

# **Report of the Advisory Committee on Local Courts**

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

January 2008



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## I. INTRODUCTION

The Local Courts Advisory Committee is one of the standing advisory committees established by the Chief Administrative Judge of the Courts pursuant to section 212(1)(q) of the Judiciary Law. The Committee advises the Chief Administrative Judge on all issues relating to the operations of the New York City Civil Court, New York City Criminal Court, District Courts, City Courts outside of New York City, and Town and Village Courts. The Committee also acts as liaison with the professional associations of the judges and clerks of these Courts and coordinates its actions and recommendations with other advisory committees established by the Chief Administrative Judge. During 2007, the Committee was comprised of 19 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.

For 2008, the Committee recommends three new measures for inclusion in its legislative program, including measures affecting the Real Property Actions and Proceedings Law and the Criminal Procedure Law. These measures are based on the Committee's own studies, examination of decisional law, and suggestions received from the bench and bar, as well as members of the public. The Committee also reviews and make recommendations with respect to existing court rules.

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

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

## II. NEW LEGISLATION

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

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

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

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

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

#### Proposal

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

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

follows:

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

2. [The notice of petition, or order to show cause, and petition together with proof] Proof

of service [thereof] of the notice of petition, or order to show cause, and petition shall be filed with the court or clerk thereof within three days after;

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

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

§ 2. This act shall take effect immediately.

2. Automatic Sealing of Accusatory Instrument  
in Youthful Offender Case  
(CPL 720.15)

This measure would amend CPL 720.15 to authorize a criminal court to automatically seal the accusatory instrument filed against an eligible youthful offender.

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

Currently, CPL 720.15(1) provides that “[w]hen an accusatory instrument against an apparently eligible youth is filed with a court, the court, with the defendant's consent, must order that it be filed as a sealed instrument, though only with respect to the public.” The standards for determining who qualifies as an eligible youth are set forth in CPL 720.10. CPL 720.10(1) defines a youth as a person charged with a crime alleged to have been committed when the person was between 16 and 19 years of age or a person, between 13 and 16 years of age, who is responsible for acts that would constitute any one of the felonies enumerated in CPL 1.20(42). Further, CPL 720.10(2) provides that to be eligible for youthful offender status the youth cannot be convicted of a class A-I or class A-II felony, armed felony, rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse; cannot have been previously convicted and sentenced for a felony; and cannot have been previously adjudicated a youthful offender or juvenile delinquent after being convicted of a felony.

The problem is that despite the language of CPL 720.15(1) which authorizes a court to seal an accusatory instrument against an eligible youthful offender, courts typically do not issue a sealing order sua sponte. See e.g., Herald Company v. Tormey, 142 Misc.2d 675 (Sup. Ct., Onondaga Co. 1989). The phrase “with the defendant’s consent” has been interpreted as requiring a formal application for such relief. Notwithstanding the reliance upon this ambiguous statutory language, requiring such a motion runs counter to the purpose of CPL 720.15(1), which is to protect an apparently eligible youth from being stigmatized by unproven allegations of criminal conduct contained in the accusatory instrument, a public record. The amendment -- which removes the phrase from CPL 720.15(1) -- seeks to require the court sua sponte to seal the accusatory instrument at arraignment, a point in the criminal proceeding where the defendant -- who may appear without counsel -- submits to control of the court. See CPL 1.20(9). The clerk of the arraignment part of the court can determine if the defendant is an eligible youth by reviewing the defendant’s NYSID designation in light of the standards set forth in CPL 720.10(1) and (2) and 720.15.

Amending CPL 720.15(1) to provide for automatic sealing of the accusatory instrument would help to effectuate the purpose of this provision, which is to protect against the stigma created by an allegation of criminal conduct.

Proposal

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

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

enact as follows:

Section 1. Subdivision 1 of section 720.15 of the criminal procedure law, as amended by chapter 832 of the laws of 1975, is amended as follows:

1. When an accusatory instrument against an apparently eligible youth is filed with a court, [the court, with the defendant's consent, must order that] it shall be filed as a sealed instrument, though only with respect to the public.

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

3. Unsealing Youthful Offender Case File  
(CPL 720.35)

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

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

Under this procedure, eligible youths are tried as any criminal defendant would be. Upon conviction, the court must determine whether the defendant should be treated as a youthful offender. If a “youthful offender” finding is made, the court must direct that the conviction be deemed vacated and replaced by the youthful offender finding, and it must sentence the defendant pursuant to Penal Law § 60.02, which permits a maximum indeterminate term of imprisonment of four years. CPL 720.20 [1]; 720.10 [4]. Upon a youthful offender adjudication, all official records and papers must be sealed. CPL 720.35. CPL 720.15(2), however, permits portions of the youthful offender record to be unsealed and disclosed to officials and other persons under conditions specified by the statute, such as when the state division of parole or the probation department “requires such official records and papers for the purpose of carrying out duties specifically authorized by law.”

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

The problem is that since the criminal history necessarily encompasses information

concerning the youthful offender adjudication that resulted in the sentence of probation or conditional discharge, that portion of the violator's history is sealed and therefore not available. See CPL 735.20(2). The foreign criminal court is therefore hampered in its ability to issue a securing order that is appropriate for the youthful offender.

Amending CPL 720.20 to permit the criminal record of an adjudicated youthful offender to be unsealed and disclosed to a court seeking to enforce the arrest warrant that has been issued against that youthful offender for violating his or her sentence will facilitate the administration of the youthful offender procedure.

### Proposal

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

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

follows:

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

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

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

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

### III. PREVIOUSLY ENDORSED LEGISLATION

#### 1. Dismissal of Abandoned Cases (CPLR 3404)

This measure would amend the CPLR to authorize the automatic dismissal of a case in all courts one year after the case is struck from a court's calendar due to the plaintiff's default on a calendar call.

CPLR 3404 provides that a case "marked 'off' or struck from the calendar or unanswered on a clerk's calendar call" that is not restored within one year "shall be deemed abandoned and shall be dismissed without costs for neglect to prosecute."

The problem is that the provision expressly limits itself to a "case in a supreme court or a county court." Until recently, the courts have strictly construed this language and held that the CPLR does not apply to courts other than the Supreme or County Courts. See LoFredo v. CMC Occupational Health Services, P.C., 189 Misc.2d 781, 782 (App. Term, 2d Dept. 2001) (finding that CPLR 3404 "only applies to Supreme Court and County Court cases" and not the New York City Civil Court); Jeganathan v. O'Reilly, 195 Misc.2d 197, 200 (White Plains City Ct. 2003) (finding that CPLR 3404 does not apply to the City Court). Moreover, although the local rules of the Civil Court, District Court, and City Court authorize the court to dismiss an action due to the plaintiff's default on a calendar call or pretrial conference, the dismissal is not automatic. See 22 NYCRR § 208.14(b)(2) and (3); 22 NYCRR § 212.14(b)(3); 22 NYCRR § 210.14(3).

Recently, the limitation of CPLR 3404 to actions and proceedings in the Supreme and County Courts was rejected by the Appellate Term in Chavez v. Seventh Avenue Corp., 10 Misc.3d 33, 35 (App. Term, 2d Dept. 2005). Rejecting its own precedent, see, e.g., LoFredo v. CMC Occupational Health Services, P.C., 189 Misc.2d 781, 782 (App. Term, 2d Dept. 2001), the Appellate Term held that CPLR 3404 applied to the Civil Court and it based its decision on NYCCCA § 2101 which makes the CPLR applicable to proceedings in the Civil Court, provided the CPLR does not conflict with the Civil Court Act. The Appellate Term, despite a strongly worded dissent in Chavez, see 10 Misc.3d at 35-39 (Patterson, J.), found that CPLR 3404 does not conflict with the Civil Court Act. Since the Uniform District Court, City Court and Justice Court Acts all have a provision that is identical to NYCCCA § 2101, see UDCA § 2101; UCCA § 2101; UJCA § 2101, the reasoning in Chavez also extends to abandoned cases in these courts.

