 18 years who is designated by the court to the serve the summons, see CPL 130.40(1), it constitutes a method of compelling the appearance of a defendant that saves valuable law enforcement resources.

The problem is that a criminal summons can only be served upon a defendant in the county where the criminal court sits or in an adjoining county. See CPL 130.40(2). The source of this limitation is Article VI, section 1(c) of the State Constitution which provides that "[t]he legislature may provide . . . that processes, warrants and other mandates of town, village and city courts outside the city of New York may be served and executed in any part of the county in which the courts are located or any part of any adjoining county." Despite these constitutional limitations, the criminal procedure law effectively provides for the execution anywhere in the state of an arrest warrant issued by a City, Town or Village Court, provided the local criminal court in the county where the arrest is to be made endorses the warrant of arrest of the issuing court. See CPL 120.70(2)(b). There is no reason to treat a criminal summons different than an arrest warrant with respect to its territorial reach.

In addition to amending Article VI, section 1(c) of the State Constitution to permit the process of the City, Town and Village Courts to be served anywhere in the State, New York statutory provisions relating to the limit of the territorial reach of the process of these Courts must also be amended.

Proposal (Constitutional)

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY proposing an amendment to section 1 of article 6 of the constitution, in relation to the process of the village, town and city courts

Section 1. Resolved (if the _____ concur), That subdivision c of section 1 of

article 6 of the constitution be amended to read as follows:

c. All processes, warrants and other mandates of the court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court and the family court may be served and executed in any part of the state. All processes, warrants and other mandates of the courts or court of civil and criminal jurisdiction of the city of New York may, subject to such limitation as may be prescribed by the legislature, be served and executed in any part of the state. The legislature may provide that processes, warrants and other mandates of the district [court], town, village and city courts outside the city of New York may be served and executed in any part of the state [and that processes, warrants and other mandates of town, village and city courts outside the city of New York may be served and executed in any part of the county in which such courts are located or in any part of any adjoining county].

§ 2. Resolved (if the _____ concur), That the foregoing amendment be referred to the first regular legislative session convening after the next succeeding general election of members of the assembly, and, in conformity with section 1 of article 19 of the constitution, be published for 3 months previous to the time of such election.

Proposal (Statutory)

AN ACT to amend the criminal procedure law, the uniform city court act, and the uniform justice court act, in relation to the criminal summons issued by town, village and city courts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 2 of section 130.40 of the criminal procedure law is amended to read as follows:

2. A summons may be served anywhere in [the county of issuance or anywhere in an adjoining county] the state.

§ 2. Section 2005 of the uniform justice court act, as amended by chapter 1097 of the laws of 1971, is amended to read as follows:

§ 2005. Further powers of judges; process and mandates. The court shall have the power and jurisdiction to send processes and other mandates in any matter of which it has jurisdiction into any part of the [county or any adjoining county] state, for service or execution, as provided by the criminal procedure law; and particularly to compel the attendance of witnesses, to order the conditional examination of witnesses within or without the state, to inquire into the sanity of a defendant and to dismiss the prosecution of an action conformably to the provisions of the criminal procedure law, and to punish for criminal contempt a person guilty thereof in the manner and subject to the limitations prescribed for courts of record by the judiciary law.

§ 3. Section 2005 of the uniform city court act is amended to read as follows:

§ 2005. Further powers of judges; process and mandates. The judges of the court shall have the power and jurisdiction to send processes and other mandates in any matter of which they have jurisdiction into any part of the [county or any adjoining county] state, for service or execution, as provided by the criminal procedure law; and particularly to compel the attendance of witnesses, to order the conditional examination of witnesses, to issue commissions for the examination of witnesses within or without the state, to inquire into the sanity of a defendant and to dismiss the prosecution of an action conformably to the provisions of the criminal procedure law, and to punish for criminal contempt a person guilty thereof in the manner and subject to the limitations prescribed for courts of record by the judiciary law.

§ 4. This act shall take effect on the same day that a concurrent resolution proposing an amendment to section 1 of article 6 of the constitution, in relation to the process of the village, town and city courts, first proposed in the year 2010, shall take effect.

16. Entry of Default Judgment for Certain Petty Offenses
(CPL 170.10)

This measure would add a new subdivision 10 to section 170.10 of the Criminal Procedure Law to authorize a court to enter a guilty plea and issue a default judgment against persons charged with petty offenses who do not appear in court to answer their respective charges.

Currently, thousands of summons are issued for such offenses to persons who purposefully refuse to respond to them. Petty offense for the purpose of this amendment means any violation (see CPL 1.20) and as a practical matter includes a wide and varied range of charges such as, among others, harassment in the second degree (Penal Law § 240.26), disorderly conduct (Penal Law § 240.20), unlawful postings of advertisement (Penal Law § 145.30), and unlawful possession of an air gun on school grounds (Penal Law § 265.06) as well as violations of local laws, statutes or ordinances. These minor offenses, however, rarely justify the time and expense of issuing an arrest warrant to compel the attendance of the person charged with the petty offense. As a result, the summonses remain unenforced and the law ignored. This measure is an effort to establish a meaningful disincentive for such disregard of the law.

This measure specifically excludes traffic infractions because the failure to respond to a summons is covered by V&TL § 1806-a. It also excludes the petty offenses of loitering for a deviate sexual purpose (CPL 240.35(3)) and loitering for the purpose of engaging in prostitution (CPL 240.37(2)), both of which are printable offenses. See CPL 160.10(1)(d) and (e). Since the Legislature has concluded that the seriousness of this class of offenses warrants the creation of an identifying record that protects the innocent defendant from false accusations as well as assists courts in sentencing repeat offenders, see CPL 160.10 Practice Commentaries (McKinney's 2004), persons charged with these loitering offenses should not be subject to criminal liability as a result of a default judgment, which is not based on the determination of the merits of the state's case.

Although this measure authorizes the entry of a guilty plea and the issuance of a default judgment, which can be enforced as a civil judgment, it affords the defendant an additional opportunity to appear in court and defend against the charge. The clerk of the court is directed to send by certified mail a notice to the defendant that a guilty plea will be entered and a default judgment issued against that defendant unless he or she appears and answers the charges. The measure provides that where the defendant appears and pleads not guilty, no fine or penalty shall be imposed against that defendant prior to the holding of a trial.

Proposal

AN ACT to amend the criminal procedure law, in relation to the entry of a guilty plea and a default judgment for certain petty offenses for non-answering defendants

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 170.10 of the criminal procedure law is amended by adding a new subdivision 10 to read as follows:

10. (a) Notwithstanding any other provision of law to the contrary, in the event any person charged with a petty offense, other than a traffic infraction defined in the vehicle and traffic law or a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10, does not answer within the time specified, the court having jurisdiction, in addition to any other action authorized by law, may enter a plea of guilty on behalf of the defendant and render a default judgment of a fine determined by the court within the amount authorized by law upon conviction for such offense. Any such default judgment shall be civil in nature, but shall be treated as a conviction for the purposes of this section. However, at least thirty days after the expiration of the original date prescribed for entering a plea and before a plea of guilty and a default judgment may be rendered, the clerk of the court, shall notify the defendant by certified mail: (a) of the violation charged; (b) of the impending plea of guilty and default judgment; (c) that such judgment will be filed with the county clerk of the county in which the person is located; and (d) that a default judgment or plea of guilty may be avoided by entering a plea or making an appearance within thirty days of the sending of such notice. Pleas entered within that period shall be in a manner prescribed in the notice. In no case shall a default judgment and plea of guilty be rendered more than two years after the expiration of the time prescribed for originally entering a plea. When a person has entered a plea of not guilty and has demanded a trial, no fine or penalty shall be imposed for any reason prior to the holding of the

trial, which shall be scheduled by the court within sixty days of such demand.

