Report of the Advisory Committee on Local Courts

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

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I. INTRODUCTION: A NEW APPROACH

The Local Courts Advisory Committee is one of the five 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 2012, the Committee was comprised of 16 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 makes recommendations with respect to existing court rules.

New Proposals for 2013

For 2013, the Committee recommends three new legislative measures. Two are constitutional amendments regarding temporary assignments to Supreme Court from the New York City courts and District Courts, respectively. A third would allow perfection of appeals from local criminal courts to intermediate appellate courts (i.e. County Court or Appellate Terms of Supreme Court) based on mechanical recordings of trial proceedings, rather than only an inefficient, outmoded affidavit of errors. The Committee also offers several amended proposals: one would provide limited redress where a defendant in a local criminal court fails to honor an appearance ticket for allegedly violating open-container laws: these defendants are minors who, by not appearing, may "graduate" to more serious and life-threatening alcohol-related offenses. Another proposal would grant New York City Civil Court, District Courts and City Courts limited powers where a claim or defense sounds in equity: current law requires such cases to be recommenced in a higher court, which is inconsistent with this State's access-to-justice policy. The foregoing 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.

Honing Priorities

To assist the Legislature and public in discerning the Committee's legislative priorities, the Committee reviewed its prior Annual Reports and determined to significantly streamline its submission for 2013. The Committee observed that prior Annual Reports had grown to exceed 40 submissions, many of them accreted over the years. Many proposals, in turn, were not introduced in either House of the Legislature in the 2011-2012 sessions. With a nod to both high-priority issues and practicality, the 2013 Annual Report reflects a more tailored approach than any Annual Report in the last decade. The Committee offers for consideration only measures that reflect high priorities of the Committee based on key policy principles (e.g. upholding the rule of law, promoting judicial intervention to save lives, promoting efficiency) and that appear to have a reasonable chance of favorable consideration.

The Committee's legislative program for 2013 focuses on initiatives that, if enacted, would close outmoded jurisdictional gaps, enhance judicial efficiency, save time and money

across multiple areas of practice, and advance State policy that identifies and reduces the collateral consequences of certain criminal processes.

- **Promoting efficiency and modernization.** In service of these goals, the Committee proposes to allow appeals from local criminal courts to intermediate appellate courts based on recordings and settled transcripts rather than outmoded affidavits of errors (LCAC New #3); allow certain local courts to hear limited equity claims and defenses to avoid re-starting these cases in other courts (LCAC Amended #2); allow all local criminal courts rather than only New York City Criminal Court to hold single-judge trials in B misdemeanors (LCAC Old #6); expand from the New York City courts to all local courts the Constitution's consent to statewide service of process, so process does not need to be double issued or double indorsed (LCAC Old #7); and authorize City Courts to set or remit bail to avoid multiple applications to superior courts (LCAC Old #11 and #12).

- **Promoting the administration of justice.** Consistent with existing policy to address the collateral consequences of court proceedings while bringing offenders to justice, the Committee recommends measures to seal court records of petty offenses whose records in other governmental agencies already are sealed (LCAC Old #10); seal records of cases dismissed on the People's motion (LCAC Old #13); allow courts to suspend the driver's license of persons who fail without justification to appear to answer charges of unlawful possession of alcohol, or who fail to complete their sentences timely (LCAC New #3); and allow arrest warrants to issue for misdemeanors (e.g. DWI) charged by simplified traffic information where the defendant fails to appear (LCAC Old #9).

- **Closing loopholes.** Recognizing that statutes governing local courts have accreted over time and may have seemingly unintended loopholes in procedure or jurisdiction, the Committee recommends reforms allowing LLCs to commence small commercial claims in the local courts (LCAC Old #1), and allowing a commercial case to proceed in District Court based on the defendant's contacts with any district of the court (LCAC Old #2).

The Committee expresses its advance appreciation to the Legislature for considering this streamlined Annual Report, and welcomes comments and suggestions from the Legislature, the Judiciary, the Bar and the public concerning issues that arise in the local courts. Any comments and suggestions may be addressed to:

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II. NEW LEGISLATION

1. Temporary Appointments from New York City Courts to Supreme Court in Any County of New York City (NY Const, art VI, § 26[g])

This measure would amend the New York State Constitution to authorize the temporary assignment of a judge of the New York City Civil Court or Criminal Court as an acting Supreme Court justice in any judicial district within the City of New York.

The Constitution authorizes temporary assignment of a New York City Civil Court or Criminal Court judge to "supreme court in the judicial department of his or her residence." N.Y. Const., art. VI, § 26(g). The City's boroughs divide among two judicial departments: Kings, Queens and Richmond Counties are in the Second Department, while New York and Bronx Counties comprise the First Department. See N.Y. Const., art. VI, § 4(a). However, the Civil Court and Criminal Court each is a single court of "citywide" jurisdiction whose judges may discharge their duties "in any county" of New York City. N.Y. Const., art. VI, §§ 15(a), 26(g). Thus, New York City judges often serve in boroughs other than where they reside.

The problem is that even when a New York City judge may dedicate his or her judicial career to service in one county within New York City, becoming fluent in that county's dockets and administrative dynamics, the Constitution may not allow such judge to serve temporarily in Supreme Court in that county. The Constitution limits a temporary assignment in Supreme Court to the judicial department of a judge's residence, despite the citywide jurisdiction of a New York City judge and the citywide service explicit in such judge's office. Accordingly, a New York City judge residing in the Bronx but serving for many years with distinction in Queens is ineligible for temporary assignment to Supreme Court in Queens County because the East River divides the judge's judicial department of residency (i.e. First Department) from the judge's judicial department where he or she serves (i.e. Second Department).

This restriction makes no practical or juridical sense, and defies the Constitution's own characterization of the New York City Civil Court and Criminal Courts as courts of citywide jurisdiction with citywide powers. Because temporary assignments are an important tool for deploying limited judicial resources to address Supreme Court calendar demands, New York City judges should be eligible for temporary assignment within the same jurisdiction – that is, "citywide," within the City of New York – for which they are elected or appointed to serve. While recognizing that temporary assignments to Supreme Court should depend on objective caseloads and judicial needs commensurate with the local administration of justice, this measure would only authorize those temporary assignments consistent with these well-settled objectives – in this case, allowing those very judges, whose experience gives them the fullest understanding of a county's needs, to serve in that county and vindicate those judicial needs.

Legislative history: None. New proposal.

Proposal

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY proposing an amendment to article 6 of the constitution, in relation to the temporary assignment of certain judges to the supreme court.

Section 1. Resolved (if the _____) concur, That subdivision g of section 26 of article 6 of the constitution be amended to read as follows:

g. A judge of a court for the city of New York established pursuant to section fifteen of this article may perform the duties of office or hold court in any county and may be temporarily assigned to the supreme court in [the judicial department of his or her residence] any county within the city of New York, or to the county court or the family court in any county or to the other court for the city of New York established pursuant to section fifteen of this article.

§ 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.

2. Temporary Appointment from District Court
to Supreme Court
(NY Const, art VI, § 26[h])

This measure would amend the New York State Constitution to authorize the temporary assignment of a judge of the District Court to serve as an acting Supreme Court justice in the judicial department of his or her residence.

The Constitution authorizes the temporary assignment of a judge of the District Court to the County Court in the judicial department of his or her residence, or to the citywide Civil Court or Criminal Court of the City of New York. See N.Y. Const., art. VI § 26(h). The Constitution does not, however, allow District Court judges to be temporarily assigned to Supreme Court. That the Constitution invites judges of the New York City Criminal Court to be temporarily assigned to Supreme Court but does not allow similar temporary assignment for District Court judges, who constitutionally enjoy the same jurisdiction and adjudicate comparable dockets, makes no juridical sense.