Amending CPLR 3404 to make it expressly applicable to actions and proceedings in all courts would codify the result reached in Chavez.

Proposal

AN ACT to amend the civil procedure law and rules, in relation to the dismissal of abandoned cases

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

Section 1. Rule 3404 of the civil procedure law and rules is amended to read as follows:

Rule 3404. Dismissal of abandoned cases. A case [in the supreme court or a county court] marked "off" or struck from the calendar or unanswered on a clerk's calendar call, and not restored within one year thereafter, shall be deemed abandoned and shall be dismissed without costs for neglect to prosecute. The clerk shall make an appropriate entry without the necessity of an order.

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

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

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

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

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

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

Proposal

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

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

Section 1. Section 1402 of the New York city civil court act, as amended by chapter 344 of the laws of 1977, is amended by adding a new last paragraph to read as follows:

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

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

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

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

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

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

Proposal

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

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

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

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

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

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

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

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

Currently, the Civil Court Act limits the number of commercial small claims filed by a commercial claimant to five filings per calendar month. The capacity of the Civil Court to process commercial claims has increased due to the decrease in the number of small claims filed in that court. In 2007, for example, the number of small claims filings has dropped to approximately 30,000 from 60,000 filings made in 2004.

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

Proposal

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

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

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

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

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

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

Either party may request that the hearing be scheduled during evening hours, provided that the hearing shall not be scheduled during evening hours if it would cause unreasonable

hardship to either party. The court shall not unreasonably deny requests for evening hearings if such requests are made by the claimant upon commencement of the action or by the party complained against within fourteen days of receipt of the notice of claim.

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

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

A form for the demand letter shall be prescribed and furnished by the state office of court administration and shall require the following information: the date of the consumer transaction;

the amount that remains unpaid; a copy of the original debt instrument or other document underlying the debt and an accounting of all payments, and, if the claimant was not a party to the original transaction, the names and addresses of the parties to the original transaction; and a statement that the claimant intends to use this part of the court to obtain a judgment, that further notice of a hearing date will be sent, unless payment is received by a specified date, and that the party complained against will be entitled to appear at said hearing and present any defenses to the claim.

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

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

that the hearing be scheduled during evening hours, provided that the hearing shall not be scheduled during evening hours if it would cause unreasonable hardship to either party. The court shall not unreasonably deny requests for evening hearings if such requests are made by the claimant upon commencement of the action or by the party complained against within fourteen days of receipt of the notice of claim.

§ 2. Subdivision (c) of section 1809-A of the New York city civil court act is amended to read as follows:

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

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

#### Proposed Rule

##### § 208.41-a(a) Commercial Claims Procedure

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

following information:

- (1) claimant's name and principal office address;
- (2) defendant's name and place of residence or place of business or employment;
- (3) the nature and amount of the claim, including dates, and other relevant information; where the claim arises out of a consumer transaction (one where the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes), information showing that the transaction is a consumer transaction;
- (4) a certification that not more than [five] fifty claims have been instituted in the courts of this State in the calendar month; and,
- (5) in the case of a commercial claim arising out of a consumer transaction, a certification that the claimant has mailed a demand letter, containing the information set forth in NYCCCA § 1803-A, no less than 10 days and no more than 180 days prior to the commencement of the claim.

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

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

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

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

Proposal

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

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

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

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

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

§ 2. Subdivision (a) of section 1809-A of the New York city civil court act is amended to read as follows:

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

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

#### Proposed Rule

##### § 208.41-a(a) Commercial Claims Procedure

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

- (1) claimant's name and [principal] office address;
- (2) defendant's name and place of residence or place of business or employment;
- (3) the nature and amount of the claim, including dates, and other relevant information; where the claim arises out of a consumer transaction (one where the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes),

information showing that the transaction is a consumer transaction;

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

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

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

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

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

Despite the availability of arbitration, and the fact that almost all overdue payment claims fall far below \$5,000, most claimants proceed by court action. As a result, the case dockets of courts where these claims have been filed has experienced a dramatic increase in size. In the New York City Civil Court, for example, no-fault cases have been primarily responsible for the rise of the caseload of that court from 212,000 filings in 2000 to over 600,000 filings in 2007. The rise in the number of case filings has placed a significant administrative burden on the courts.

Amending the Insurance Law to provide for mandatory arbitration of overdue insurance claims will assure the competent disposition of these claims by arbitrators, qualified to review issues involved in no-fault insurance disputes, while achieving the important objective of reducing the administrative burden that these claims place on the courts. The courts will continue to have the authority to review the award of master arbitrators, in accordance with Article 75 of the Civil Practice Law and Rules, and conduct a *de novo* review of such awards in excess of \$5000. Moreover, amending the Insurance Law to reduce the interest on an overdue insurance claim will make it less lucrative to file a large number of such claims and reduce the burden on the arbitration panel.

Proposal

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

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

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

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

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

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

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

This measure amends the State Constitution to authorize the service of a criminal summons issued by a City, Town, and Village Court anywhere in the state.

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

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

In addition to amending Article VI, Section 1(c) of the State Constitution to permit the process of the City, Town and Village Courts to be served anywhere in the State, New York statutory provisions relating to the limit of the territorial reach of the process of these Courts must also be amended. Although the constitutional amendment process must be completed before, and establish the basis for, the statutory amendment process, the proposed amendment to the State Constitution as well as the proposed amendments to the Criminal Procedure Law, Uniform City Court Act, and Uniform Justice Court Act, are also set forth below.

Proposal (Constitutional)

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

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

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

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

Proposal (Statutory)

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

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

Section 1. Subdivision 2 of section 130.40 of the criminal procedure law is amended to

read as follows:

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

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

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

§ 3. Section 2005 of the uniform city court act, 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.

§ 4. This act shall take effect one year after it shall have become a law and shall apply to all proceedings commenced on or after such date; provided, however, that this act shall not take effect until a concurrent resolution proposing an amendment to section 1 of article 6 of the constitution, in relation to the process of the village, town and city courts, first proposed in the year 2006, shall take effect.

8. Commencement of Thirty-Day Period for Filing  
a Supporting Deposition  
(CPL 100.25)

This measure would amend the Criminal Procedure Law by establishing the court appearance date set forth on the simplified information or appearance ticket as the earliest date when the 30-day period for service of a supporting deposition by the complainant police officer starts to run.

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

A problem arises from the fact that the Criminal Procedure Law does not require the court that orders a supporting deposition to inform the police officer exactly when it received the request for the deposition and hence when the 30-day period starts to run. Normally, this fact does not pose a problem where the defendant requests the supporting deposition when he or she personally appears in court on the date stated on the simplified information. In that case, the police officer can safely assume that the 30-day period starts on the date of the court's order because that date typically coincides with the date of the defendant's appearance and request. However, where a court officially acts upon defendant's request and issues its order several days or weeks after the receipt by mail of defendant's request for a supporting deposition -- such as, for example, local courts that hear traffic cases once or twice a month -- the police officer who receives that order runs the risk of running afoul of the 30-day rule since the date of the court's order will not coincide with the date of defendant's request.

By establishing the court appearance date posted on the simplified information or appearance ticket as the earliest date that the 30-day period for serving and filing a supporting deposition can begin to run, the amendment conforms the Criminal Procedure Law with current practice in the courts. Moreover, while preserving a defendant's right to receive a supporting deposition, this measure assures that the case will be decided on the merits by enabling a police officer to file a supporting deposition in a timely fashion.