(b) The filing of the default judgment with the county clerk shall have the full force and effect of a judgment duly docketed in the office of such clerk and may be enforced in the same manner and with the same effect as that provided by law in respect to executions issued against property upon judgments of a court of record and such judgment shall remain in full force and effect for ten years notwithstanding any other provision of law.

(c) Notwithstanding the provisions of paragraph (a) of this subdivision, the clerk of the court shall have two years from the effective date of this subdivision to serve notice upon a defendant charged with a petty offense other than a traffic infraction or a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 who has not answered within the time specified and prior to the effective date of this subdivision.

§ 3. This act shall take effect on the first day of November next succeeding the date on which it shall have become law.

17. Violation for Unauthorized Parking in Handicapped Parking Area Access Aisle (VTL § 1203-b)

This measure would amend the Vehicle and Traffic Law to make it a violation to park in a handicapped parking area access aisle in all public parking areas.

Currently, section 1203-b makes it a violation for a person to stop, stand or park in any area designated as a handicapped parking space unless the vehicle bears the requisite parking permit.

A problem arises where a person stops, stands or parks in the access aisle that is used to reach a parking space designated for handicapped drivers. A parked or stopped car in a parking aisle interferes with a handicapped driver's ability to park his or her car and ultimately undermines the law's protection of a handicapped person's ability to park in a space designated for his or her use.

Section 1203-c does prohibit parking in a handicapped parking aisle, but this prohibition is limited only to parking areas associated with a shopping center or facility. There is no basis for treating a driver with a disability one way in a shopping mall parking lot and another way in other public parking areas, such as a government center parking lot.

This measure seeks to make the legal protections afforded to drivers with a disability applicable to all public parking areas.

Proposal

AN ACT to amend the vehicle and traffic law, in relation to unauthorized parking in a handicapped parking area

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 2 of section 1203-b of the vehicle and traffic law, as amended by chapter 203 of the laws of 1981, is amended to read as follows:

2. It shall be a violation for any person to stop, stand or park a vehicle (a) in any area designated as a place for handicapped parking unless the vehicle bears a permit issued under section one thousand two hundred three-a or a registration issued under section four hundred

four-a of this chapter and such vehicle is being used for the transportation of a severely disabled or handicapped person, or (b) in a handicapped parking access aisle. This subdivision shall not apply to a violation of section twelve hundred three-c of this chapter.

_____§ 2. This act shall take effect on the first day of January next succeeding the date on which it shall have become law.

18. Violation for False Vehicle Parking
Permit for Handicapped Persons
(VTL § 1203-a)

This measure would amend the Vehicle and Traffic Law to make it unlawful to create a fake special vehicle identification parking permit.

Currently, as part of the parking privileges afforded to drivers with a disability or handicap, section 1203-a(4) of the Vehicle and Traffic Law makes it unlawful for an otherwise healthy driver to obtain a parking permit for handicapped drivers using false information. A growing problem throughout the state is the use by healthy drivers of fake or materially altered handicapped driver parking permits. This problem is not addressed by section 1203-a(4).

By amending section 1203-a(4) to include persons who forge a handicapped driver parking permit, this measure would eliminate the anomaly in the law that makes it illegal for a person to make a false statement to obtain a genuine parking permit, but does not make it illegal to forge such a permit.

Proposal

AN ACT to amend the criminal procedure law, in relation to the use of false parking permit

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 4 of the section 1203-a of the vehicle and traffic law, as amended by chapter 298 of the laws of 2007, is amended to read as:

4. A person who knowingly and wilfully with the intent to deceive makes a false statement or gives information which such individual knows to be false to a public official to obtain a parking permit for handicapped persons or to prevent the marking on such permit of the last three digits of a driver's license or non-driver license identification card held by such person or who uses or displays an altered or counterfeit special vehicle identification parking permit or one issued to another person, in addition to any other penalty provided by law, shall be subject to a civil penalty of not less than two hundred fifty dollars nor more than one thousand dollars.

§ 2. This act shall take effect on the first day of January next succeeding the date on which it shall have become law; provided, however, it shall only apply to any person who uses or displays an altered or counterfeit special vehicle identification parking permit or one issued to another person on or after such effective date.

19. Issuance of Transcript of Judgment
(NYCCCA § 1911, UDCA § 1911, UCCA § 1911,
and UJCA § 1911)

This measure would amend the New York City Civil Court Act, the Uniform District Court Act, the Uniform City Court Act, and the Uniform Justice Court Act to authorize a fee for issuing a transcript of judgment.

Section 1911 of the New York City Civil Court Act and each of the aforementioned Uniform Court Acts authorizes the clerk of the respective courts to collect a fee for issuing a satisfaction of judgment and any certificate attesting to the satisfaction of the judgment. The problem arises from the fact that none of these Court Acts expressly authorizes a fee for the issuance of a transcript of judgment. The current practice in each of these courts, however, has been to collect a fee for the transcript of judgment.

The legal justification for the current practice is the definition of the term "certificate of judgment", as set forth in section 255-c of the Judiciary Law, which necessarily incorporates a transcript of judgment. Because a transcript of judgment is a form of certificate of judgment, the courts are authorized under the Judiciary Law collect a fee for either a certificate or transcript of judgment.

By including an express reference to transcript of judgment in each of the Court Acts, this measure seeks to conform the actual language of each of the Court Acts with the current practice in each court.

Proposal

AN ACT to amend the New York city civil court act, the uniform district court act, the uniform city court act, and the uniform justice court act, in relation to the fee for the issuance of a transcript of judgment.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (m) of section 1911 of the New York city civil court act is relettered subdivision (n) and a new subdivision (m) is added to read as follows:

(m) For issuing a transcript of judgment, fifteen dollars.

§ 2. Paragraph (5) of subdivision (a) of the section 1911 of the uniform district court act,

as amended by chapter 62 of the laws of 2003, is amended to read as:

(5) For issuing a satisfaction of judgment, a transcript of judgment, or a certificate regarding the judgment, six dollars.

§ 3. Paragraph (7) of subdivision (a) of the section 1911 of the uniform city court act, as amended by chapter 686 of the laws of 2003, is amended to read as:

(7) For issuing a satisfaction of judgment, a transcript of judgment, or a certificate regarding the judgment, six dollars.

§ 4. Subparagraph f of paragraph 1 of subdivision (a) of section 1911 of the uniform justice court act, as amended by chapter 489 of the laws of 2001, is amended to read as:

f. For issuing a satisfaction of judgment, a transcript of judgment, or a certificate regarding the judgment, two dollars.

§ 5. This act shall take effect on the first day of January next succeeding the date on which it shall have become law.

20. Simplified Turnover Proceedings
(NYCCCA § 1812.1 and CPLR 5221)

This measure is an attempt to respond to the persistent complaint, particularly heard in the New York City Civil Court, that obtaining a judgment in small claims court is an exercise in futility because the judgment cannot be enforced absent time consuming and expensive procedures held in the regular part of the court. The measure creates a temporary pilot program to address this problem by creating a new section, 1812.1 of the New York City Civil Court Act, to authorize a simplified turnover proceeding. The simplified turnover proceeding is meant to target the specific problem that typically arises when a judgment debtor has assets in a joint bank account—assets that belong to both the judgment debtor and a non-debtor.

It is fairly simple to obtain information about the existence and location of a judgment debtor's assets through the use of an information subpoena. Then, the assets may be restrained and an execution levied on them. However, a problem is encountered when the assets exist in a joint bank account. Due to the significant due process concerns that arise with respect to the rights of the non-judgment debtor, banks typically refuse to release assets from a joint account upon an execution. A common bank practice, in order to insure that the bank will not be liable for improper release of the assets, is for the bank to force a special proceeding to determine the rights to the assets. Currently, this special proceeding must take place in the regular part of the New York City Civil Court, as authorized by CPLR 5221.