Redressing this outdated distinction between the New York City courts and the District Courts on Long Island would help meet particular judicial needs in the courts of Nassau and Suffolk County. For example, in Nassau County, there has been a shortage of justices available for assignment to the Felony Drug Treatment Court, a problem-solving court administered by the Nassau County Court. This shortage is underscored by the fact that all judges of the Nassau County Court have been designated acting justices of the Supreme Court for the Tenth Judicial District. Allowing temporary service of District Court judges would allow the flexibility that effective discharge of judicial business requires.

Legislative history: None. New proposal.

Proposal

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY proposing an amendment to article 6 of the constitution, in relation to the temporary assignment of certain judges to the supreme court.

Section 1. Resolved (if the _____) concur, That subdivision h of section 26 of article 6 of the constitution be amended to read as follows:

h. A judge of the district court in any county may perform the duties of office or hold court in any county and may be temporarily assigned to the supreme court or county court in the

judicial department of his or her residence or to a court for the city of New York established pursuant to section fifteen of this article or to the district court in any 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.

3. Perfecting Appeals from Local Criminal Courts Based on Mechanical or Electronic Recordings (CPL 460.10[2]-[3], 460.70[1])

This measure would amend Criminal Procedure Law sections 460.10 and 460.70 to allow appeals from local criminal courts to intermediate appellate courts to proceed based on a mechanical or electronic recording of the proceedings below.

Under current law, where proceedings in a local criminal court are transcribed by a court stenographer, appeals to an intermediate appellate court (i.e. County Court or an Appellate Term of Supreme Court) are perfected by filing a notice of appeal and then settling the transcript of the proceedings below. See CPL 460.10, 460.70(1). Where local criminal court trial proceedings below are not transcribed by a court stenographer, however, appeals to the County Court or an Appellate Term of Supreme Court are perfected by filing an affidavit of errors setting forth alleged errors or defects in the trial proceeding. See CPL 460.10(3)(a).

As authorized by the Chief Judge of the State of New York, the Chief Administrative Judge has directed that all proceedings in a town or village Justice Court be recorded by mechanical recording device. See 22 NYCRR [Rules of the Chief Judge] § 30.1; Administrative Order [Chief Administrative Judge] 245/08. By similar authority, proceedings in certain City Courts outside the City of New York are subject to mechanical recording. These initiatives have created questions – and divided judicial opinions – about whether the resulting recordings are sufficient basis upon which to appeal such proceedings to an intermediate appellate court.

In People v Bartholemew, 31 Misc 3d 698 (Broome Co Ct 2011), the County Court, sitting as an intermediate appellate court, held that a criminal defendant appealing from Binghamton City Court could not appeal from a mechanical recording of the City Court's proceedings, and instead had to proceed by an affidavit of errors. The Court held that filing and serving the affidavit of errors is a jurisdictional prerequisite to an intermediate appellate court's hearing of the appeal, and that failure to file the affidavit of errors – even given a certified transcript of the proceeding below – was a non-waivable jurisdictional defect. See id. at 701, following People v Duggan, 69 NY2d 931 (1987); see also Cash v Maggio, __ Misc 3d __, 2012 NY Slip Op 22376 (Livingston Co Ct 2012) (no appeal from Justice Court to County Court except upon affidavit of errors despite presence of mechanical record of the proceeding below).

Conversely, in People v Schumacher, 35 Misc 3d 1206 (Sullivan Co Ct 2012), the County Court, sitting as an intermediate appellate court, held that a criminal defendant appealing from a Justice Court could indeed appeal using the mechanical recording of the proceeding below. Disagreeing with the Bartholemew court, Schumacher reasoned that rigid adherence to the provisions of CPL article 460 governing appeals from local criminal court to an intermediate appellate court would "undermine the spirit of the [Judiciary's proceedings-recording] Order of 2008," which seeks to transition "local courts to a modernized and streamlined process." See id. at *3. The court continued that a criminal appellant "need not adhere to a statutory scheme that

was appropriate when one used a quill and ink to generate a subjective affidavit of errors based on recollection of court proceedings; New York's local courts now have an economic, accurate, and expedited way, by mechanical recordings, to provide appellants with a transcribed record equivalent to a stenographic recording." Id.

To promote efficiency, judicial economy and clarity among bar and bench, this measure would codify the Schumacher result and abrogate Bartholemew. Section one of this measure would amend CPL 460.10(1) and 460.10(2) to exempt mechanically recorded local criminal court cases from the need to prepare and serve an affidavit of errors as a prerequisite for prosecuting an appeal. Section two of this measure would harmonize the foregoing with CPL 460.70(1), governing the settlement of transcripts in local criminal court proceedings.

Mechanical recording of local criminal court proceedings has become so common and well-proved that a settled transcript from those recordings is a more reliable basis to prosecute an appeal than subjectively reconstructing trial proceedings by manual affidavit of errors. Enacted in 1971, the existing statute governing intermediate appeals predates mechanical recordings by decades; in the current era of mechanical recording, the statute creates jurisdictional traps and much inefficiency for parties and courts alike. There is no defensible policy or practical reason that appellants possessing an accurate recording and transcript thereof nevertheless must proceed on an affidavit of errors, especially given that the consequence of relying on the former is a non-waivable jurisdictional defect that can doom an appeal. Such outcomes are especially disfavored given that for misdemeanors and violations, State policy is to minimize cost and complexity in service of access-to-justice objectives. Because preparing an affidavit of errors can be more costly than routine settlement of a transcript, this measure also would promote more cost-effective access to justice in local criminal courts in which there is no court stenographer.

Critically, nothing in this measure would change practice in superior criminal courts, or privilege recording over court stenography where the latter exists. Rather, this limited measure provides only that where a local criminal court uses mechanical recording, a verdict or sentence in that court is appealable by settling the transcript without an outdated affidavit of errors.

This measure, which would have no fiscal impact on state or local governments but could reduce the cost of prosecuting local criminal court appeals, would take effect on the first day of November next succeeding the date on which this bill shall have become a law.

Legislative history: None. New proposal.

Proposal

AN ACT to amend the criminal procedure law, in relation to perfecting appeals from local criminal courts based on mechanical or electronic recordings

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

Section 1. Subdivision 2 and the opening unlettered paragraph of subdivision 3 of section 460.10 of the criminal procedure law are amended to read as follows:

2. An appeal taken as of right to a county court or to an appellate term of the supreme court from a judgment, sentence or order of a local criminal court in a case in which the underlying proceedings were recorded by a court stenographer or by mechanical or electronic means is taken in the manner provided in subdivision one; except that where no clerk is employed by such local criminal court the appellant must file the notice of appeal with the judge of such court, and must further file a copy thereof with the clerk of the appellate court to which the appeal is being taken.

An appeal taken as of right to a county court or to an appellate term of the supreme court from a judgment, sentence or order of a local criminal court in a case in which the underlying proceedings were not recorded by a court stenographer or by mechanical or electronic means is taken as follows:

§ 2. The second unlettered paragraph of subdivision 1 of section 460.70 of the criminal procedure law, as amended by section 208 of chapter 85 of the laws of 1995, is amended to read as follows

When an appeal is taken by a defendant pursuant to section 450.10 or subdivision two of section 460.10, a transcript shall be prepared and settled and shall be filed with the criminal court by the court reporter. The expense for such transcript and any reproduced copies of such transcript shall be paid by the defendant. Where the defendant is granted permission to proceed

as a poor person by the appellate court, the court reporter shall promptly make and file with the criminal court a transcript of the stenographic minutes of such proceedings as the appellate court shall direct. The expense of transcripts and any reproduced copies of transcripts prepared for poor persons under this section shall be a state charge payable out of funds appropriated to the office of court administration for that purpose. The appellate court shall where such is necessary for perfection of the appeal, order that the criminal court furnish a reproduced copy of such transcript to the defendant or his or her counsel.