Proposal

AN ACT to amend the criminal procedure law, in relation to the service of a supporting deposition

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

follows:

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

2. A defendant charged by a simplified information is, upon a timely request, entitled as a matter of right to have filed with the court and served upon him or her, or if such defendant is represented by an attorney, upon his or her attorney, a supporting deposition of the complainant police officer or public servant, containing allegations of fact, based either upon personal knowledge or upon information and belief, providing reasonable cause to believe that the defendant committed the offense or offenses charged. To be timely, such a request must, except as otherwise provided herein and in subdivision three of this section, be made before entry of a plea of guilty to the charge specified and before commencement of a trial thereon, but not later than thirty days after the date the defendant is directed to appear in court as such date appears upon the simplified information and upon the appearance ticket issued pursuant thereto. If the defendant's request is mailed to the court, the request must be mailed within such thirty day period. Upon such a request, the court must order the complainant police officer or public servant to serve a copy of such supporting deposition upon the defendant or his or her attorney, within thirty days of the date such request is received by the court, or at least five days before trial, whichever is earlier, and to file such supporting deposition with the court together with

proof of service thereof. In the event that the request is made prior to the date that the defendant is directed to appear in court as such date appears upon the simplified information and upon the appearance ticket issued pursuant thereto, the thirty-day period for service by the people of a copy of the supporting deposition shall commence on the aforementioned court appearance date.

Notwithstanding any provision to the contrary, where a defendant is issued an appearance ticket in conjunction with the offense charged in the simplified information and the appearance ticket fails to conform with the requirements of subdivision two of section 150.10, a request is timely when made not later than thirty days after (a) entry of the defendant's plea of not guilty when he or she has been arraigned in person, or (b) written notice to the defendant of his or her right to receive a supporting deposition when a plea of not guilty has been submitted by mail.

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

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

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

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

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

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

Proposal

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

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

follows:

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

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

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

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

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

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

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

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

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

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

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

Proposal

AN ACT to amend the criminal procedure law, in relation to unauthorized parking in a handicapped parking area

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

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

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

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

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

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

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

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

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

Proposal

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

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

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

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

§ 2. This act shall take effect on the first day of January next succeeding the date on which it shall have become law; provided, however, it shall not apply to any person on account of his or her use or display of an altered or counterfeit special vehicle identification parking permit or one issued to another person prior to such effective date.

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

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

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

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

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

#### Proposal

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

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

Section 1. Subdivision (m) of section 1911 of the New York city civil court act, as amended by chapter 686 of the laws of 2003, is amended to read as:

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

(n) For any other matter, not provided for above, for which there would be a fee payable

in the supreme court of a county within the city of New York, the same fee; except that this subdivision shall not apply to the fees required to be paid in supreme court (i) upon the filing of a motion or cross-motion pursuant to subdivision (a) of section 8020 of the civil practice law and rules, and (ii) upon the filing of a stipulation of settlement or a voluntary discontinuance pursuant to subdivision (d) of such section.

§ 2. Paragraph (5) of subdivision (a) of the section 1911 of the uniform district court act, as amended by chapter 62 of the laws of 2003, is amended to read as:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (A) the caption.
- (B) the date, time and location, including the address of the court, upon which the petition will be heard.
- (C) a statement to the respondent that the failure to appear may result in the entry of judgment against the respondent for an amount out of the assets held that may be used to satisfy the underlying judgment.
- (D) a statement of notice to the judgment debtor that the merits of the underlying small claims action may not be contested and that the judgment debtor may intervene in the simplified turnover proceeding only for the purpose of disputing an interest in the assets at issue or to claim an exemption applies. The clearest “defense” that the judgment debtor has that could stop the proceeding from going forward is that the assets do not belong to him or her at all.
- (E) a statement that any other person may intervene in the simplified turnover proceeding solely for the purpose of claiming an interest in the assets at issue. This statement simply puts all parties and the judgment debtor on notice that someone else may be involved in this matter.
- (F) a statement that if the respondent is aware of a potential claim by any other person, the respondent shall provide notice of the simplified turnover proceeding to such person by first class mail. This requirement probably could not be enforced. However, as a practical matter, it is logical that the bank would want the non-debtor account holder to become involved in the proceeding in order to sort everything out in an expedient fashion. Indeed, if the full fledged CPLR 5239 enforcement proceeding were to be used, the bank would probably want to interplead the non-debtor account holder if, for some reason, that person refused to intervene.

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

- (A) the caption.
- (B) the name and address of the petitioner.
- (C) the name and address of the respondent.
- (D) the name and address of the judgment debtor—for ease of notification.

- (E) the amount of the underlying judgment.
- (F) an explanation of how the petitioner is aware that relevant assets are being held by the respondent. This requirement is not onerous. Pursuant to NYCCCA § 1812, the small claims clerk is required to issue an information subpoena upon request, for a nominal fee, and assist the judgment creditor. The information subpoena provides an explanation that will help to satisfy the court that the assets do exist and that will help the bank fulfill its efforts to avoid liability for the release of assets. Information may be provided in other forms, but an information subpoena is probably the most helpful for these purposes.
- (G) the date of the issuance of the execution, the name and address of the executing officer and an indication of whether the assets are restrained.
- (H) the total amount of relief requested.

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

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

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

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

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

1. whether any people, other than those present and those who were served notice of the hearing but are not present, may claim an interest in the assets; and
2. whether any people claiming a possessory interest in the assets have been or are currently involved in bankruptcy proceedings; and
3. whether any levy, lien, execution or restraint has ever been placed on the assets as a result of any action or proceeding other than the underlying small claims action; and
4. whether any exemptions apply to the assets such that they are not available for collection.

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

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

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

Finally, this act is set to take effect on the ninetieth day after it shall become a law and shall apply to all judgments entered on and after such effective date. The act shall expire December 31, 2013, at which time the efficacy of the program should be evaluated for continuation and possible expansion.

#### Proposal

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

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

follows:

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

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

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

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

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

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

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

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

(A) the caption, as described above;

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

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

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

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

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

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

(A) the caption, as described above;

(B) the name and address of the petitioner;

(C) the name and address of the respondent;

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

(E) the amount of the judgment;

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

respondent:

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

(H) the total amount of relief requested.

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

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

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

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

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

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

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

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

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

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

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

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

§ 3. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all judgments entered on and after such effective date. This act shall expire December 31, 2013.

Proposed Rule

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

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

CIVIL COURT OF THE CITY OF NEW YORK

CASE # (UNDERLYING CASE)

COUNTY OF \_\_\_\_\_

SMALL CLAIMS PART

**SIMPLIFIED TURNOVER PROCEEDING  
NOTICE OF PETITION**

\_\_\_\_\_  
Petitioner

vs.

\_\_\_\_\_  
Respondent

To: (Respondent)

(Address)

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

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Location: \_\_\_\_\_

Address: \_\_\_\_\_

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

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

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

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Chief Clerk

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

CIVIL COURT OF THE CITY OF NEW YORK

CASE # (UNDERLYING CASE)

COUNTY OF \_\_\_\_\_

SMALL CLAIMS PART

**SIMPLIFIED TURNOVER PROCEEDING  
PETITION**

\_\_\_\_\_  
Petitioner

vs.

Respondent  
\_\_\_\_\_

The Petition of (Petitioner) alleges as follows:

1. Petitioner is the Judgment Creditor in the small claims matter captioned \_\_\_\_\_, bearing the same Index Number as set forth above.
2. A total judgment was entered in that case against (Judgment Debtor) (the Judgment Debtor) in the amount of \$ \_\_\_\_\_.
3. The following information indicates that assets belonging to the Judgment Debtor are held by you: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. An execution was issued on (date) and served upon you by \_\_\_\_\_ (a Sheriff/a City Marshal), (address of enforcement officer). (A restraining notice/a garnishment has also been served.)