Bringing a special proceeding in the regular part of the court involves the judgment creditor having to, in essence, commence a second lawsuit. A filing fee is charged and the proceeding is made returnable on the daytime Civil Court calendar, as opposed to the evening Small Claims calendar. The process and expense seem to defeat the purpose of having a small claims part and frustrate many a judgment creditor.

This measure sets up a special proceeding, the simplified turnover proceeding, that will occur within the small claims part of the New York City Civil Court, without the cost of another filing fee. In order to protect the due process interests of all the parties involved, the measure sets up a fairly narrow category of cases in which the simplified turnover proceeding may be used. The limitations may be evaluated as the simplified turnover proceeding is used.

Subdivision (a) sets the parameters to determine which cases will be eligible for the simplified turnover proceeding:

1. There must be a recorded judgment of the small claims court.

2. At least one execution has been issued against the bank, but the bank has refused to turn over such assets. This requirement helps insure that out-of-court process has been attempted to collect the assets, but, essentially, the bank has forced a special proceeding.

3. The bank has a place for the regular transaction of business in person within the jurisdiction of the small claims court. This requirement has jurisdictional, as well as venue, implications. The limitation is an effort to insure that there are minimal service and concomitant due process issues implicated in the pilot program. Additionally, as with the restraining device, it is best to notify the exact branch of the bank (rather than a non-local corporate office) of the proceeding regarding the assets.

If each of the above requirements is met, subdivision (b) entitles the judgment creditor to commence a "simplified turnover proceeding" against the bank in the same small claims court in which the underlying judgment was recorded. There is no fee for bringing such a simplified turnover proceeding. The simplified turnover proceeding may seek the release of assets in the amount of the underlying judgment. If the respondent holds less than that, the judgment in the simplified turnover proceeding will cover only so much of the underlying judgment as may be satisfied by the assets held – the bank cannot be forced to turn over more of the judgment debtor's assets than it holds. Pursuant to NYCCCA § 1901(c), no costs are taxed in a simplified turnover proceeding.

The simplified turnover proceeding authorized by this section is considered a special proceeding, which would technically be a separate proceeding from the underlying action. However, in order to help the court keep track of which proceeding goes with which judgment, the measure provides that a simplified turnover proceeding shall receive the same index number as the underlying small claims action -- thus, no separate filing fee. But, despite the same index number, the simplified turnover proceeding should bear its own caption, largely because the parties are not the same. The caption should indicate in bold print "SIMPLIFIED TURNOVER PROCEEDING," name the judgment creditor as the petitioner and name the third party holder of assets as the respondent. The simplified turnover proceeding is commenced by notice of petition and petition, served in the same manner as the summons in the underlying small claims action. Again, this requirement is meant to minimize service and due process issues, especially because the result of a lack of appearance may be a default judgment against the bank.

Other due process issues arise with respect to the judgment debtor, who is not technically a party, but who is certainly interested in the fate of the assets. Accordingly, upon commencement of the simplified turnover proceeding, the court shall notify the judgment debtor of the commencement by serving a copy of the notice of petition and petition on the judgment debtor by first class mail. The service requirement is not so stringent because the judgment debtor already knows there is a judgment existing against him or her – service here is simply a courtesy to let the debtor know that serious action is being taken to collect on the judgment.

Yet other due process concerns arise when the assets are held in a joint account and, therefore, a non-debtor also has an interest in the account. Thus, the notice of petition is designed to offer courtesy to the judgment debtor, as well as more substantial due process protection to other potential interveners. The notice of petition shall take the form prescribed by the Chief

Administrator of the Courts and shall include all of the following information:

(A) the caption.

(B) the date, time and location, including the address of the court, upon which the petition will be heard.

(C) a statement to the respondent that the failure to appear may result in the entry of judgment against the respondent for an amount out of the assets held that may be used to satisfy the underlying judgment.

(D) a statement of notice to the judgment debtor that the merits of the underlying small claims action may not be contested and that the judgment debtor may intervene in the simplified turnover proceeding only for the purpose of disputing an interest in the assets at issue or to claim an exemption applies. The clearest "defense" that the judgment debtor has that could stop the proceeding from going forward is that the assets do not belong to him or her at all.

(E) a statement that any other person may intervene in the simplified turnover proceeding solely for the purpose of claiming an interest in the assets at issue. This statement simply puts all parties and the judgment debtor on notice that someone else may be involved in this matter.

(F) a statement that if the respondent is aware of a potential claim by any other person, the respondent shall provide notice of the simplified turnover proceeding to such person by first class mail. This requirement probably could not be enforced. However, as a practical matter, it is logical that the bank would want the non-debtor account holder to become involved in the proceeding in order to sort everything out in an expedient fashion. Indeed, if the full fledged CPLR 5239 enforcement proceeding were to be used, the bank would probably want to interplead the non-debtor account holder if, for some reason, that person refused to intervene.

Similarly, the petition shall take the form prescribed by the Chief Administrator of the Courts and shall include information to offer various due process assurances to all involved:

(A) the caption.

(B) the name and address of the petitioner.

(C) the name and address of the respondent.

(D) the name and address of the judgment debtor—for ease of notification.

(E) the amount of the underlying judgment.

(F) an explanation of how the petitioner is aware that relevant assets are being held by the respondent. This requirement is not onerous. Pursuant to NYCCCA § 1812, the small claims clerk is required to issue an information subpoena upon request, for a nominal fee, and assist the judgment creditor. The information subpoena provides an explanation that will help to satisfy the court that the assets do exist and that will help the bank fulfill its efforts to avoid liability for the release of assets. Information may be provided in other forms, but an information subpoena is probably the most helpful for these purposes.

(G) the date of the issuance of the execution, the name and address of the executing officer and an indication of whether the assets are restrained.

(H) the total amount of relief requested.

The measure provides for two possible scenarios at the return date of the petition: (1) there is no indication that there is a problem with releasing the assets (i.e., the judgment debtor does not dispute ownership; the judgment debtor does dispute ownership, but it is obvious that the dispute is without merit; there does not actually appear to be any other joint owner of the assets); or (2) the assets are apparently jointly owned assets, and a non-debtor "tenant" exists. In the first instance, subdivision (d) requires the court to order the bank to release from the assets a sum no greater than the amount of the underlying judgment.

In the latter instance, subdivision (e) requires the court to schedule a hearing of the matter no later than sixty days from the appearance date indicated in the notice of petition. Sixty days should provide adequate time to serve notice, as is required, but still provides a fairly expedited time frame. The small claims court shall serve the non-judgment debtor tenant, in the same manner as the summons in the underlying small claims action, with a copy of the notice of petition and petition, together with a notice of the hearing date. The service requirement is stringent here to cover due process concerns. The notice of hearing date shall state that the hearing is a special proceeding to determine claims to assets that are alleged to be jointly held assets and that failure to appear at the hearing may result in a waiver of interest in the assets. The waiver statement is another effort to cover due process concerns. These considerations, coupled with the mechanics of the hearing comply with the parameters established by case law to protect the rights of the non-debtor tenant. See Mendel v. Chervanyou, 147 Misc.2d 1056 (N.Y.C. Civ. Ct., Kings Co. 1990); Household Finance Corporation v. Rochester Community Savings Bank, 143 Misc.2d 436 (Rochester City Ct. 1989).