§ 3. This act shall take effect on the first day of November next succeeding the date on which it shall have become law, and shall apply to all actions in which a notice of appeal from a local criminal court to an intermediate appellate court is filed on or after such date.

III. AMENDED PROPOSALS

1. Authorize Suspension of Driver's License For Unjustified Failure to Attend Court on Charge of Underage Possession of Alcohol or Comply With Court Conditions After Conviction for Such Offense (VTL § 510[3][k], [4-a][a]; ABC § 65-c[3])

This measure would amend the Vehicle and Traffic Law and the Alcohol Beverage Control Law, to authorize a court to suspend a driver's license where the holder fails timely to appear before the court, pay a fine, complete an alcohol awareness program or complete community service associated with a charge of under-age possession of alcohol.

Years of judicial experience, and experience in the broader law enforcement and child-welfare communities, demonstrates that a charge of under-age possession of alcohol may be the first and best opportunity to avert more serious and potentially life-threatening alcohol-related offenses. When defendants less than age 21 are charged with under-age possession of alcohol with intent to consume under Alcohol Beverage Control Law section 65-c, authorized sentences of completing alcohol awareness programs and community service offer potential judicial remedies to help deter drunk driving and other more serious offenses.

Unfortunately, many of these defendants ignore their appearance tickets or, if convicted, they ignore the very sentences calculated to discourage more serious offenses. Under current law, however, there is no practical redress: statute allows no other remedy besides contempt, which is a resource-intensive path that may lead to incarceration inapposite for these offenders. For that reason, underage defendants flaunt the law: many do so precisely because they know there is no negative consequence for ignoring the charge or sentence, which compounds their disrespect for the law and encourages further offenses. The Internet is rife with advice for teens that there is no negative consequence for ignoring appearance tickets or court-imposed penalties for underage drinking. Given these dynamics, it is little surprise that in some courts, the scoff rate on underage alcohol possession exceeds 30%. These dynamics particularly manifest after proms, concerts, festivals and other large gatherings of teens, which expose teens to not only alcohol but also the risk of drunk driving. Without remedies for alcohol-possession violations, too often the result is drunk driving, injuries and preventable deaths.

While fully cognizant that underage offenders are minors for whom our law must take an especially measured approach, New York State must address the perversion by which courts can do little or nothing when persons charged with underage possession of alcohol fail to appear or complete court-ordered sentences. Their impunity must stop not only to inculcate respect for the law and the courts generally, but also to help prevent more serious offenses and the risks to life that these more serious offenses entail.

Accordingly, this measure would authorize courts to suspend driving privileges for defendants charged with under-age possession of alcohol with intent to consume under Alcohol

Beverage Control Law section 65-c, who either do not appear in court or who are convicted and fail timely to satisfy their sentences. The suspension would be on the same terms of notice and delayed implementation as other suspensions under the Vehicle and Traffic Law. This limited approach, rather than proposing to increase penalties or expose these defendants to incarceration, seeks only to bring these defendants before the court to answer charges and honor sentences that are calculated to educate them and prevent potentially life-threatening behaviors. Because the most effective tool for the underage offender is to suspend driving privileges associated with the offender's maturity and independence, that result is the only one this measure contemplates.

This measure represents an amended version of S.3188 and A.5722 of 2012. Those prior measures also would have applied the license-suspension remedy to violations of Penal Law 221.05 (unlawful possession of marijuana). The current measure, by contrast, focuses exclusively on underage possession of alcohol with intent to consume.

This measure is cognizant that continuing to drive with a suspended license could expose the defendant to additional penalties. While such additional penalties may be appropriate under the circumstances, the Legislature is invited to weigh the collateral consequences of such further penalties and collaborate with the Judiciary to craft an amendment to this measure that would limit such collateral consequences in light of a defendant's under-age status.

This measure, which would have no fiscal impact on the State or any locality, would take effect on the first day of January next succeeding the date on which it shall have become a law.

Legislative history: Amended version of S.3188 (passed Senate) and A.5722 (Codes).

Proposal

AN ACT to amend the vehicle and traffic law and the alcohol beverage control law, in relation to authorizing suspension of driver's licenses for unjustified failure to attend court on charge of underage possession of alcohol or comply with court conditions after conviction for such offense

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

Section 1. Paragraph (k) of subdivision 3 of section 510 of the vehicle and traffic law, as amended by chapter 124 of the laws of 1992, is amended and a new paragraph (l) is added to such subdivision, 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 alcohol beverage control law.

§ 2. Paragraph (a) of subdivision 4-a of section 510 of the vehicle and traffic law, as amended by section 10 of part J of chapter 63 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), or 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, or in the case of a violation of subdivision three of section sixty-five-c of the alcohol beverage control law, the failure to complete an alcohol awareness program or complete community service imposed by the court as a sentence for such violation, 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 or complete such alcohol awareness program or complete such community service. Such suspension shall take effect no less 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-1) of subdivision two of section five hundred three of this [chapter] title.

§ 3. Subparagraph (i) of paragraph (j-1) of subdivision 2 of section 503 of the vehicle and traffic law, as amended by section 3 of part PP of chapter 59 of the laws of 2009, is amended to read as follows:

(i) When a license issued pursuant to this article, or a privilege of operating a motor vehicle or of obtaining such a license, has been suspended based upon a failure to answer an appearance ticket or a summons or failure to pay a fine, penalty or mandatory surcharge, pursuant to subdivision three of section two hundred twenty-six, subdivision four of section two hundred twenty-seven[, subdivision four-a of section five hundred ten] or subdivision five-a of section eighteen hundred nine of this chapter, or upon a failure to answer an appearance ticket or summons, pay a fine, complete an alcohol awareness program or complete community service imposed by a court pursuant to subdivision four-a of section five hundred ten of this chapter, such suspension shall remain in effect until a termination of a suspension fee of seventy dollars is paid to the court or tribunal that initiated the suspension of such license or privilege. In no event may the aggregate of the fees imposed by an individual court pursuant to this paragraph for the termination of all suspensions that may be terminated as a result of a person's answers, appearances or payments made in such cases pending before such individual court exceed four hundred dollars. For the purposes of this paragraph, the various locations of the administrative

tribunal established under article two-A of this chapter shall be considered an individual court.

§ 4. Subdivision 3 of section 65-c of the alcohol 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 the court. Such suspension shall be made upon notice to such person and shall remain in effect until such person appears in court, pays such fine or completes such program or community service to the satisfaction of the court.

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

2. Use of Equitable Principles of Justice in Small Claims Actions in the New York City Civil Court, District Courts and City Courts (NYCCCA § 1804; UDCA § 1804; UCCA § 1804)

This measure amends the New York City Civil Court Act, the Uniform District Court Act, and the Uniform City Court Act to authorize these courts to consider equitable claims and defenses in small claims actions.

A small claim is a cause of action for money not in excess of the monetary jurisdiction established for such claims in the particular court where a small claims part has been established. The monetary ceiling for such small claims is $5,000. See NYCCCA § 1801 (New York City Civil Court); UDCA § 1801 (District Court); UCCA § 1801 (City Court outside New York City).