5. However, you have refused to turn over assets in your possession that belong to the Judgment Debtor.
6. Accordingly, Petitioner requests that a judgment be entered in this simplified turnover proceeding against you, as the holder of assets belonging to the Judgment Debtor, in the amount of:

\$\_\_\_\_\_ the underlying judgment

TOTAL \$\_\_\_\_\_.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Petitioner

Petitioner's Name & Address:

Respondent's Name & Address:

Judgment Debtor's Name & Address:

14. Venue of Enforcement Proceedings  
(CPLR 5221)

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

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

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

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

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

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

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

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

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

### Proposal

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

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

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

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

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

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

15. Electronic Filing of Traffic Tickets  
(CPL 1.20)

This measure would amend pertinent sections of the Criminal Procedure Law to clarify procedural measures related to the Department of Motor Vehicles' electronic traffic ticketing program.

Currently, a pilot program has been commenced by the Department of Motor Vehicles, which allows for electronic traffic ticketing. The program permits police officers to "write" tickets on a computer and transfer the pertinent information directly to a court computer, in place of filing a paper ticket. The traffic offender still receives a paper ticket, but the traffic court conducts all of the pertinent business related to the ticket by computer.

These amendments help insure that, for this pilot program, there can be no technical challenges to jurisdiction as a result of the commencement by electronic filing. The change to the Criminal Procedure Law definition of "commencement of criminal action" would mirror the 1999 change that was made to CPLR 304 (regarding "method of commencing action or special proceeding") when the filing by electronic means pilot program was instituted in civil courts. See 22 NYCRR § 202.5-b. The change to the reference to "written accusation" is meant to clarify that a ticket may be considered "written" electronically, as long as the form of the ticket is prescribed as an electronic format by the Commissioner of Motor Vehicles. This clarification is desirable because, in the past, an appellate court examined the status of the law and found that the transmission of electronic data to a court computer did not constitute filing, particularly in the absence of a written, verified accusation. See *People v. Gilberg*, 166 Misc.2d 772 (Sup. Ct., App. Term, 2d Dept. 1995); see also *People v. Pilewski*, 173 Misc.2d 800 (Justice Ct., Village of Great Neck 1997). However, the *Gilberg* case was decided based on the status of the law in 1995, and its current inapplicability should be confirmed by the legislature.

The Uniform Rules for Courts Exercising Criminal Jurisdiction regarding the form of papers filed in criminal court (22 NYCRR § 200.3) already reference CPLR 2101, which, as of 1999, refers to papers filed by electronic means. However, these statutory amendments will help insure the success of the electronic ticketing program by clarifying the law in this regard.

Proposal

AN ACT to amend the criminal procedure law, in relation to permitting the electronic filing of papers in local criminal courts, where authorized by law

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

follows:

Section 1. Subdivision 5 of section 1.20 of the criminal procedure law, as amended by

section 729 of the laws of 1972, set out first, is amended to read as follows:

5. "Simplified traffic information" means a written accusation, including an accusation written in electronic form where authorized by law, more fully defined and described in article one hundred, by a police officer, or other public servant authorized by law to issue same, filed with a local criminal court, which, being in a brief or simplified form prescribed by the commissioner of motor vehicles, charges a person with one or more traffic infractions or misdemeanors relating to traffic, and which may serve both to commence a criminal action for such offense and as a basis for prosecution thereof.

§ 2. Paragraph (b) of subdivision 5 of section 1.20 of the criminal procedure law, as amended by chapter 661 of the laws of 1972, set out second, is amended to read as follows:

(b) "Simplified traffic information" means a written accusation, including an accusation written in electronic form where authorized by law, by a police officer, or other public servant authorized by law to issue same, more fully defined and described in article one hundred, filed with a local criminal court, which, being in a brief or simplified form prescribed by the commissioner of motor vehicles, charges a person with one or more traffic infractions or misdemeanors relating to traffic, and which may serve both to commence a criminal action for such offense and as a basis for prosecution thereof.

§ 3. Subdivision 17 of section 1.20 of the criminal procedure law is amended to read as follows:

17. "Commencement of criminal action." A criminal action is commenced by the filing, including filing by electronic means where authorized by law, of an accusatory instrument against a defendant in a criminal court, and, if more than one accusatory instrument is filed in the

course of the action, it commences when the first of such instruments is filed.

§ 4. This act shall take effect immediately.

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

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

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

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

Proposal

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

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

follows:

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

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

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

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

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

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

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

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

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

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

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

Proposal

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

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

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

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

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

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

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

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

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

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

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

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

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

18. Provide Local Criminal Courts With the Ability to Enforce Sentencing for the Unlawful Possession of an Alcoholic Beverage by a Minor (Alcoholic Beverage Control Law § 65-c)

This measure amends section 65-c of the Alcoholic Beverage Control Law to provide courts with a mechanism to insure that the conditions of sentence are met for an offense of unlawful possession of an alcoholic beverage with the intent to consume by persons under the age of twenty-one years.

The measure grants to the courts the power to enter a default judgment, upon notice and an opportunity to be heard, against a person charged with unlawful possession of an alcoholic beverage who has failed to pay a fine or complete an alcohol awareness program or complete community service within the amount of time established by the court to do so. As a result of this change, courts will be able to enforce their sentences for unlawful possession of an alcoholic beverage. Without this ability, the courts are powerless to insure that the conditions of sentence are met.

The measure provides that the clerk of the court that had jurisdiction over the conviction will file the default judgment with the county court. At the time of filing, the county clerk shall enter the transcript of judgment without charging a fee until such time as the judgment is satisfied. When the default judgment is collected, the filing costs will be added to the recovery and be provided to the county clerk's office.

Proposal

AN ACT to amend the alcoholic beverage control law, in relation to entry of default judgments against persons under age twenty-one who fail to pay fines or complete an alcohol awareness program or community service

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

follows:

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

3. Any person who unlawfully possesses an alcoholic beverage with intent to consume may be summoned before and examined by a court having jurisdiction of that charge; provided, however, that nothing contained herein shall authorize, or be construed to authorize, a peace

officer as defined in subdivision thirty-three of section 1.20 of the criminal procedure law or a police officer as defined in subdivision thirty-four of section 1.20 of such law to arrest a person who unlawfully possesses an alcoholic beverage with intent to consume. If a determination is made sustaining such charge the court may impose a fine not exceeding fifty dollars and/or completion of an alcohol awareness program established pursuant to section 19.25 of the mental hygiene law and/or an appropriate amount of community service not to exceed thirty hours. In the event a person convicted of unlawful possession of an alcoholic beverage with intent to consume fails to pay a fine within the period of time established by such court for payment of such fine, the court having jurisdiction may enter a default judgment in the amount of the fine. In the event a person convicted of unlawful possession of an alcoholic beverage with intent to consume fails to complete an alcohol awareness program or complete community service pursuant to this section within the period of time established by such court for the completion of such program or community service, the court having jurisdiction may enter a default judgment in the amount of a fine that would have been authorized by law upon the conviction. Prior to entering any default judgment and at least thirty days after the expiration of the original date established by such court for the payment of such fine or completion of such program or community service, the clerk of the court shall notify the person charged by certified mail: (a) of the impending default judgment in the amount of a fine determined by the court, which amount must be authorized by the law governing the conviction, and which judgment will be filed with the county clerk of the county in which the person convicted is located; (b) of a date, no less than ten days and no more than thirty days from the date of the mailing of the notice, on which the person convicted may be heard to contest such entry of a default judgment; (c) and that a default

judgment may be avoided by paying the fine or completing the alcohol awareness program or community service within thirty days of the sending of such notice or by appearing on the date specified and making other arrangements with the court for the fulfillment of the sentence. In no case shall a default judgment be entered more than two years after the expiration of the time prescribed for originally paying the fine or completing the alcohol awareness program or community service. Any judgment entered pursuant to default shall be civil in nature. The clerk of the court of jurisdiction over the conviction shall file the default judgment with the county clerk, who shall enter a transcript of judgment without charging a fee until such time as the default judgment is satisfied. The default judgment shall have the full force and effect of a judgment duly docketed in the office of such county clerk and may be enforced in the same manner and with the same effect as that provided by law in respect to executions issued against property upon judgments of a court of record and such default judgment shall remain in full force and effect for eight years notwithstanding any other provision of law.