At the hearing, subdivision (f) requires the court to hear evidence from all of the interested parties in order to determine the amount of each party's interest in the assets. This step is necessary due to the state of the law regarding joint tenancy issues and bank accounts. See Tayar v. Tayar, 208 AD2d 609 (2d Dept. 1994); Viggiano v. Viggiano, 136 A.D.2d 630 (2d

Dept. 1988). The opening of a joint bank account creates a presumption, pursuant to the Banking Law, that each named tenant is possessed of the whole account, such that the whole account is vulnerable to a judgment creditor's efforts against one of the joint tenants. However, the presumption is rebuttable because a presumption also exists that each party is entitled to half of the account. Joint tenants are possessed of the half and the whole – if they are each possessed of the whole, they are clearly each entitled to half. See Mendel, supra. Or, another way to view it is that the debtor's whole possessory interest seems to make the entire account vulnerable to a money judgment, but the nondebtor tenant's reciprocal whole possessory interest would appear to prevent the release of the funds. See Household Finance Corporation, supra. Thus, banks seek court orders before they release funds from joint accounts. Because of the dual presumptions, courts have determined that the burden of proof is on the person trying to obtain more than half of the funds in a joint account -- the judgment creditor. See Mendel, supra; Household Finance Corporation, supra. Accordingly, if the judgment creditor is seeking more than one half of the funds, the judgment creditor must provide evidence that the judgment debtor has a possessory interest in more than one half of the funds.

Aside from the Banking Law presumptions, several other issues may arise that would prevent the bank from releasing funds to this particular judgment creditor. There may be a priority established to the funds by another person; or, there may be stays of bankruptcy that would affect the funds. Accordingly, the measure sets up a road map to help judges become aware of these issues, and requires that, during the course of the hearing, the court shall elicit information pertinent to these matters:

1. whether any people, other than those present and those who were served notice of the hearing but are not present, may claim an interest in the assets; and

2. whether any people claiming a possessory interest in the assets have been or are currently involved in bankruptcy proceedings; and

3. whether any levy, lien, execution or restraint has ever been placed on the assets as a result of any action or proceeding other than the underlying small claims action; and

4. whether any exemptions apply to the assets such that they are not available for collection.

At this point, the measure, again, provides for two possible scenarios: (1) the court is satisfied that all interested people were served with notice of the hearing, that none of the people claiming a possessory interest in the assets is or has been involved in a bankruptcy proceeding, and that no other levy, lien, execution or restraint exists that would establish another person's priority to the assets; or (2) the small claims court determines that the adverse claims are too complex to be dispensed with upon a simplified turnover proceeding. In the first instance,

subdivision (g) requires the court to determine the possessory interest of each person claiming an interest in the assets. Out of the amount of assets determined to be possessed by the judgment debtor, the court shall order the third party holder of assets to release a sum no greater than the amount of the underlying judgment. Obviously, if the third party holds less than the full amount of the underlying judgment, it will only be obligated to turn over the lesser amount.

In the latter instance, which could occur for a variety of reasons beyond the enumerated due process, priority or bankruptcy issues, subdivision (h) requires the court to dismiss the petition, with leave to the judgment creditor to bring a special proceeding to enforce a judgment in the regular part of the court pursuant to CPLR Article 52. There seems to be no way to avoid sending a judgment creditor in a complex case to the regular part of court for regular special proceedings. Similarly, there is no current way to help judgment creditors whose cases do not fall into the category established by subdivision (a) of the measure. All of these creditors, however, may take solace in the fact that the existing proceedings do work. See House v. Lalor, 119 Misc.2d 193 (Sup. Ct., N.Y. Co. 1983)(N.Y.C. sheriff sold at auction a judgment debtor's $200,000 interest in a co-op for $15,000, $350 of which was turned over to the judgment creditor).

Finally, this act is set to take effect on the ninetieth day after it shall become a law and shall apply to all judgments entered on and after such effective date. The act shall expire on December 31, 2015, at which time the efficacy of the program should be evaluated for continuation and possible expansion.

Proposal

AN ACT to amend the New York city civil court act and the civil practice law and rules, in relation to establishing a simplified turnover proceeding to aid in the enforcement of certain judgments obtained in the small claims part of the civil court of the city of New York

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The New York city civil court act is amended by adding a new section 1812.1 to read as follows:

§ 1812.1. Simplified turnover proceedings. (a) The special procedures set forth in subdivision (b) hereof shall be available only where:

1. there is a recorded judgment of the small claims court; and

2. at least one execution has been issued against the third party holder of assets, but the third party holder of assets has failed to turn over such assets following such execution; and

3. the third party holder of assets resides or is regularly employed or has a place for the regular transaction of business in person within the jurisdiction of the small claims court in which the judgment is recorded.

(b) A judgment creditor shall be entitled to commence a "simplified turnover proceeding" against the third party holder of the assets in the same small claims court in which the underlying judgment was recorded. No fee pursuant to article 19 of this act shall be charged for bringing such a simplified turnover proceeding. The simplified turnover proceeding may seek the release of assets in the amount of the underlying judgment.

(c) 1. The simplified turnover proceeding authorized by subdivision (b) of this section is a special proceeding that shall receive the same index number as the underlying small claims action but bear its own caption, which caption should indicate in bold print "SIMPLIFIED TURNOVER PROCEEDING" and name the third party holder of assets as the respondent. The simplified turnover proceeding is commenced by notice of petition and petition, which shall be served in the same manner as the summons in the underlying small claims action. Upon commencement of the simplified turnover proceeding, the court shall notify the judgment debtor thereof by serving him or her, by first class mail, with a copy of the notice of petition and petition on the judgment debtor by first class mail.

2. The notice of petition shall be in a form prescribed by the chief administrator of the courts and shall include all of the following information:

(A) the caption, as described in paragraph (1) of this subdivision;

(B) the date, time and location, including the address of the court, where the petition will be heard;

(C) a statement to the respondent that the failure to appear may result in the entry of judgment against the respondent for an amount out of the assets held that may be used to satisfy the underlying judgment;

(D) a statement of notice to the judgment debtor that the merits of the underlying small claims action may not be contested and that the judgment debtor may intervene in the simplified turnover proceeding only for the purpose of disputing an interest in the assets at issue or to claim that an exemption applies to the assets;

(E) a statement that any other person may intervene in the simplified turnover proceeding solely for the purpose of claiming an interest in the assets at issue; and

(F) a statement that if the respondent is aware of a potential claim to the assets by any other person, the respondent shall provide notice of the simplified turnover proceeding to such other person by first class mail.

3. The petition shall be in a form prescribed by the chief administrator and shall include all of the following information:

(A) the caption, as described in paragraph (1) of this subdivision;

(B) the name and address of the petitioner;

(C) the name and address of the respondent;

(D) the name and address of the judgment debtor;

(E) the amount of the judgment;

(F) an explanation of how the petitioner is aware that relevant assets are being held by the

respondent;

(G) the date of the issuance of the execution, the name and address of the executing officer and an indication of whether the assets are restrained; and

(H) the total amount of relief requested.

(d) If, upon the appearance date indicated in the notice of petition, it is evident that the assets at issue belong to the judgment debtor and the judgment debtor alone but are not being released by the respondent, the court shall order the respondent to release from the assets held a sum no greater than the amount of the underlying judgment.

(e) If, upon the appearance date indicated in the notice of petition, it is evident that any person other than the judgment debtor has claimed an interest in the assets at issue, the court shall schedule a hearing of the matter no later than sixty days from the appearance date indicated in the notice of petition. The court shall serve the non-judgment debtor, in the same manner as was used to serve the summons in the underlying action, with a copy of the notice of petition and petition, together with a notice of the hearing date. The notice of hearing date shall state that the hearing is a special proceeding to determine claims to assets that are alleged to be jointly held assets and that failure to appear at the hearing may result in a waiver of interest in the assets.