In deciding a small claim, the court is required to do "substantial justice between the parties according to the rules of substantive law," see NYCCCA § 1804; UDCA § 1804; UCCA § 1804, which requires the court to enforce the duties and obligations created by the law without requiring the claimant to comply with the technical rules for establishing his or her right to their enforcement. This mandate requires the court to play a more proactive role in the litigation so as to ensure that the claims are resolved in accord with the law. Accordingly, a small claims court has wide latitude of discretion in issuing a judgment that does substantial justice between the parties. See Buonomo v. Stalker, 40 A.D.2d 733, 733 (4th Dept. 1972); Roundtree v. Singh, 143 A.D.2d 995, 996 (2d Dept. 1988); Miller v. Sanchez, 6 Misc.3d 479, 482 (Civ. Ct. 2004). The mandate to do substantial justice, however, does not confer upon the small claims court the power to grant equitable relief. See Cucinotta v. Hanulak, 231 A.D.2d 904, 905 (2d Dept. 1996); TR Construction v. Fischer, 2010 WL 979702, *2 (Watertown City Ct. 2010); Scott v. Dale Carpet Cleaning Inc., 120 Misc.2d 118, 119 (Civ. Ct. 1983).

The problem is that while equitable relief in the form of specific performance, injunction, or declaratory judgment would be inappropriate in a small claims context given the nature of such claims, the blanket prohibition against doing equity in a small claims action precludes the use of equitable principles of justice, such as the doctrines of unjust enrichment, quantum meruit, laches, and equitable estoppel. Instead, when these claims or defenses arise in these courts, the case must be dismissed and re-commenced in Supreme Court. The result is rife inefficiency and an invitation to strategic manipulation of the courts' jurisdiction, to the detriment of efficiency for the courts and the parties. This outcome, in turn, undermines the access-to-justice objectives of establishing small claims parts in the first place, and foists these small claims cases onto Supreme Court dockets in derogation of the Legislature's apparent intent that cases falling within the monetary jurisdiction of lower courts be brought in those local courts or be transferred from Supreme Court to those local courts. See generally CPLR 325.

This measure would redress these difficulties by authorizing a small claims part in the New York City Civil Court, District Court or City Court outside New York City to consider equitable claims and defenses to decide a small claim, consistent with their charge to do

"substantial justice" between the parties. This measure would effectuate the Constitution's authorization to the Legislature to provide this jurisdiction. See N.Y. Const., art. VI, §§ 15(b) (Civil Court "shall further exercise such equity jurisdiction as may be provided by law"); 16(d) (District Court shall have the jurisdiction provided by law, but no greater that conferred upon the Civil Court); 17(a) (City Courts outside the City of New York shall have jurisdiction proscribed by the Legislature, but no greater than that conferred upon the District Court). This measure, unlike its predecessor (S.6655-A of 2012), would not alter the jurisdiction or otherwise affect town and village Justice Courts.

Legislative history: None. New proposal.

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 the consideration of equitable claims and defenses in small claims actions

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

Section 1. Section 1804 of the New York city civil court act, as amended by chapter 650 of the laws of 1991, is amended to read as follows:

§ 1804. Informal and simplified procedure on small claims. The court shall conduct hearings upon small claims in such manner as to do substantial justice between the parties according to the rules of substantive law and shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence, except statutory provisions relating to privileged communications and personal transactions or communications with a decedent or mentally ill person. The court may consider equitable claims and counterclaims, including but not limited to, unjust enrichment and quantum meruit, and equitable defenses including, but not limited to, laches and equitable estoppel. An itemized bill or invoice, receipted or marked paid, or two itemized estimates for services or repairs, are admissible in evidence and are prima facie

evidence of the reasonable value and necessity of such services and repairs. Disclosure shall be unavailable in small claims procedure except upon order of the court on showing of proper circumstances. In every small claims action, where the claim arises out of the conduct of the defendant's business at the hearing on the matter, the judge or arbitrator shall determine the appropriate state or local licensing or certifying authority and any business or professional association of which the defendant is a member. The provisions of this act and the rules of this court, together with the statutes and rules governing supreme court practice, shall apply to claims brought under this article so far as the same can be made applicable and are not in conflict with the provisions of this article; in case of conflict, the provisions of this article shall control.

§ 2. Section 1804 of the uniform district court act, as amended by chapter 650 of the laws of 1991, is amended to read as follows:

§ 1804. Informal and simplified procedure on small claims. The court shall conduct hearings upon small claims in such manner as to do substantial justice between the parties according to the rules of substantive law and shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence, except statutory provisions relating to privileged communications and personal transactions or communications with a decedent or mentally ill person. <u>The court may consider equitable claims and counterclaims, including but not limited to, unjust enrichment and quantum meruit, and equitable defenses including, but not limited to, laches and equitable estoppel.</u> An itemized bill or invoice, receipted or marked paid, or two itemized estimates for services or repairs, are admissible in evidence and are prima facie evidence of the reasonable value and necessity of such services and repairs. Disclosure shall be unavailable in small claims procedure except upon order of the court on showing of proper

circumstances. In every small claims action, where the claim arises out of the conduct of the defendant's business at the hearing on the matter, the judge or arbitrator shall determine the appropriate state or local licensing or certifying authority and any business or professional association of which the defendant is a member. The provisions of this act and the rules of this court, together with the statutes and rules governing supreme court practice, shall apply to claims brought under this article so far as the same can be made applicable and are not in conflict with the provisions of this article; in case of conflict, the provisions of this article shall control.

§ 3. Section 1804 of the uniform city court act, as amended by chapter 650 of the laws of 1991, is amended to read as follows:

§ 1804. Informal and simplified procedure on small claims. The court shall conduct hearings upon small claims in such manner as to do substantial justice between the parties according to the rules of substantive law and shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence, except statutory provisions relating to privileged communications and personal transactions or communications with a decedent or mentally ill person. <u>The court may consider equitable claims and counterclaims, including but not limited to unjust enrichment and quantum meruit, and equitable defenses including but not limited to laches and equitable estoppel.</u> An itemized bill or invoice, receipted or marked paid, or two itemized estimates for services or repairs, are admissible in evidence and are prima facie evidence of the reasonable value and necessity of such services and repairs. Disclosure shall be unavailable in small claims procedure except upon order of the court on showing of proper circumstances. In every small claims action, where the claim arises out of the conduct of the defendant's business at the hearing on the matter, the judge or arbitrator shall determine the appropriate state or local

licensing or certifying authority and any business or professional association of which the defendant is a member. The provisions of this act and the rules of this court, together with the statutes and rules governing supreme court practice, shall apply to claims brought under this article so far as the same can be made applicable and are not in conflict with the provisions of this article; in case of conflict, the provisions of this article shall control.

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

IV. PREVIOUSLY ENDORSED LEGISLATION

1. Authorize a Limited Liability Company to Commence a Commercial Small Claim Action
(NYCCCA §§ 1801-A, 1809-A; UDCA §§ 1801-A, 1809-A; UCCA §§ 1801-A, 1809-A)

This proposal would amend the New York City Civil Court Act, the Uniform District Court Act, and the Uniform City Court Act to expressly authorize a limited liability company to commence a commercial small claim action.

Section 1801-A of the New York City Civil Court Act, the Uniform District Court Act, and the Uniform City Court Act each defines a commercial small claim as "any cause for money only not in excess of the maximum amount permitted for a small claim in the small claims part of the court" provided "the clamant is a corporation, partnership or association." NYCCCA § 1801-A(a); UDCA § 1801-A(a); UCCA § 1801-A(a).