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

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

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

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

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

Proposal

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

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

follows:

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

§ 1811-A. [Indexing] Notice of commercial claims part judgments and indexing  
commercial claims part judgments. (a) Notice of judgment sent to a judgment debtor shall

specify that a failure to satisfy a judgment may subject the debtor to any one or a combination of the following actions:

1. garnishment of wage;
2. garnishment of bank account;
3. a lien on personal property;
4. seizure and sale of real property;
5. seizure and sale of personal property, including automobiles;
6. suspension of motor vehicle license and registration, if the claim is based on

defendant's ownership or operation of a motor vehicle;

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

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

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

1. the claimant's right to payment upon entry of judgment by the court clerk;
2. the procedures for enforcement of commercial claims judgments as provided in section eighteen hundred twelve-A of this article;
3. the claimant's right to initiate actions to recover the unpaid judgment through the sale of the debtor's real property, or personal property;
4. the claimant's right to initiate actions to recover the unpaid judgment through suspension of debtor's motor vehicle license and registration, if the claim is based on defendant's

ownership or operation of a motor vehicle;

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

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

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

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

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

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

§ 1811-A. [Indexing] Notice of commercial claims part judgments and indexing commercial claims part judgments. (a) Notice of judgment sent to a judgment debtor shall

specify that a failure to satisfy a judgment may subject the debtor to any one or a combination of the following actions:

1. garnishment of wage;
2. garnishment of bank account;
3. a lien on personal property;
4. seizure and sale of real property;
5. seizure and sale of personal property, including automobiles;
6. suspension of motor vehicle license and registration, if the claim is based on defendant's ownership or operation of a motor vehicle;
7. revocation, suspension, or denial of renewal of any applicable business license or permit;
8. investigation and prosecution by the attorney general for fraudulent or illegal business practices.

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

1. the claimant's right to payment upon entry of judgment by the court clerk;
2. the procedures for enforcement of commercial claims judgments as provided in section eighteen hundred twelve-A of this article;
3. the claimant's right to initiate actions to recover the unpaid judgment through the sale of the debtor's real property, or personal property;
4. the claimant's right to initiate actions to recover the unpaid judgment through suspension of debtor's motor vehicle license and registration, if the claim is based on defendant's

ownership or operation of a motor vehicle;

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

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

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

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

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

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

§ 1811-A. [Indexing] Notice of commercial claims part judgments and indexing commercial claims part judgments. (a) Notice of judgment sent to a judgment debtor shall

specify that a failure to satisfy a judgment may subject the debtor to any one or a combination of the following actions:

1. garnishment of wage;
2. garnishment of bank account;
3. a lien on personal property;
4. seizure and sale of real property;
5. seizure and sale of personal property, including automobiles;
6. suspension of motor vehicle license and registration, if the claim is based on defendant's ownership or operation of a motor vehicle;
7. revocation, suspension, or denial of renewal of any applicable business license or permit;
8. investigation and prosecution by the attorney general for fraudulent or illegal business practices.

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

1. the claimant's right to payment upon entry of judgment by the court clerk;
2. the procedures for enforcement of commercial claims judgments as provided in section eighteen hundred twelve-A of this article;
3. the claimant's right to initiate actions to recover the unpaid judgment through the sale of the debtor's real property, or personal property;
4. the claimant's right to initiate actions to recover the unpaid judgment through suspension of debtor's motor vehicle license and registration, if the claim is based on defendant's

ownership or operation of a motor vehicle;

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

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

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

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

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

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

20. Orders of Recognizance or Bail by a Local Criminal Court  
in a Proceeding where the Defendant is Charged with a Class E Felony  
(CPL 530.20)

This measure would amend section 530.20 of the Criminal Procedure Law to authorize a local criminal court to set bail for a defendant charged with certain class E felonies without first consulting with the District Attorney.

Under current law, a local criminal court cannot order recognizance or bail with respect to a defendant charged with a felony without first consulting with the District Attorney and, except in certain limited circumstances, obtaining a criminal history or prior arrest record for the defendant.<sup>1</sup> In contrast, when a defendant is arrested without a warrant for committing the same E felonies, a desk officer or other superior officer at a police station may fix pre-arraignment bail and, if the bail is posted, serve the arrested person with an appearance ticket and release the person from custody. Such officer is not required to consult with the District Attorney or to obtain a criminal history or prior arrest record before fixing pre-arraignment bail.

With the authority supplied by this measure, a local criminal court can complete an arraignment expeditiously. In addition, the court can make an informed and reasoned decision about the propriety of releasing a defendant on bail after reviewing the defendant's criminal history or prior arrest record. No such review is required before a police official can release a defendant on pre-arraignment bail.

Proposal

AN ACT to amend the criminal procedure law, in relation to orders of recognizance or bail by a local criminal court when an action is pending therein

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

Section 1. Subparagraph (i) of paragraph (b) of subdivision 2 of section 530.20 of the criminal procedure law is amended to read as follows:

(i) The district attorney has been heard in the matter or, after knowledge or notice of the

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<sup>1</sup>Section 530.20(2)(a) prohibits a city, town or village court from ordering 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. Section 530.20(2)(b) prohibits a local criminal court from ordering recognizance or bail without first affording the District Attorney an opportunity to be heard and obtaining the defendant's criminal history or prior arrest record. The criminal history or prior arrest record, however, may be dispensed with under certain circumstances.

application and reasonable opportunity to be heard, has failed to appear at the proceeding or has otherwise waived his or her right to do so; provided however, this subparagraph shall not apply when a defendant is charged with a class E felony other than a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law; and

§ 2. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all orders of recognizance or bail made on or after such effective date.

21. Removal of Certain Criminal Cases  
(CPL 180.25)

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

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

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

Proposal

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

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

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

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

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

§ 2. This act shall take effect immediately.

22. Single Judge Trials in Certain Misdemeanor Cases  
(CPL 340.40(2) and PL § 70.15(1) and (3))

This measure would amend CPL 340.40 and Penal Law § 70.15 to authorize single judge trials in the New York City Criminal Court, the District Court and certain City Courts for certain misdemeanors where the term of imprisonment is, or will be, less than six months.

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

First, this measure would extend the exception now applicable only in the New York City Criminal Court to apply as well in the District Courts of Nassau and Suffolk Counties and in the City Courts of Buffalo, Rochester, Syracuse and Yonkers. Thus, in these latter courts, trials of class B misdemeanors would be nonjury trials only -- as now is the case in the New York City Criminal Court. Second, this measure would provide that where a criminal defendant is charged in any of these courts with a misdemeanor punishable by a term of imprisonment of more than six months, and the court, upon application of the People, declares on the record that if the defendant is convicted after trial he or she will not be sentenced to a term of imprisonment of more than six months, the trial of the information must be a single judge trial. The measure further requires that the court's declaration be made "not later than forty-five days after defendant's arraignment." The measure also makes corresponding amendments to Penal Law section 70.15 to preclude the imposition of a sentence of imprisonment of more than six months following a single judge trial under CPL 340.40(2).