(f) At the hearing, the court shall hear evidence from all of the interested parties in order to determine the amount of each party's interest in the assets. If the judgment creditor is seeking more than one-half of the assets, the judgment creditor must provide evidence that the judgment debtor has a possessory interest in more than one half of the assets. During the course of the hearing, the court shall elicit the following information:

1. whether any people, other than those present and those who were served notice of the

hearing but are not present, may claim an interest in the assets; and

2. whether any people claiming a possessory interest in the assets have been or are currently involved in bankruptcy proceedings; and

3. whether any levy, lien, execution or restraint has ever been placed on the assets as a result of any action or proceeding other than the underlying small claims action; and

4. whether any exemptions apply to the assets such that they are not available for collection.

(g) If, upon the hearing of evidence, the court is satisfied that all interested people were served with notice of the hearing, none of the people claiming a possessory interest in the assets is or has been involved in a bankruptcy proceeding, and no other levy, lien, execution or restraint exists that would establish another person's priority to the assets, the court shall determine the possessory interest of each person claiming an interest in the assets. Out of the amount of assets determined to be possessed by the judgment debtor, the court shall order the third party holder of assets to release to the judgment creditor a sum no greater than the amount of the underlying judgment.

(h) If, upon the hearing of evidence, the court determines that for any reason the adverse claims are too complex to be dispensed with upon a simplified turnover proceeding, the court shall dismiss the petition, with leave to the judgment creditor to bring a special proceeding to enforce the judgment in the regular part of the court pursuant to article 52 of the civil practice law and rules.

§ 2. Paragraph 3 of subdivision (a) of section 5221 of the civil practice law and rules is amended to read as follows:

3. If the judgment sought to be enforced was entered in the [municipal court of the city of New York, the city court of the city of New York or the] civil court of the city of New York, and the respondent resides or is regularly employed or has a place for the regular transaction of business in person within that city, a special proceeding authorized by this article shall be commenced in the civil court of the city of New York. If the judgment sought to be enforced was entered in the small claims part of the civil court of the city of New York, a simplified turnover proceeding may be brought as set forth in section 1812.1 of the New York city civil court act.

§ 3. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all judgments entered on and after such effective date; provided, however this act shall expire December 31, 2015.

Proposed Rule

§ 208.41 (o) **Simplified Turnover Proceedings**

(1) The notice of petition shall be in substantially the following form:

CIVIL COURT OF THE CITY OF NEW YORK CASE # (UNDERLYING CASE)

COUNTY OF _____

SIMPLIFIED TURNOVER PROCEEDING

SMALL CLAIMS PART NOTICE OF PETITION

_____

Petitioner

vs.

Respondent

_____

To: (Respondent)_____

(Address)_____

You, as respondent in a small claims simplified turnover proceeding must appear in the Small Claims Court as follows:

Date: _____

Time: _____

Location: _____

Address: _____

This simplified turnover proceeding has been initiated by (Petitioner) to recover assets being held by you on behalf of (Judgment Debtor).

NOTICE TO RESPONDENT: Failure to appear as indicated above may result in the entry of a judgment against you for an amount out of the assets held that may be used to satisfy the underlying judgment. If you are aware of a potential claim to these assets by any other person, you should notify the person of this simplified turnover proceeding by first class mail as soon as possible.

NOTICE TO JUDGMENT DEBTOR: You may intervene in this simplified turnover proceeding only for the purpose of disputing an interest in the assets at issue or for claiming that an exemption applies to the assets. You may not contest the merits of the underlying judgment.

NOTICE: Any other person may intervene in this simplified turnover proceeding solely for the purpose of claiming an interest in the assets at issue.

_____ _____

(Date) Chief Clerk

(2) The petition shall be in substantially the following form:

CIVIL COURT OF THE CITY OF NEW YORK CASE # (UNDERLYING CASE)

COUNTY OF _____

SIMPLIFIED TURNOVER PROCEEDING

SMALL CLAIMS PART PETITION

_____

Petitioner

vs.

Respondent

_____

The Petition of (Petitioner)_____ alleges as follows:

1. Petitioner is the Judgment Creditor in the small claims matter captioned _____, bearing the same Index Number as set forth above.

2. A total judgment was entered in that case against (Judgment Debtor)_____ (the Judgment Debtor) in the amount of $_____.

3. The following information indicates that assets belonging to the Judgment Debtor are held by you: _____

_____

_____

4. An execution was issued on (date)____ and served upon you by _____ (a Sheriff/a City Marshal), (address of enforcement officer)_____. (A restraining notice/a garnishment has also been served.)

5. However, you have refused to turn over assets in your possession that belong to the Judgment Debtor.

6. Accordingly, Petitioner requests that a judgment be entered in this simplified turnover proceeding against you, as the holder of assets belonging to the Judgment Debtor, in the amount of:

$_____ the underlying judgment

TOTAL $_____ .

_____ _____

Date Petitioner

Petitioner's Name & Address:

Respondent's Name & Address:

Judgment Debtor's Name & Address:

21. Venue of Enforcement Proceedings
(CPLR 5221)

This measure would amend CPLR 5221 to limit the venue of an enforcement proceeding when the enforcement proceeding is based on an underlying consumer credit transaction.

In 1973, as part of the Governor's Consumer Protection Program, CPLR 503 and New York City Civil Court Act § 301(a) were amended to provide that suits arising out of consumer credit transactions must be brought in either the county where the buyer resides or the county where the purchase was made. The main purpose of the amendments was "to protect consumers by limiting the places where a creditor can bring suit arising out of a consumer credit transaction." See Legislative Memoranda, L.1973, ch.238, 1973 N.Y. Session Laws 2171, 2171 (McKinney's).

The amendments specifically changed a venue practice that previously had been authorized under the Civil Court Act. That Act and the CPLR provisions that followed it had permitted venue in plaintiff's county. However, the 1973 amendments precluded the laying of venue in the plaintiff's county in connection with consumer credit transactions. See NYCCCA § 301 Practice Commentary (McKinney's 1989). These venue changes were significant, and the policy which led to the enactment of CPLR 503(f) and the amendment of NYCCCA § 301 was not to be lightly disregarded. See CPLR 503 Practice Commentary C503:6 (McKinney's 2006).

For the sake of consistency, it appears that this venue policy also should apply to the enforcement of judgments obtained in connection with consumer credit transactions. It does not make sense to protect the consumer's venue interests with respect to the obtaining of the underlying judgment, but then permit the creditor to seek enforcement in any county, which would implicate the same travel burdens at issue in the underlying action.

However, CPLR 5221, the law governing the venue of enforcement proceedings was not altered in 1973, leaving an apparent conflict between the venue provisions of the New York City Civil Court Act and the CPLR and the enforcement provisions of the CPLR. CPLR 5221(a)(3) provides that a judgment entered in the New York City Civil Court may be enforced within that court as long as the respondent resides or is regularly employed or has a place for the regular transaction of business in person within New York City. There is no restriction as to the county within New York City, and legislative history indicates that this resulting broad scope of venue was intentional.

A 1959 legislative report indicates that the former Civil Practice Act had provided a narrow scope of venue for judgment proceedings -- a proceeding on a judgment of the Municipal Court of the City of New York was required to be instituted in the court in the county where the debtor lives or works. Subsequently, the CPLR created a broader scope of venue:

Because of the ease of transportation within New York City, and in accordance with other

provisions of the CPLR, New York City is treated as a single unit, and a proceeding . . . may be instituted in any county in the city of New York. See Legislative Studies and Reports following CPLR 5221.