A limited liability company is an unincorporated organization of one or more persons having limited liability for the contractual obligations and other liabilities of the business conducted by the organization, and is an entity other than a partnership or a trust. See Limited Liability Company Law § 102(m).

Since a limited liability company is a statutory business form, there is no reason to exclude a limited liability company from the privilege to commence a commercial claim.

In addition to expressly authorizing a limited liability company to commence a commercial claim action, this proposal would amend section 1809-A of each of the aforementioned Court Acts to make the prohibitions against basing a commercial claim upon an assigned claim and commencing more than five commercial claims actions per month also applicable to a limited liability company.

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 the authority of a limited liability company to commence a commercial claim action or proceeding

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, limited liability company, or association, which has its principal 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. Section 1809-A of the New York city civil court act, as added by chapter 653 of the laws if 1987, is amended to read as follows:

§ 1809-A. Procedures relating to corporations, associations, insurers and assignees. (a) Any corporation, including a municipal corporation or public benefit corporation, partnership, limited liability company, or association, which has its principal office in the city of New York and an assignee of any commercial claim may institute an action or proceeding under this article.

(b) No person or co-partnership, engaged directly or indirectly in the business of collection and adjustment of claims, and no corporation, limited liability company or association, directly or indirectly, itself or by or through its officers, agents or employees, shall solicit, buy or take an assignment of, or be in any manner interested in buying or taking an assignment of a bond, promissory note, bill of exchange, book debt, or other thing in action, or any claim or demand, with the intent and for the purpose of bringing an action or proceeding thereon under this article.

(c) A corporation, partnership, limited liability company or association, which institutes an action or proceeding under this article shall be limited to five such actions or proceedings per calendar month. Such corporation, partnership, limited liability company 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.

(d) A corporation may appear as a party in any 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 a commercial claims part case.

§ 3. Subdivision (a) of section 1801-A of the uniform district court act, as amended by chapter 41 of the laws of 2006, is amended to read as follows:

(a) The term "commercial claim" or "commercial claims" as used in this act 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, limited liability company or association, which has its principal 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 district in the county where the court is located.

§ 4. Section 1809-A of the uniform district court act, as added by chapter 653 of the laws

of 1987, is amended to read as follows:

§ 1809-A. Procedures relating to corporations, associations, insurers and assignees. (a) Any corporation, including a municipal corporation or public benefit corporation, partnership, limited liability company, or association, which has its principal office in the state of New York and an assignee of any commercial claim may institute an action or proceeding under this article.

(b) No person or co-partnership, engaged directly or indirectly in the business of collection and adjustment of claims, and no corporation, limited liability company, or association, directly or indirectly, itself or by or through its officers, agents or employees, shall solicit, buy or take an assignment of, or be in any manner interested in buying or taking an assignment of a bond, promissory note, bill of exchange, book debt, or other thing in action, or any claim or demand, with the intent and for the purpose of bringing an action or proceeding thereon under this article.

(c) A corporation, partnership, limited liability company, or association, which institutes an action or proceeding under this article shall be limited to five such actions or proceedings per calendar month. Such corporation, partnership, limited liability company, 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.

(d) A corporation may appear as a party in any 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 a commercial claims part case.

§ 5. Subdivision (a) of section 1801-A of the uniform city court act, as amended by chapter 847 of the laws of 1990, is amended to read as follows:

(a) The term "commercial claim" or "commercial claims" as used in this act 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, limited liability company, or association, which has its principal 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 county in which the court is located. [In a city court having a basic monetary jurisdiction in civil matters of less than one thousand dollars, the commercial claims jurisdiction of such court shall be equal to its basic monetary jurisdiction.]

§ 6. Section 1809-A of the uniform city court act, as added by chapter 653 of the laws of 1987, is amended to read as follows:

§ 1809-A. Procedures relating to corporations, associations, insurers and assignees. (a) Any corporation, including a municipal corporation or public benefit corporation, partnership, limited liability company, or association, which has its principal office in the state of New York and an assignee of any commercial claim may institute an action or proceeding under this article.

(b) No person or co-partnership, engaged directly or indirectly in the business of collection and adjustment of claims, and no corporation, limited liability company, or association, directly or indirectly, itself or by or through its officers, agents or employees, shall

solicit, buy or take an assignment of, or be in any manner interested in buying or taking an assignment of a bond, promissory note, bill of exchange, book debt, or other thing in action, or any claim or demand, with the intent and for the purpose of bringing an action or proceeding thereon under this article.

(c) A corporation, partnership, limited liability company, or association, which institutes an action or proceeding under this article shall be limited to five such actions or proceedings per calendar month. Such corporation, partnership, limited liability company, 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.

(d) A corporation may appear as a party in any 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 a commercial claims part case.

§ 7. This act shall take effect immediately.

2. Defendant's Contacts with District Court in Commercial Claims Proceedings (UDCA § 1801-A)

This measure would amend the Uniform District Court Act to clarify the territory where a defendant can be found in order for a District Court to have subject matter jurisdiction over a commercial claim against that defendant.

Currently, the Uniform District Court Act requires that in commercial claims proceedings, the defendant must reside, have an office for the transaction of business, or be regularly employed "within the district in the county where a court is located." See UDCA § 1801-A(a). The District Courts are organized into districts. The Nassau County District Court is organized into four judicial districts. The first judicial district of this court encompasses the entire county of Nassau. The second judicial district encompasses the town of Hempstead. The third judicial district encompasses the town of North Hempstead. The fourth judicial district encompasses the town of Oyster Bay. See UDCA § 2405. The Suffolk County District Court encompasses five towns in the western part of Suffolk County and is organized into six districts. The first judicial district encompasses the territory covered by the five towns collectively. The second judicial district encompasses the town of Babylon. The third judicial district encompasses the town of Huntington. The fourth judicial district encompasses the town of Smithtown. The fifth judicial district encompasses the town of Islip. The sixth judicial district encompasses the town of Brookhaven. See UDCA § 2403. The phrase "within the district in the county where a court is located" unnecessarily restricts the ability of the District Court to exercise subject matter jurisdiction over a commercial claim by making the exercise of that jurisdiction contingent upon the defendant having contact with the specific town encompassed by the particular division of the District Court where the action was filed.

This proposal removes that restriction by replacing the phrase "within the district in the county" to "within a district in the county" and thereby enables a party to commence a commercial small claim in *any* district of the District Court provided the defendant has the requisite contact with any part of the territory encompassed by the court.

By amending UDCA § 1801-A(a) to make a defendant's contacts with any constituent district of the court sufficient to confer jurisdiction, regardless whether the defendant has territorial contacts with the specific district court holding the trial, this measure would provide for the expeditious resolution of a commercial claim.

Proposal

AN ACT to amend the uniform district court act, in relation to the territorial definition of a commercial claim

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 uniform district court act, as amended by chapter 41 of the laws of 2006, is amended to read as follows:

(a) The term "commercial claim" or "commercial claims" as used in this act 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 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] a district of the county where the court is located.

§ 2. This act shall take effect immediately.

3. Fine and Conditional Discharge Upon Conviction for Driving While Ability Impaired (Penal Law § 60.20)

This measure amends the Penal Law to authorize the imposition of the sentence of a fine and conditional discharge upon conviction for the offense of driving while ability impaired.

Section 1192(1) of the Vehicle and Traffic Law makes it unlawful for a person to operate a motor vehicle while "the person's ability to operate such motor vehicle is impaired by the consumption of alcohol." Vehicle and Traffic Law § 1192(1). The violation of this provision of the Vehicle and Traffic Law is a traffic infraction and punishable by a fine in an amount between $300 and $500 or by imprisonment for 15 days, or by both a fine and imprisonment. See Vehicle and Traffic Law § 1193(1)(a).