Last year, each judge sitting in the New York City Criminal Court handled, on average, nearly 5,000 cases. In recent years, that Court has had a more than forty percent increase in its filings. With calendars that large, and with no new influx of criminal court judges to handle its growing caseload, the Court has been reduced to what some have called a "plea bargain mill," a system where the pressure of case volume, rather than the merits of a particular case, often becomes the driving force. The accused, as well as the public in general, must know that the system is capable of adjudicating each and every criminal case on its merits by providing a swift and certain trial of criminal charges.

This measure would help to achieve this goal by enlarging misdemeanor trial capacity in the New York City Criminal and the State's other large local criminal courts. Under the Constitution, a defendant's right to a jury trial attaches only when charged with a crime for which the maximum penalty is more than six months' incarceration. See Baldwin v. New York, 399 U.S. 66 (1970). This measure would permit a Court, upon motion of the District Attorney, to declare that, should there be a conviction on the misdemeanor charge after trial, the sentence will be within this Constitutional six-month "ceiling," thereby allowing the prosecution to proceed by way of a single judge trial. This, in turn, will free up limited judicial and prosecutorial resources

for jury trials in cases where imposition of a sentence in excess of six months would be warranted.

Although to a somewhat lesser degree than in New York City, major local criminal courts outside the City suffer for a want of misdemeanor trial capacity. The Legislature has acknowledged this in the past and sought its correction. See L.1984, ch.673 (enacting the original misdemeanor trial law and applying it to Buffalo, Rochester, Syracuse and Yonkers along with New York City). The instant measure recognizes that a problem yet remains, and offers a cure modeled after the New York City approach.

### 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, in the district courts, and in the local criminal courts of those cities with a population of one hundred fifty thousand or more each of the following must be a single judge trial:

(a) 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.]; and

(b) the trial of an information which charges a misdemeanor for which the authorized term of imprisonment is more than six months where, on request of the people, the court, not later than forty-five days after defendant's arraignment, declares on the record its commitment

that, should defendant be convicted after trial, he or she will not be sentenced to a term of imprisonment of more than six months.

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. Subdivisions 1 and 3 of section 70.15 of the penal law, subdivision 1 as amended by chapter 291 of the laws of 1993, are amended to read as follows:

1. Class A misdemeanor. A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year; provided, however, that a sentence of imprisonment imposed upon a conviction of criminal possession of a weapon in the fourth degree as defined in subdivision one of section 265.01 must be for a period of no less than one year when the conviction was the result of a plea of guilty entered in satisfaction of an indictment or any count thereof charging the defendant with the class D violent felony offense of criminal possession of a weapon in the third degree as defined in subdivision four of section 265.02, except that the court may impose any other sentence authorized by law upon a person who has not been previously convicted in the five years immediately preceding the commission of the offense for a felony or a class A misdemeanor defined in this chapter, if the court having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such sentence would be unduly harsh and that the alternative sentence would be consistent with public safety and does not deprecate the seriousness of the crime. Notwithstanding the foregoing, where the defendant is convicted of a class A misdemeanor following a single judge trial in a local

criminal court as required by paragraph (b) of subdivision two of section 340.40 of the criminal procedure law, he or she may not be sentenced thereon to a term of imprisonment exceeding six months.

3. Unclassified misdemeanor. A sentence of imprisonment for an unclassified misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and, except as otherwise provided herein, shall be in accordance with the sentence specified in the law or ordinance that defines the crime. Where a defendant is convicted in a local criminal court of an unclassified misdemeanor that, under the law or ordinance that defines the crime, is punishable by a term of imprisonment in excess of six months, following a single judge trial as required by paragraph (b) of subdivision two of section 340.40 of the criminal procedure law, he or she may not be sentenced thereon to a term of imprisonment exceeding six months.

§ 3. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law and shall apply to all actions and proceedings commenced on or after such effective date; provided, however, this act shall expire on the first day of November in the third year next succeeding such effective date at which time the provisions of law amended by this act shall be those existing without such amendments.

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

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

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

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

Proposal

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

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

follows:

Section 1. Subdivision 1 of section 1806-a of the vehicle and traffic law is amended to read as follows:

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

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

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

on behalf of the defendant and render a default judgment of a fine determined by the court within the amount authorized by law; and (ii) proof of service thereof, in a form prescribed by section three hundred six of the civil practice law and rules, is filed with the court.

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

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

24. Guilty Pleas to Superior Court Informations in Local Criminal Courts  
Following Waiver of Indictment  
(CPL 10.20(1)(a), 10.30(1), 195.30, 195.40, and 200.15)

Under current law, a criminal defendant who is charged in a local criminal court with commission of a felony may opt to waive indictment and consent to be prosecuted by a superior court information. The latter is a written accusation by the district attorney that charges the defendant with commission of one or more crimes.

While a defendant may be tried on a superior court information, more often it is the case that defendants consent to prosecution thereby as part of a plea agreement. That is, a defendant who is charged by felony complaint with commission of a serious felony agrees to plead guilty to a lesser felony before the matter can be brought before the grand jury and the defendant is indicted. Under these circumstances, defendant waives prosecution by indictment, consents to prosecution on the agreed-upon charge by superior court information filed with a superior court, and appears before a superior court judge for purposes of formally entering the plea and being sentenced.

To economize in the use of resources, in New York City the courts have established special parts (referred to as "SCI" Parts) in which New York City Criminal Court Judges sit first as local criminal court judges, to preside over preliminary proceedings involving felony charges against a defendant, and then as Acting Supreme Court Justices, to take guilty pleas to superior court informations following defendants' waivers of indictment. Similarly, District Courts in Suffolk County have special parts for the same purpose, in which District Court Judges sit first as local criminal court judges and then as Acting County Court Judges. In both courts, while the Justices and Judges are sitting in their "acting" capacities, their courts technically become superior courts, which necessitates a variety of costly administrative steps (including introduction of additional court personnel during the proceedings, and use of regularly-designated Acting Justices of the Supreme Court and Acting County Court Judges -- Justices and Judges who, but for such assignments, could otherwise be presiding over jury trials in more serious cases).

City Courts outside New York City do not operate special parts for handling felony charges. Rather, if a defendant charged with a felony waives prosecution by indictment and consents to prosecution by a superior court information for the purpose of entering a plea to a reduced felony charge, the case then must be sent to the County Court for disposition. This is because, until recently, City Court judges could not be assigned to superior courts. Now, because of the voters' recent approval of a constitutional amendment permitting certain City Court judges to sit temporarily on County Court, that disability no longer exists.

The steps that must be taken in each of these courts can be saved by some simple amendments to the Criminal Procedure Law. At the present time, that statute requires that a superior court information be filed with a superior court, which means with either Supreme Court or County Court. By amendment to sections 10.20 and 10.30, and provisions of Articles 195 and

200, the statute can authorize the filing of a superior court information in New York City's local criminal court (i.e., the N.Y.C. Criminal Court), District Courts and City Courts, and permit those courts to accept a plea to that instrument (and sentence defendant thereon)<sup>2</sup>. By doing this, it would be possible to have regular Criminal Court Judges preside over the SCI Parts in the New York City Criminal Court, rather than Acting Justices of the Supreme Court, and to have regular District Court Judges preside over special felony parts rather than Acting County Court Judges. And, felony cases begun in City Courts can be disposed without involving County Courts. This is a better use of judicial resources, and it spares the State the costs of converting local criminal courts into superior courts, and transferring cases to superior courts, to avoid an artificial and unjustifiable jurisdictional obstacle. This is the purpose of this measure.