However, this decision with respect to the broad scope of venue pre-dated the significant policy change with respect to consumer credit transactions. Since the provisions of the CPLR have changed with respect to this subject area, the enforcement provisions probably should have been amended to follow suit in 1973. This measure corrects that disparity.

Proposal

AN ACT to amend the civil practice law and rules, in relation to the venue of enforcement proceedings based on underlying judgments obtained in actions involving consumer credit transactions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph 3 of subdivision (a) of section 5221 of the civil practice law and rules is amended to read as follows:

3. If the judgment sought to be enforced was entered in the [municipal court of the city of New York, the city court of the city of New York or the] civil court of the city of New York, and the respondent resides or is regularly employed or has a place for the regular transaction of business in person within that city, a special proceeding authorized by this article shall be commenced in the civil court of the city of New York. If the underlying judgment was entered in an action arising out of a consumer credit transaction where a purchaser, borrower, or debtor is a defendant, and the defendant resides in the city of New York or the transaction took place in the city of New York, then a special proceeding authorized by this article shall be commenced in the county within the city of New York in which the judgment was entered.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law and

shall apply to all judgments entered on and after such effective date.

22. Increasing the Criminal Mischief Threshold Levels
(Penal Law §§ 145.05 and 145.10)

This measure seeks to increase the threshold level for the offenses of criminal mischief in the third degree (a class E felony) and criminal mischief in the second degree (a class D felony). Currently, a person is guilty of criminal mischief in the third degree when he or she damages another person's property in an amount exceeding $250. A person is guilty of criminal mischief in the second degree when he or she damages another person's property in an amount exceeding $1,500. These monetary levels were last amended in 1971 and should be adjusted to reflect the reality of current costs.

A helpful parallel can be drawn using the grand larceny threshold levels, which levels were amended in 1986. Grand larceny in the fourth degree (a class E felony) occurs when the value of the stolen property exceeds $1,000. Penal Law § 155.30. Grand larceny in the third degree (a class D felony) occurs when the value of the property exceeds $3,000. Penal Law § 155.35.

Accordingly, the criminal mischief threshold levels should be amended to reflect similar amounts. Criminal mischief in the third degree (the class E felony) should lie where the value of the damage exceeds $1,000, and criminal mischief in the second degree (the class D felony) should lie where the value of the damage exceeds $3,000.

Proposal

AN ACT to amend the penal law, in relation to criminal mischief in the second and third degrees

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 2 of section 145.05 of the penal law, as amended by chapter 276 of the laws of 2003, is amended to read as follows:

2. damages property of another person in an amount exceeding [two hundred fifty] one thousand dollars.

§ 2. Section 145.10 of the penal law, as amended by chapter 961 of the laws of 1971, is amended to read as follows:

§ 145.10. Criminal mischief in the second degree. A person is guilty of criminal

mischief in the second degree when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he or she has such right, he or she damages property of another person in an amount exceeding [one] three thousand [five hundred] dollars.

Criminal mischief in the second degree is a class D felony.

§ 3. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law.

23. Permit Corporate Counterclaims in Small Claims Court
(NYCCCA § 1809, UDCA § 1809, UCCA § 1809, and UJCA § 1809)

Subdivision one of section 1809 of each of the Uniform Court Acts prohibits corporations from bringing claims in a small claims court. Subdivision two of that section, however, does permit a corporation to appear as a defendant in small claims court.

There is some uncertainty in New York as to whether a corporate defendant in an action in a small claims court may bring a counterclaim in that action. The statute is unclear and the only appellate caselaw addressing the issue is a 1997 decision of the Appellate Term, Second Department. See Marino v. N.A.S. Plumbing, 175 Misc.2d 519 (App. Term, 2d Dept.1997).

The Committee believes the issue should be clarified, and that section 1809(2) of the Uniform Court Acts should be amended to expressly authorize corporate counterclaims in small claims, under certain circumstances. As a defendant, a corporation should generally be no less able to file a counterclaim in a small claims court than any class of small claims defendant. Such a practice best serves the administration of justice and, within the limitations proposed in our measure, should come at no meaningful cost to the objectives underlying small claims court. These limitations, as articulated by the Marino court in its decision upholding a corporate counterclaim in a small claims action, are that the counterclaim fall within the small claims court's monetary jurisdiction and that it "[be] related to the main claim and [that it be] not overly complex."

Proposal

AN ACT to amend the New York city civil court act, the uniform district court act, the uniform city court act, and the uniform justice court act, in relation to permitting a corporate defendant to interpose a counterclaim in small claims court

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 2 of section 1809 of the New York city civil court act, as amended by chapter 157 of the laws of 1984, is amended to read as follows:

2. A corporation may appear in the defense of any small claim action brought pursuant to this article by an attorney as well as by any authorized officer, director or employee of the corporation provided that the appearance by a non-lawyer on behalf of a corporation shall be

deemed to constitute the requisite authority to bind the corporation in a settlement or trial. The court or arbitrator may make reasonable inquiry to determine the authority of any person who appears for the corporation in defense of a small claims court case. The corporation's right to defend against a small claim action includes the right to interpose a counterclaim in small claims court, as long as the counterclaim falls within the court's monetary jurisdiction, is related to the main claim and is not overly complex.

§ 2. Subdivision 2 of section 1809 of the uniform district court act, as amended by chapter 157 of the laws of 1984, is amended to read as follows:

2. A corporation may appear in the defense of any small claim action brought pursuant to this article by an attorney as well as by any authorized officer, director or employee of the corporation provided that the appearance by a non-lawyer on behalf of a corporation shall be deemed to constitute the requisite authority to bind the corporation in a settlement or trial. The court or arbitrator may make reasonable inquiry to determine the authority of any person who appears for the corporation in defense of a small claims court case. The corporation's right to defend against a small claim action includes the right to interpose a counterclaim in small claims court, as long as the counterclaim falls within the court's monetary jurisdiction, is related to the main claim and is not overly complex.

§ 3. Subdivision 2 of section 1809 of the uniform city court act, as amended by chapter 157 of the laws of 1984, is amended to read as follows:

2. A corporation may appear in the defense of any small claim action brought pursuant to this article by an attorney as well as by any authorized officer, director or employee of the corporation provided that the appearance by a non-lawyer on behalf of a corporation shall be

deemed to constitute the requisite authority to bind the corporation in a settlement or trial. The court or arbitrator may make reasonable inquiry to determine the authority of any person who appears for the corporation in defense of a small claims court case. The corporation's right to defend against a small claim action includes the right to interpose a counterclaim in small claims court, as long as the counterclaim falls within the court's monetary jurisdiction, is related to the main claim and is not overly complex.

§ 4. Subdivision 2 of section 1809 of the uniform justice court act, as amended by chapter 157 of the laws of 1984, is amended to read as follows:

2. A corporation may appear in the defense of any small claim action brought pursuant to this article by an attorney as well as by any authorized officer, director or employee of the corporation provided that the appearance by a non-lawyer on behalf of a corporation shall be deemed to constitute the requisite authority to bind the corporation in a settlement or trial. The court or arbitrator may make reasonable inquiry to determine the authority of any person who appears for the corporation in defense of a small claims court case. The corporation's right to defend against a small claim action includes the right to interpose a counterclaim in small claims court, as long as the counterclaim falls within the court's monetary jurisdiction, is related to the main claim and is not overly complex.

§ 5. This act shall take effect on the first day of January next succeeding the date on which it becomes a law and shall apply to small claims brought on or after that date.

24. Notice of Commercial Small Claims Judgment
(NYCCCA § 1811-A, UDCA § 1811-A, and UCCA § 1811-A)

This measure would amend section 1811-A of the New York City Civil Court Act, the Uniform District Court Act and the Uniform City Court Act to require courts to send a notice of judgment to the judgment creditor and to the judgment debtor in commercial claims actions.