Section 60.20 of the Penal Law sets forth the sentences that are to be imposed upon the conviction of a traffic infraction. The sentences are: a conditional discharge; an unconditional discharge; a fine or imprisonment, or both; or a sentence of intermittent imprisonment. See Penal Law § 60.20. While the Vehicle and Traffic Law expressly prohibits the court from imposing a conditional discharge without also imposing a fine for any violation of its provisions, see Vehicle and Traffic Law § 1193(1)(e), Penal Law section 60.20 does not authorize the imposition of a fine and conditional discharge for the conviction of a traffic infraction.

A conditional discharge is a sentence intended to rehabilitate a person, convicted of an offense, by discharging the applicable penalty (i.e. imprisonment or probation) on condition that a person performs certain acts that the court deems reasonably necessary to ensure that he or she will lead a law-abiding life. See Penal Law §§ 65.05 and 65.10. Among other things, a conditional discharge may require that the person undergo medical or psychiatric treatment or participate in an alcohol or substance abuse program. See Penal Law § 65.10(d) and (e). Because the discharge may be conditioned upon the person's receipt of treatment or counseling, the conditional discharge is an extremely useful tool for addressing the substance abuse problem that may underlie an individual defendant's conviction for driving while impaired.

Finally, authorizing a court to impose the sentence of a conditional discharge for the conviction of the offense of driving while impaired is consistent with other provisions of the Vehicle and Traffic Law, which authorize mandatory treatment for substance abuse for persons who violate its provisions. See Vehicle and Traffic Law § 1198-a(2)(b) (requiring persons convicted of driving while intoxicated to receive treatment).

Proposal

AN ACT to amend the penal law, in relation to authority to impose a sentence of a fine and conditional discharge upon conviction for the offense of 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 60.20 of the penal law is amended by adding a new paragraph (e) to read as follows:

(e) Upon a conviction under subdivision one of section one thousand one hundred ninety-two of the vehicle and traffic law, a fine or a sentence to a term of imprisonment, or both as prescribed in the vehicle and traffic law, and a period of conditional discharge, as provided in article sixty-five of this chapter.

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

4. Authorize New York City Civil Court, District Court and City Court to Issue Judgment in Excess of Monetary Jurisdiction of the Court for Cost of Enforcing State and Local Housing Laws and Codes
(NYCCCA§ 203; UDCA § 203; UCCA § 203)

This measure amends the New York City Civil Court Act, the Uniform District Court Act, and the Uniform City Court Act to authorize an exception to the monetary jurisdiction of each court to permit it to issue a judgment for the full cost associated with executing an order to cure a violation of state or local housing maintenance, building, or health laws and codes.

Section 203(l) of the New York City Civil Court Act and section 203(a)(3) of both the Uniform District Court Act and Uniform City Court Act provide that the court has jurisdiction over actions to "recover costs, expenses and disbursements incurred by" a political subdivision of the state in the "elimination or correction of a nuisance or any violation of any law [such as the multiple dwelling law, the multiple residence law, and any applicable local housing maintenance, building, and health codes] including the "demolition of any building pursuant to such law or laws." NYCCCA § 203(l)-(m); UDCA § 203(a)(2)-(3); UCCA § 203(a)(2)-(3). The problem is that a judgment issued by any of these courts to recover the cost incurred by a municipality in a proceeding to enforce state and local housing maintenance, building, and health codes, i.e., such as the cost of demolishing a building, is subject to the monetary jurisdiction of each court, which is $25,000 for the New York City Civil Court, see NYCCCA § 201, and $15,000 for both the District Court and the City Court. See UDCA § 201; UCCA § 201.

Exceptions to the monetary jurisdictions of the Civil, District and the City Courts have been authorized in certain proceedings so as to facilitate each court's ability to provide full relief to the parties. For example, in summary proceedings to recover possession of real property, each Court may "render judgment for rent due without regard to amount." NYCCCA § 204; UDCA § 204; UCCA § 204. A similar exception is warranted in proceedings to enforce state and local housing maintenance, building, and health codes. In order to provide the full relief afforded by the law, the New York City Civil, District and City Courts should not be limited in their ability to reimburse a municipality for the full cost associated with executing an order to cure violations of the law.

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 the authority of the New York City civil court, district court and city court to issue a judgment to recover the cost of enforcing state and local housing maintenance, building, and health codes without regard to amount

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

follows:

Section 1. Subdivision (l) of section 203 of the New York city civil court act, as amended by chapter 849 of the laws of 1977, is amended to read as follows:

(l) An action to recover costs, expenses and disbursements incurred by the city of New York in the elimination or correction of a nuisance or other violation of any law described in subdivision (k) of this section, or in the removal or demolition of any building pursuant to such law or laws. The court shall have jurisdiction to render a judgment for costs, expenses and disbursements incurred by the city of New York in the correction of a nuisance, other violation of law, or removal or demolition of any building without regard to amount.

§ 2. Paragraph 3 of subdivision (a) of section 203 of the uniform district court act, as added by chapter 337 of the laws of 2005, is amended to read as follows:

(3) An action to recover costs, expenses and disbursements incurred by any political subdivision of the state located in whole or in part within a district of the court in the elimination or correction of a nuisance or other violation of any law described in paragraph (2) of this subdivision, or in the removal or demolition of any building pursuant to such law or laws. The court shall have jurisdiction to render a judgment for costs, expenses and disbursements incurred by a political subdivision of the state in the correction of a nuisance, other violation of law, or removal or demolition of any building without regard to amount.

§ 3. Paragraph 3 of subdivision (a) of section 203 of the uniform city court act, as added by chapter 337 of the laws of 2005, is amended to read as follows:

(3) An action to recover costs, expenses and disbursements incurred by any political subdivision of the state in the elimination or correction of a nuisance or other violation of any

law described in paragraph (2) of this subdivision, or in the removal or demolition of any building pursuant to such law or laws. The court shall have jurisdiction to render a judgment for costs, expenses and disbursements incurred by a political subdivision of the state in the correction of a nuisance, other violation of law, or removal or demolition of any building without regard to amount.

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

5. Authorize Judicial Hearing Officers to Accept Certain Guilty Pleas (CPL 350.20 and 380.10)

This measure amends sections 350.20 and 380.10 of the Criminal Procedure Law to authorize a judicial hearing officer to accept a guilty plea when authorized to hold a trial of a B misdemeanor.

Judicial hearing officers 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).

Section 350.20 of the Criminal Procedure Law authorizes a local criminal court to assign a judicial hearing officer to conduct a trial of a B misdemeanor upon consent of all parties to the criminal proceeding. When assigned to try the case, the judicial hearing officer has the same powers as a judge of the court in which the proceeding is pending. CPL 350.20(2). With respect to a trial of a B misdemeanor, section 350.20 provides that the judicial hearing officer shall determine all questions of law, act as the exclusive trier of all issues of fact, and render a verdict. CPL 350.20(1).

It is not uncommon that after a case has been assigned to a judicial hearing officer under this provision, the defendant decides to plead guilty in lieu of proceeding to trial. The problem is that because section 350.20 does not expressly authorize a judicial hearing officer to accept a guilty plea, the matter has to be returned to the judge from whom it originated for final disposition. The return of the case to the originating judge defeats the purpose of the original assignment, namely, to free the judge to dispose of matters involving more serious offenses.