### Proposal

AN ACT to amend the criminal procedure law, in relation to superior court informations

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

Section 1. Paragraph (a) of subdivision 1 of section 10.20 of the criminal procedure law is amended to read as follows:

(a) [Exclusive] Except as otherwise provided in subdivision one of section 10.30,

exclusive trial jurisdiction of felonies; and

§ 2. Subdivision 1 of section 10.30 of the criminal procedure law is amended to read as follows:

1. Local criminal courts have trial jurisdiction of all offenses other than felonies. They have:

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<sup>2</sup>Permitting a local criminal court to receive defendant's plea to a felony and to impose sentence does not violate the Constitution. Section 7 of Article 6 provides that "[i]n the city of New York, [Supreme Court] shall have exclusive jurisdiction over crimes prosecuted by indictment . . ." (emphasis supplied). It does not, however, give Supreme Court a similar corner on crimes prosecuted by information. At the same time, section 15(c) of Article 6 gives the N.Y.C. Criminal Court "jurisdiction over crimes and other violations of law, other than those prosecuted by indictment, . . ." (emphasis supplied); and Sections 16(d) and 17(a) give the District Court and upstate City Courts, respectively, such jurisdiction as the Legislature provides (so long as it is not greater than that of the N.Y.C. Civil and Criminal Courts).

(a) Exclusive trial jurisdiction of petty offenses except for the superior court jurisdiction thereof prescribed in paragraph (c) of subdivision one of section 10.20; and

(b) Trial jurisdiction of misdemeanors concurrent with that of the superior courts but subject to divestiture thereof by the latter in any particular case.

Notwithstanding the foregoing, the New York city criminal court, a district court and a city court have jurisdiction to accept a plea of guilty to a superior court information filed therein and to sentence defendant thereon, as provided in subdivision two of section 195.40.

§ 3. Section 195.30 of the criminal procedure law, as added by chapter 467 of laws of 1974, is amended to read as follows:

§ 195.30. Waiver of indictment; approval of waiver by the court. The court shall determine whether the waiver of indictment complies with the provisions of sections 195.10 and 195.20. If satisfied that the waiver complies with such provisions, the court shall approve the waiver and execute a written order to that effect. When the waiver is approved by a local criminal court, the local criminal court shall promptly transmit to the appropriate superior court the written waiver and order approving the waiver, along with all other documents pertinent to the action unless the defendant has consented to enter a plea of guilty to a superior court information to be filed in the New York city criminal court, a district court, or a city court, as provided in subdivision two of section 195.40. Until such papers are received by the superior court, the action is deemed to be pending in the local criminal court.

§ 4. Section 195.40 of the criminal procedure law, as added by chapter 467 of laws of 1974, is amended to read as follows:

§ 195.40. Waiver of indictment; filing of superior court information. 1. When

indictment is waived in a superior court the district attorney shall file a superior court information in such court at the time the waiver is executed. When indictment is waived in a local criminal court the district attorney shall file a superior court information in the appropriate superior court within ten days of the execution of the court order approving the waiver. Upon application of a defendant whose waiver of indictment has been approved by the court, and who, at the time of such approval or subsequent thereto, has been committed to the custody of the sheriff pending disposition of the action, and who has been confined in such custody for a period of more than ten days from the date of approval without the filing by the district attorney of a superior court information, the superior court must release [him] such defendant on his or her own recognizance unless:

(a) The failure of the district attorney to file a superior court information during such period of confinement was due to defendant's request, action or condition or occurred with his or her consent; or

(b) The people have shown good cause why such order of release should not be issued. Such good cause must consist of some compelling fact or circumstance which precluded the filing of the superior court information within the prescribed period.

2. Notwithstanding the provisions of subdivision one of this section, when a defendant waives indictment in the New York city criminal court, a district court or a city court, the district attorney may file a superior court information in such court. In such event, the criminal court shall have the same jurisdiction to accept a plea of guilty thereto and to sentence defendant thereon as a superior court.

§ 5. Section 200.15 of the criminal procedure law, as added by chapter 467 of laws of

1974, is amended to read as follows:

§ 200.15. Superior court information; definition. A superior court information is a written accusation by a district attorney filed in a [superior] court pursuant to article one hundred ninety-five, charging a person, or two or more persons jointly, with the commission of a crime, or with the commission of two or more offenses, at least one of which is a crime. A superior court information may include any offense for which the defendant was held for action of a grand jury and any offense or offenses properly joinable therewith pursuant to sections 200.20 and 200.40, but shall not include an offense not named in the written waiver of indictment executed pursuant to section 195.20. A superior court information has the same force and effect as an indictment and all procedures and provisions of law applicable to indictments are also applicable to superior court informations, except where otherwise expressly provided.

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

25. Supporting Depositions for Defendants Charged by Simplified Information  
with a Misdemeanor  
(CPL 100.20 and 100.25)

This measure would amend sections 100.20 and 100.25 of the Criminal Procedure Law to entitle a defendant charged by simplified information with a misdemeanor to a supporting deposition that contains non-hearsay allegations which establish, if true, every element of the offense charged and the defendant's commission thereof.

A simplified information is a short form accusatory instrument created for use by law enforcement personnel to streamline the process of charging persons with traffic infractions, misdemeanors relating to traffic and non-felony offenses defined in the Environmental Conservation Law and the Parks, Recreation and Historic Preservation Law. Unless a defendant requests a supporting deposition pursuant to section 100.25 of the CPL, a simplified information is legally sufficient and can serve as the basis for prosecution of the charge contained therein, without any supporting factual allegations. And, even if a defendant requests a supporting deposition, it need only contain allegations of fact based only upon the information and belief of the complainant police officer or public servant. A defendant charged by simplified information with a misdemeanor, therefore, can be prosecuted based solely on hearsay allegations. In contrast, a defendant charged by "long form" information with a misdemeanor is entitled to an accusatory instrument that includes allegations of fact that provide reasonable cause to believe that the defendant committed the offense charged in the accusatory part of the information and non-hearsay allegations that establish, if true, every element of the offense charged and the defendant's commission thereof. See CPL 100.40(b) and (c). A "long form" information that does not contain such allegations of fact is subject to dismissal as defective pursuant to sections 170.30 and 170.35 of the CPL.

Under the present statutory scheme, two defendants who are charged with the same misdemeanor offense are entitled to different procedural safeguards depending on the type of accusatory instrument used to charge the offense. This distinction exists even though both defendants are subject to the same sentencing provisions and both, upon conviction, are guilty of a crime. This measure will ensure that all such defendants are afforded the same supporting deposition prior to trial.

Proposal

AN ACT to amend the criminal procedure law, in relation to a defendant's right to a supporting deposition

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

follows:

Section 1. Section 100.20 of the criminal procedure law, as amended by chapter 661 of the laws of 1972, is amended to read as follows:

§ 100.20. Supporting deposition; definition, form and content. [A] Except as otherwise provided in section 100.25, a supporting deposition is a written instrument accompanying or filed in connection with an information, a simplified information, a misdemeanor complaint or a felony complaint, subscribed and verified by a person other than the complainant of such accusatory instrument, and containing factual allegations of an evidentiary character, based either upon personal knowledge or upon information and belief, which supplement those of the accusatory instrument and support or tend to support the charge or charges contained therein.

§ 2. Subdivision 2 of section 100.25 of the criminal procedure law, as amended by chapter 67 of the laws of 1996, is amended to read as follows:

2. A defendant charged by a simplified information is, upon a timely request, entitled as a matter of right to have filed with the court and served upon him or her, or if [he] the defendant is represented by an attorney, upon his or her attorney, a supporting deposition of the complainant police officer or public servant, containing allegations of fact, based either upon personal knowledge or upon information and belief, providing reasonable cause to believe that the defendant committed the offense or offenses charged. A defendant charged by simplified information with a misdemeanor is, upon a timely request, entitled as a matter of right to have filed with the court and served upon him or her, or if the defendant is represented by an attorney, upon his or her attorney, one or more supporting depositions by the complainant police officer or public servant and/or by a person other than the complainant police officer or public servant, containing allegations of fact, based either upon personal knowledge or upon information and

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

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

26. Entry of Default Judgments by a Traffic and Parking Violations Agency  
(VTL § 1806-a(4))

This measure would amend subdivision 4 of section 1806-a of the Vehicle and Traffic Law to authorize a traffic and parking violations agency to enter default judgments for failure to answer a traffic infraction as well as a parking violation.