Pursuant to section 1811 of the New York City Civil Court Act and the Uniform City and District Court Acts, the courts must send a notice of judgment to all small claims judgment debtors and creditors. The notice to the judgment debtor must specify the consequences of failing to pay the judgment. The notice to the judgment creditor must contain information about the judgment creditor's rights with respect to enforcement of the judgment. Finally, both parties must be notified of the time for taking an appeal from a small claims judgment. In contrast, no provision is made for notice to parties to commercial claims actions, leaving them ignorant of their rights and responsibilities with respect to a commercial claims judgment. As a result, commercial claims judgments may remain unpaid while one side determines the means for enforcement and the other is unaware that good reason exists to pay the judgment sooner rather than later. Moreover, the losing party may, through ignorance, forego the chance to appeal an unjust decision.

There is no rationale for treating parties in small claims actions differently from parties in commercial claims actions. Both should be informed of the rights or obligations that flow from the judgments entered in these actions and should be advised of the time for taking an appeal from those judgments.

Proposal

AN ACT to amend the New York city civil court act, the uniform district court act, and the uniform city court act, in relation to notice of commercial small claims judgments

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1811-A of the New York city civil court act, as amended by chapter 100 of the laws of 1998, is amended to read as follows:

§ 1811-A. [Indexing] Notice of commercial claims part judgments and indexing commercial claims part judgments. (a) Notice of judgment sent to a judgment debtor shall specify that a failure to satisfy a judgment may subject the debtor to any one or a combination of

the following actions:

1. garnishment of wage;

2. garnishment of bank account;

3. a lien on personal property;

4. seizure and sale of real property;

5. seizure and sale of personal property, including automobiles;

6. suspension of motor vehicle license and registration, if the claim is based on defendant's ownership or operation of a motor vehicle;

7. revocation, suspension, or denial of renewal of any applicable business license or permit;

8. investigation and prosecution by the attorney general for fraudulent or illegal business practices.

(b) Notice of judgment sent to a judgment creditor shall contain but not be limited to the following information:

1. the claimant’s right to payment upon entry of judgment by the court clerk;

2. the procedures for enforcement of commercial claims judgments as provided in section eighteen hundred twelve-A of this article;

3. the claimant's right to initiate actions to recover the unpaid judgment through the sale of the debtor's real property, or personal property;

4. the claimant's right to initiate actions to recover the unpaid judgment through suspension of debtor's motor vehicle license and registration, if the claim is based on debtor's ownership or operation of a motor vehicle;

5. the claimant's right to notify the appropriate state or local licensing or certifying authority of an unsatisfied judgment as a basis for possible revocation, suspension, or denial of renewal of a business license;

6. a statement that upon satisfying the judgment, the judgment debtor shall present appropriate proof thereof to the court; and

7. the claimant's right to notify the attorney general if the debtor is a business and appears to be engaged in fraudulent or illegal business practices.

(c) Notice of judgment sent to each party shall include the following statement: "An appeal from this judgment must be taken no later than the earliest of the following dates: (i) thirty days after receipt in court of a copy of the judgment by the appealing party, (ii) thirty days after personal delivery of a copy of the judgment by another party to the action to the appealing party (or by the appealing party to another party), or (iii) thirty-five days after the mailing of a copy of the judgment to the appealing party by the clerk of the court or by another party to the action."

(d) All wholly or partially unsatisfied commercial claims part judgments shall be indexed alphabetically and chronologically under the name of the judgment debtor. Upon satisfying the judgment, the judgment debtor shall present appropriate proof to the court and the court shall indicate such in the records.

§ 2. Section 1811-A of the uniform district court act, as amended by chapter 100 of the laws of 1998, is amended to read as follows:

§ 1811-A. [Indexing] Notice of commercial claims part judgments and indexing commercial claims part judgments. (a) Notice of judgment sent to a judgment debtor shall specify that a failure to satisfy a judgment may subject the debtor to any one or a combination of

the following actions:

1. garnishment of wage;

2. garnishment of bank account;

3. a lien on personal property;

4. seizure and sale of real property;

5. seizure and sale of personal property, including automobiles;

6. suspension of motor vehicle license and registration, if the claim is based on defendant's ownership or operation of a motor vehicle;

7. revocation, suspension, or denial of renewal of any applicable business license or permit;

8. investigation and prosecution by the attorney general for fraudulent or illegal business practices.

(b) Notice of judgment sent to a judgment creditor shall contain but not be limited to the following information:

1. the claimant’s right to payment upon entry of judgment by the court clerk;

2. the procedures for enforcement of commercial claims judgments as provided in section eighteen hundred twelve-A of this article;

3. the claimant's right to initiate actions to recover the unpaid judgment through the sale of the debtor's real property, or personal property;

4. the claimant's right to initiate actions to recover the unpaid judgment through suspension of debtor's motor vehicle license and registration, if the claim is based on debtor’s ownership or operation of a motor vehicle;

5. the claimant's right to notify the appropriate state or local licensing or certifying authority of an unsatisfied judgment as a basis for possible revocation, suspension, or denial of renewal of a business license;

6. a statement that upon satisfying the judgment, the judgment debtor shall present appropriate proof thereof to the court; and

7. the claimant's right to notify the attorney general if the debtor is a business and appears to be engaged in fraudulent or illegal business practices.

(c) Notice of judgment sent to each party shall include the following statement: "An appeal from this judgment must be taken no later than the earliest of the following dates: (i) thirty days after receipt in court of a copy of the judgment by the appealing party, (ii) thirty days after personal delivery of a copy of the judgment by another party to the action to the appealing party (or by the appealing party to another party), or (iii) thirty-five days after the mailing of a copy of the judgment to the appealing party by the clerk of the court or by another party to the action."

(d) All wholly or partially unsatisfied commercial claims part judgments shall be indexed alphabetically and chronologically under the name of the judgment debtor. Upon satisfying the judgment, the judgment debtor shall present appropriate proof to the court and the court shall indicate such in the records.

§ 3. Section 1811-A of the uniform city court act, as amended by chapter 100 of the laws of 1998, is amended to read as follows:

§ 1811-A. [Indexing] Notice of commercial claims part judgments and indexing commercial claims part judgments. (a) Notice of judgment sent to a judgment debtor shall specify that a failure to satisfy a judgment may subject the debtor to any one or a combination of

the following actions:

1. garnishment of wage;

2. garnishment of bank account;

3. a lien on personal property;

4. seizure and sale of real property;

5. seizure and sale of personal property, including automobiles;

6. suspension of motor vehicle license and registration, if the claim is based on defendant's ownership or operation of a motor vehicle;

7. revocation, suspension, or denial of renewal of any applicable business license or permit;

8. investigation and prosecution by the attorney general for fraudulent or illegal business practices.

(b) Notice of judgment sent to a judgment creditor shall contain but not be limited to the following information:

1. the claimant’s right to payment upon entry of judgment by the court clerk;

2. the procedures for enforcement of commercial claims judgments as provided in section eighteen hundred twelve-A of this article;

3. the claimant's right to initiate actions to recover the unpaid judgment through the sale of the debtor's real property, or personal property;

4. the claimant's right to initiate actions to recover the unpaid judgment through suspension of debtor's motor vehicle license and registration, if the claim is based on debtor's ownership or operation of a motor vehicle;

5. the claimant's right to notify the appropriate state or local licensing or certifying authority of an unsatisfied judgment as a basis for possible revocation, suspension, or denial of renewal of a business license;

6. a statement that upon satisfying the judgment, the judgment debtor shall present appropriate proof thereof to the court; and

7. the claimant's right to notify the attorney general if the debtor is a business and appears to be engaged in fraudulent or illegal business practices.