This proposal would authorize the judicial hearing officer to accept a guilty plea by amending section 350.20 to provide that a judicial hearing officer shall have jurisdiction over the proceeding as defined in sections 1.20(24) and 10.30(1) of the Criminal Procedure Law. Section 10.30(1) provides that local courts have trial jurisdiction of all offenses other than felonies. Section 1.20(24) provides that a criminal court's trial jurisdiction of an offense includes, among other things, the "authority to accept a plea to" the offense. In addition, this measure would amend section 380.10 of the Criminal Procedure Law to provide that the sentencing procedure set forth that statute applies to all offenses, including those adjudicated by judicial hearing officers.

By authorizing a judicial hearing officer to accept a guilty plea, this measure would enable the judicial hearing officer to fully dispose of the matter assigned to him or her.

Proposal

AN ACT to amend the criminal procedure law, in relation to authorizing a judicial hearing officer to accept a guilty plea when assigned to conduct a trial

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

Section 1. Subdivision 2 of section 350.20 of the criminal procedure law, as added by chapter 840 of the laws of 1983, is amended to read as follows:

2. In the discharge of this responsibility, the judicial hearing officer shall have the same powers as a judge of the court in which the proceeding is pending, which includes authority to accept a plea to or in satisfaction of the accusatory instrument. The rules of evidence shall be applicable at a trial conducted by a judicial hearing officer.

§ 2. Subdivision 1 of section 380.10 of the criminal procedure law, as amended by chapter 840 of the laws of 1983, is amended to read as follows:

1. In general. The procedure prescribed by this title applies to sentencing for every offense, whether defined within or outside of the penal law; provided, however, where a judicial hearing officer has conducted the trial pursuant to section 350.20 of this chapter, or accepted a plea to or in satisfaction of an accusatory instrument, all references to a court herein shall be deemed references to such judicial hearing officer.

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

6. Expand Statewide the Current Authority for

Single-Judge Trials in B Misdemeanor Cases
(CPL 340.40(2))

This measure amends section 340.40 of the Criminal Procedure Law to expand statewide the current authority of a local criminal court to hold a single judge trial where the potential term of imprisonment for the offense is not more 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 the defendant is 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).

This measure would save substantial time and money in a number of ways. By freeing up limited jury resources, this measure would enlarge the misdemeanor trial capacity of the State's 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 costs associated with impaneling juries, and ensure an adequate supply of jurors for the trial of more serious misdemeanors and felony charges. These fiscal and administrative advantages would especially benefit District Courts on Long Island, upstate City Courts and busy suburban Justice Courts.

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.

7. Authorize the Legislature to Permit Statewide Service of Criminal Summons (N.Y. Const., art. VI, § 1(c); CPL 130.40; UCCA § 2005; UJCA § 2005)

These measures propose amendments to the Constitution, and effectuating amendments to the Criminal Procedure Law, the Uniform City Court Act and the Uniform Justice Court Act to authorize the service of a criminal summons issued by a City, Town and Village Court anywhere in the state. The constitutional amendment would not itself require statewide service of process for these local courts but, rather, would vest discretion in the Legislature akin to its discretion to provide statewide service of process for the District Courts.

A criminal summons is a process directing 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 for certain local criminal courts, the Constitution does not require that a criminal summons be servable statewide. See N.Y. Const., art. VI, § 1(c) ("The 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"). Existing statute mirrors this restriction: a criminal summons returnable in a City Court outside New York City, or a town and village court, can be served only in that court's county or an adjoining county. See CPL 130.40(2). Conversely, however, an arrest warrant for these same courts can be executed anywhere in the state, so long as a local criminal court in the county where the arrest is to be made endorses the arrest warrant of the issuing court. See CPL 120.70(2)(b).

Whatever merits this fractured system may once have had, it is long outdated, inefficient and disruptive of the administration of justice. Since the establishment of the Unified Court Budget Act in 1977, City Courts have become fully integrated into the state-paid courts of the Unified Court System. Their judges routinely serve in superior criminal courts and there is no reason to treat their criminal process any different than other state-paid local criminal courts with the exact same criminal jurisdiction. Continuing to limit service of a City Court criminal summons to the court's county or adjoining county, and requiring an arrest warrant executed elsewhere in the State to be counter-signed by a second local criminal court, squanders limited judicial resources and law-enforcement resources for no corresponding benefit.

Likewise for town and village Justice Courts, there is no policy reason to frustrate their criminal processes merely because a defendant happens to be served elsewhere than in the county where the Justice Court sits or an adjoining county. Society has become far more mobile than when these anachronistic provisions of Article VI first were promulgated. As the Special Commission on the Future of the Courts determined in 2007, defendants appearing in Justice Courts routinely live in different counties from the courts in which defendants may be called to answer charges. This changed dynamic may arise from increasing social mobility due to changing employment in which New Yorkers travel further for work, changing community cohesion in which New Yorkers may relocate and spread their geographic connections to family and friends across larger territory, and the proliferation of highways. Whatever the causes, New York society unquestionably is far more mobile than when the current Article VI and its limits on service of process were enacted in 1962. In that light, preserving a 50-year-old restriction on service of process invites defendants to evade jurisdiction and flaunt the law, and requires cumbersome government procedures to achieve what should be a simple objective.

Moreover, Justice Courts themselves are coming into the modern age. Justice Court proceedings now are recorded, see 22 NYCRR [Rules of the Chief Judge] § 30.1, all Justice Courts are computerized, and Justice Court software systems allow seamless reporting of case information to the Division of Criminal Justice Services and the Office of the State Comptroller. For these reasons, gone are the days when reasonable concern might arise about the potential opacity of Justice Court proceedings. Because Justice Court proceedings now are trackable, transparent and accountable, there is no policy reason to limit Justice Court service of process.

Accordingly, this measure would amend Article VI to remove the geographical restriction on service of process for these local criminal courts, allowing their service of process to be served anywhere in the State. Critically, it would continue to allow the Legislature to regulate service of process for these local courts and would vest discretion in the Legislature to allow statewide service of process, in like fashion as for the District Courts. It would not itself require statewide service of process: rather, a further statutory change would be required to give effect to that authorization. Thus, corresponding amendments to the Criminal Procedure Law, Uniform City Court Act and Uniform Justice Court Act also are proposed.

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 city 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 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.

§ 3. 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.

§ 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 city, town and village courts, first proposed in the year 2013, shall take effect.

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

This measure would amend 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 involving persons who are driving a motor vehicle after their authority to do so has 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 of Motor Vehicles, 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 a 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 that was imposed 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. See VTL § 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 two of section five hundred eleven 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.

9. Issuance of an Arrest Warrant Based on Simplified Traffic Information Charging a Traffic Misdemeanor (CPL 120.20)

This measure amends section 120.20 of the Criminal Procedure Law to authorize the issuance of an arrest warrant based on a simplified traffic information charging a traffic misdemeanor.

The simplified traffic information sometimes is used to charge misdemeanors. See generally Prieser, Practice Commentary, McKinney's Cons Laws of NY, Book 11A, CPL 100.25, at 366. 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) (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).

Where a motorist who receives a simplified traffic information fails to appear in court on the designated court date to answer a misdemeanor charge, such as driving while intoxicated ("DWI"), the court may wish to issue an arrest warrant to compel appearance. The problem is that CPL 120.20(1) expressly disallows arrest warrants where the accusatory instrument is a simplified traffic information. Given technological changes and the practice of charging DWI and other misdemeanors by simplified traffic information, this statutory restriction impedes the administration of justice and should be lifted. At the same time, however, any statutory modification should recognize that a simplified traffic information charging only an infraction should not be the basis for an arrest.