(c) Notice of judgment sent to each party shall include the following statement: "An appeal from this judgment must be taken no later than the earliest of the following dates: (i) thirty days after receipt in court of a copy of the judgment by the appealing party, (ii) thirty days after personal delivery of a copy of the judgment by another party to the action to the appealing party (or by the appealing party to another party), or (iii) thirty-five days after the mailing of a copy of the judgment to the appealing party by the clerk of the court or by another party to the action."

(d) All wholly or partially unsatisfied commercial claims part judgments shall be indexed alphabetically and chronologically under the name of the judgment debtor. Upon satisfying the judgment, the judgment debtor shall present appropriate proof to the court and the court shall indicate such in the records.

§ 4. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all notices of judgment sent on and after such effective date.

25. Removal of Certain Criminal Cases
(CPL 180.25)

This measure would add a new section 180.25 to the Criminal Procedure Law to allow a superior court to remove a felony action from a local criminal court to expedite a defendant's plea to the felony charge.

Under current law, a criminal defendant charged in a local criminal court with the commission of a felony may waive his or her right to a preliminary hearing. Upon such waiver, the local criminal court must transfer the criminal action to the superior court. In many cases, such a waiver is made by a defendant because he or she intends to plead guilty to the offense charged. In such cases, the defendant must return to the local criminal court to waive the preliminary hearing and then must appear in the superior court to waive indictment and plead guilty to a superior court information. This measure would authorize a superior court judge to remove a felony action from a local criminal court following a defendant's arraignment, but prior to the defendant's waiver of a preliminary hearing, when the superior court finds that such removal will promote the administration of justice. The superior court then would have the same powers with respect to the disposition of the felony complaint as did the local criminal court from which it was removed, including accepting the defendant's waiver of a preliminary hearing.

This measure will allow speedy disposition of those felony cases in which the defendant and the prosecutor have reached a plea bargain agreement, particularly when the defendant will be referred to a specialized court such as a drug court or a domestic violence court immediately following arraignment in a local criminal court. In addition, this new procedure will ensure the most efficient use of resources in the local criminal courts.

Proposal

AN ACT to amend the criminal procedure law, in relation to removal of certain criminal cases

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The criminal procedure law is amended by adding a new section 180.25 to read as follows:

§180.25. Proceedings upon felony complaint; removal of action from local criminal court by superior court. Following defendant's arraignment before a local criminal court upon a felony complaint, but prior to waiver by the defendant of a hearing upon such felony complaint, a

superior court of the county in which the local criminal court is located may order that the action be removed to such superior court from such local criminal court provided it finds that such removal will promote the administration of justice. Upon such removal, the superior court may exercise all powers with respect to such felony complaint as might have been exercised by the local criminal court from which it was removed, except that, where the defendant does not waive a hearing upon the felony complaint, the superior court shall order that the action be removed back to the local criminal court in which it was commenced for further proceedings in accordance with this article.

§ 2. This act shall take effect immediately.

26. Notice Required to Obtain a Default Judgment
for Failure to Answer an Accusatory Instrument
Charging a Traffic Infraction
(VTL § 1806-a)

This measure would amend section 1806-a of the Vehicle and Traffic Law to authorize a court to use regular first class mail to notify a defendant who fails to answer a notice of appearance, a summons or some other notice of violation charging the defendant with a traffic infraction involving parking, stopping, or standing.

Section 1806-a authorizes courts having jurisdiction of traffic infractions to enter a default judgment against a defendant who fails to answer the accusatory instrument charging the offense. Before doing so, however, the court must give the defendant 30 days' notice of the impending default judgment by certified mail. This measure amends section 1806-a to allow such notice to be given by regular first class mail when a defendant fails to answer a charge involving parking, stopping or standing offenses and certain conditions are met. Specifically, the defendant must have been served personally with an appearance ticket, a summons or some other notice of violation and with notice that if the defendant fails to answer the charge, the court may enter a plea of guilty on the defendant's behalf and impose a fine that is authorized by law. With respect to parking, stopping or standing offenses, personal service would include posting the notice or summons by affixing it to a conspicuous place on the motor vehicle involved. Proof of such personal service must be filed with the court. This notice procedure is consistent with that set forth in CPLR 3215 for default judgments entered in civil cases.

Enactment of this measure will greatly reduce mailing costs incurred by courts that handle a large number of parking, stopping or standing offenses.

Proposal

AN ACT to amend the vehicle and traffic law, in relation to default judgment for failure to answer an accusatory instrument charging a traffic infraction

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 1806-a of the vehicle and traffic law, as amended by chapter 83 of the laws of 1995, is amended to read as follows:

1. (a) In the event a person charged with a traffic infraction does not answer within the time specified, the court having jurisdiction, other than a court in a city having a population over

one million [population] may, in addition to any other action authorized by law, enter a plea of guilty on behalf of the defendant and render a default judgment of a fine determined by the court within the amount authorized by law. Any judgment entered pursuant to default shall be civil in nature, but shall be treated as a conviction for the purposes of this section. However, at least thirty days after the expiration of the original date prescribed for entering a plea and before a plea of guilty and a default judgment may be rendered, the traffic violations bureau or, if there be none, the clerk of the court, shall notify the defendant by certified mail at defendant's last known place of residence: [(a)] (i) of the violation charged; [(b)] (ii) of the impending plea of guilty and default judgment; [(c)] (iii) that such judgment will be filed with the county clerk of the county in which the operator or registrant is located[,]; and [(d)] (iv) that a default or plea of guilty may be avoided by entering a plea or making an appearance within thirty days of the sending of such notice. Pleas entered within that period shall be in a manner prescribed in the notice.

(b) Notwithstanding any provision of paragraph (a) of this subdivision, where defendant is charged with a traffic infraction involving parking, stopping or standing under this chapter or under an ordinance, rule or regulation adopted pursuant to this chapter, the notice required by paragraph (a) may be sent by regular first class mail to defendant's last known place of residence, provided: (i) the defendant was served, either by personal delivery to him or her or by affixation upon the motor vehicle involved, with an appearance ticket, a summons or other notice of the violation describing the traffic infraction charged, together with written notice that in the event the defendant does not appear and answer the charge within the time specified in such appearance ticket, summons or other notice of the violation, the court will enter a plea of guilty on behalf of the defendant and render a default judgment of a fine determined by the court within

the amount authorized by law; and (ii) proof of service thereof, in a form prescribed by section three hundred six of the civil practice law and rules, is filed with the court.

(c) In no case shall a default judgment and plea of guilty pursuant to this section be rendered more than two years after the expiration of the time prescribed for originally entering a plea. When a person has entered a plea of not guilty and has demanded a hearing, no fine or penalty shall be imposed for any reason, prior to the holding of the hearing which shall be scheduled by the court of such city, village or town within thirty days of such demand.

§ 2. This act shall take effect thirty days after it becomes a law and shall apply to all traffic infractions committed on or after such effective date.

IV. FUTURE MATTERS

The Committee will continue to review the various ideas and suggestions posed by judges, nonjudicial employees, practitioners and members of the public concerning all issues relating to the operations of the local courts across New York State.

The Committee may confer with the Chief Administrative Judge's other Advisory Committees when reviewing issues relating to the operations of the local courts.

Respectfully submitted,

Hon. Joseph J. Cassata, Jr. – Chair

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Jack Baer
Hon. Robert G. Bogle
Hon. Andrew G. Ceresia
Hon. Ralph J. Eannace, Jr.
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Hon. Madeleine A. Fitzgibbon
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