Accordingly, this proposal offers a balanced approach by which section 120.20(1) would be amended to authorize arrest warrants for nonappearance on misdemeanors charged by simplified traffic information, but not for traffic infractions. This approach would provide local criminal courts with a means for effectively address criminal conduct without potential for an overbroad remedy.

Proposal

AN ACT to amend the criminal procedure 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.

10. Seal Court Records of Convictions for
Certain Petty Offenses
(CPL 160.57, 160.60)

This measure adds a new section 160.57 of the Criminal Procedure Law, to authorize the sealing of court records relating to convictions for petty offenses, to help avert the collateral consequences associated with such convictions whose other records already are sealed.

Currently, section 160.55 of the Criminal Procedure Law authorizes the sealing of records relating to the conviction for a non-criminal petty offense such as a traffic infraction or violation, 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 exempted from the scope of this provision. Under CPL 160.55, the official records and papers relating to the arrest and prosecution of the non-criminal petty offense maintained by the police department, the District Attorney's Office, and the fingerprints on file with the Division of Criminal Justice Services all are sealed. Under current law, however, the official records and papers of such cases on file with the court are not sealed.

The availability to the public of the court records of a conviction for a petty offense can have adverse collateral consequences for the defendant. Having pleaded guilty to a petty offense as part of a plea bargain that avoids a conviction for a crime, the defendant who otherwise lives a law-abiding life can finds that he or she cannot secure employment or purchase a home because of a conviction for a petty offense. Such consequences make little sense given that, under CPL 160.55, it already is the public policy of this state that all other law enforcement records of such convictions be sealed.

This measure would authorize the following sealing procedure: A person 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 for such offense. 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 to grant the application. The District Attorney does not have to 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, but only as to those defendants who are sentenced after the effective date of this measure. Persons convicted of a petty offense prior to the effective date must apply to the court in order to obtain an order sealing the record of their conviction.

The procedure authorized by this measure 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 measure 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.

Like section 160.55, this measure would permit the sealed records to be unsealed and made available to a defined class of persons, specifically, the accused or his or her agent; the prosecutor in a proceeding involving the sale or possession of marijuana wherein the accused has moved to seal court records in connection with an application for adjournment in contemplation of a dismissal of the proceeding; a law enforcement agency upon a showing that justice requires the disclosure of the records; the licensing agency where the accused has applied for a license to possess a gun; a state parole or probation agency if the records concern an arrest while the accused was on parole or serving probation; a prospective employer of a police or peace officer; and police, prosecution, probation and correction agencies upon the arrest of the accused if the sealed records were for a conviction for harassment in the second degree committed against a member of the same family or household as defendant.

Section 160.60 of the Criminal Procedure Law provides that where a record of a criminal action or proceeding has been sealed the "arrest or prosecution shall not operate as a disqualification of any person so accused to pursue or engage in any lawful activity" and further authorizes the person whose record of conviction has been sealed to withhold information "pertaining to the arrest or prosecution." The operation of that provision, however, is limited to court records sealed under CPL 160.50, which applies to a criminal action or proceeding terminated in favor of the defendant. In order to effectuate the purpose of this measure and make the privileges afforded by CPL 160.60 available to persons whose record of conviction for a petty offense has been sealed, this measure also amends CPL 160.60 so as to make that provision expressly applicable to these convictions.

Proposal

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 or proceeding by conviction for noncriminal offense. 1. A person convicted of a traffic infraction or a violation, other than loitering as described in paragraph (d) 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 earlier than ninety days and no later than twenty 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 court determines that sealing pursuant to this section in not in the interests of justice. 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 of a motion to seal or the expiration of the thirty-six month period referred to in subdivision one, the court shall conduct a hearing on the return date of the motion 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 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.

6. Upon the granting of a motion to seal pursuant to this section, or upon the expiration of thirty-six months from the date of sentence 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 or peace officer shall be furnished with a copy of all records obtained under this paragraph and afforded an opportunity to make an explanation thereof, 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, or

(vii) a police agency, probation department, sheriff's office, district attorney's office, department of correction of any municipality and parole department or the court, upon arrest of the individual and where the sealed records are for conviction of harassment in the second degree, as defined in section 240.26 of the penal law, committed against a member of the same family or household as the defendant, as defined in section 530.11 of this chapter, and

determined pursuant to subdivision eight-a of section 170.10 of this chapter.

7. The record of a conviction that occurred prior to the effective date of this section shall not be automatically sealed pursuant to subdivision one of this section. However, a person convicted of a traffic infraction or a violation prior to the effective date of this section may upon written motion apply to the local criminal court or superior court in which the conviction and sentence occurred not earlier than twelve months following the date of the sentence, and upon not less than twenty days' notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise.

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. Section 160.60 of the criminal procedure law, as added by chapter 877 of the laws of 1976, is amended to read as follows:

§ 160.60. Effect of termination of criminal actions in favor of the accused or sealing of a court record of conviction for a noncriminal offense. Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision [two] three of section 160.50 of this chapter, or the sealing of court records by order of court or operation of law pursuant to section 160.57 of this chapter, the arrest and prosecution shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he or she

occupied before the arrest and prosecution. The arrest or prosecution shall not operate as a disqualification of any person so accused to pursue or engage in any lawful activity, occupation, profession, or calling. Except where specifically required or permitted by statute or upon specific authorization of a superior court, no such person shall be required to divulge information pertaining to the arrest or prosecution.

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

11. 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 outside New York City 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 restriction that 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. By contrast, the New York City Criminal Court and the District Courts have authority to order recognizance or set bail without these limitations.

There is no policy reason to exclude City Courts from exercising this same authority. Like the New York City Criminal Court and the District Courts, City Courts have access to the same information as the New York City Criminal Court and the District Court, such as the state criminal history database, that enable them to make informed and reasoned decisions 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.

Accordingly, this measure would remove City Court from the prohibition of CPL 530.20(2). By so doing, this measure would ensure that a City Court arraignment is totally dispositive on the issue of bail on the pending felony charge and would eliminate the need for further bail proceedings in the County Court. As such, this measure would promote judicial economy and streamline bail proceedings for prosecutors and defense counsel alike.

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

12. 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 outside New York City 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. See CPL 540.30(1)(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 an 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. As such, this measure would promote judicial economy and streamline bail proceedings for prosecutors and defense counsel alike.

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.

13. Sealing of Court Record of Action

Dismissed upon Motion of Prosecutor
(CPL 160.50)

This measure would amend 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 that 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, which 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. See 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). The class of dispositions qualifying for such treatment includes 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

§ 2. 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.

§ 3. This act shall take effect immediately.

V. 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.

The Committee expresses its strong support for a much-needed remedy to the "paper terrorism" phenomenon that has been impacting judges and other public servants – a nationwide problem with a noxious effect on the administration of justice in New York. Defendants and others wishing to exact retribution for official governmental process have been purporting to copyright their names and, whenever judges or other public officers use these persons' names in official proceedings, these purveyors of "paper terrorism" file Uniform Commercial Code ("UCC") financing statements with the Secretary of State purporting to perfect security interests in the assets of these judges or other public officers. The result has been a flurry of bogus papers filed with the Secretary of State against judges in retaliation for official proceedings. These papers have no legitimate purpose and no validity, but nevertheless subject judges and their families to financial uncertainty arising from the potential impacts on credit reports and other financial instruments. Because current law accords inadequate redress for these false papers, the Committee supports legislative amendments to the UCC and the Judiciary Law to provide for speedy invalidation of these papers, and establish appropriate penalties for persons who abuse government process in retaliation for official judicial proceedings.

Respectfully submitted,

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