Subdivision 4 currently authorizes a traffic and parking violations agency to enter a default judgment when a person charged with a parking violation fails to answer within the time specified. This measure would expand the authority of such an agency also to allow entry of a default judgment when a person charged with any traffic infraction fails to answer within the time specified. A traffic infraction is any violation of the Vehicle and Traffic Law which is not a misdemeanor or felony. Vehicle and Traffic Law § 155. Parking violations constitute a subset of this class of offenses.

The Nassau County Traffic and Parking Violations Agency was created to assist the Nassau County District Court in the disposition and administration of certain infractions of traffic and parking laws, ordinances, rules and regulations. The assistance rendered by the agency includes issuing default judgments when defendants fail to appear. To limit the agency's authority to issue default judgments to only one class of cases over which it has jurisdiction is inconsistent with its purpose and renders it unable to dispose of more serious offenses.

Proposal

AN ACT to amend the vehicle and traffic law, in relation to entry of default judgments by a traffic and parking violations agency

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

as follows:

Section 1. Subdivision 4 of section 1806-a of the vehicle and traffic law, as added by chapter 496 of the laws of 1990, is amended to read as follows:

4. In the event a person charged with a traffic infraction or a parking violation does not answer within the time specified, a traffic and parking violations agency may, in addition to any other action authorized by law, enter a plea of guilty on behalf of the defendant and render a default judgment of a fine determined by the judicial hearing officer within the amount

authorized by law. Any judgment entered pursuant to default shall be civil in nature, but shall be treated as a conviction for the purposes of this section. However, at least thirty days after the expiration of the original date prescribed for entering a plea and before a plea of guilty and a default judgment may be rendered, the traffic and parking violations agency shall notify the defendant by certified mail: (a) of the infraction or violation charged; (b) of the impending plea of guilty and default judgment; (c) that such judgment will be filed with the county clerk of the county in which the operator or registrant is located, and (d) that a default or plea of guilty may be avoided by entering a plea or making an appearance within thirty days of the sending of such notice. Pleas entered within that period shall be in a manner prescribed in the notice. In no case shall a default judgment and plea of guilty be rendered more than two years after the expiration of the time prescribed for originally entering a plea. When a person has entered a plea of not guilty and has demanded a hearing, no fine or penalty shall be imposed for any reason, prior to the holding of the hearing which shall be scheduled by the traffic and parking violations agency within thirty days of such demand.

§ 2. This act shall take effect immediately.

27. Filing Fees for Commencing Commercial Claims  
(NYCCCA § 1803-A(a) and (b); UCCA § 1803-A(a) and (b);  
and UDCCA § 1803-A(a) and (b))

This measure would amend section 1803-A of the New York City Civil Court Act, the Uniform City Court Act, and the Uniform District Court Act to make it consistent with the filing fee provisions for regular small claims by creating a two-tiered filing fee based on the amount of the claim and by eliminating the requirement that a claimant pay the cost of mailings when commencing a commercial claim.

Upon enactment of chapter 309 of the Laws of 1996, the provisions of the uniform court acts governing filings of small claims were amended to increase the filing fees and to delete language requiring individuals filing small claims to pay the costs of mailing a notice of small claim. Through inadvertence, the parallel provisions governing filings of commercial claims were not also amended. This measure, therefore, in keeping with the intent to make uniform the practice and procedures in local courts, would conform the statutory provisions governing commercial claims with those governing small claims.

Proposal

AN ACT to amend the New York city civil court act, the uniform city court act and the uniform district court act, in relation to commencing a commercial claim

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

follows:

Section 1. The first unnumbered paragraph of subdivision (a) of section 1803-A of the New York city civil court act, as amended by chapter 62 of the laws of 2003, is amended to read as follows:

Commercial claims other than claims arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty-five dollars [and the cost of mailings as herein provided] for claims in the amount of one thousand dollars or less and thirty dollars for claims in the amount of more than one thousand dollars, without the service of a summons and, except by special order of the court, without the service of any pleading other than

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

§ 2. The first unnumbered paragraph of subdivision (b) of section 1803-A of the New York city civil court act, as amended by chapter 62 of the laws of 2003, is amended to read as follows:

Commercial claims in actions arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty-five dollars [and the cost of mailings

as herein provided] for claims in the amount of one thousand dollars or less and thirty dollars for claims in the amount of more than one thousand dollars, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required statement of the cause of action by the claimant or someone on its behalf [of] to the clerk, who shall reduce the same to a concise written form including the information required by subdivision (c) of this section, denominate it conspicuously as a consumer transaction, and record it in the docket marked as a consumer transaction, and by filing with the clerk a required certificate verified as to its truthfulness by the claimant on forms prescribed by the state office of court administration.

§ 3. The first unnumbered paragraph of subdivision (a) of section 1803-A of the uniform district court act, as amended by chapter 62 of the laws of 2003, is amended to read as follows:

Commercial claims other than claims arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty-five dollars [and the cost of mailings as herein provided] for claims in the amount of one thousand dollars or less and thirty dollars for claims in the amount of more than one thousand dollars, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required certification verified as to its truthfulness by the claimant on a form prescribed by the state office of court administration and filed with the clerk, that no more than five such actions or proceedings (including the instant action or proceeding) have been instituted during that calendar month, and a statement of its cause of action by the claimant or someone in its behalf to the clerk, who shall reduce the same to a concise, written form and record it in a filing system maintained especially for such purpose. Such procedure shall provide that the commercial claims part of the

court shall have no jurisdiction over, and shall dismiss, any case with respect to which the required certification is not made upon the attempted institution of the action or proceeding. Such procedure shall provide for the sending of notice of such claim by ordinary first class mail and certified mail with return receipt requested to the party complained against at his or her residence, if he or she resides within the municipality in which the court is located, and his or her residence is known to the claimant, or at his or her office or place of regular employment within such municipality if he or she does not reside within such municipality or his or her residence within the municipality is not known to the claimant. If, after the expiration of twenty-one days, such ordinary first class mailing has not been returned as undeliverable, the party complained against shall be presumed to have received notice of such claim. Such notice shall include a clear description of the procedure for filing a counterclaim, pursuant to subdivision (d) of this section.

§ 4. The first unnumbered paragraph of subdivision (b) of section 1803-A of the uniform district court act, as amended by chapter 62 of the laws of 2003, is amended to read as follows:

Commercial claims in actions arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty-five dollars [and the cost of mailings as herein provided] for claims in the amount of one thousand dollars or less and thirty dollars for claims in the amount of more than one thousand dollars, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required statement of the cause of action by the claimant or someone on its behalf to the clerk, who shall reduce the same to a concise written form including the information required by subdivision (c) of this section, denominate it conspicuously as a consumer transaction, and record it in the docket

marked as a consumer transaction, and by filing with the clerk a required certificate verified as to its truthfulness by the claimant on forms prescribed by the state office of court administration. Such verified certificate shall certify (i) that the claimant has mailed by ordinary first class mail to the party complained against a demand letter, no less than ten days and no more than one hundred eighty days prior to the commencement of the claim, and (ii) that, based upon information and belief, the claimant has not instituted more than five actions or proceedings (including the instant action or proceeding) during the calendar month.

§ 5. The first unnumbered paragraph of subdivision (a) of section 1803-A of the uniform city court act, as amended by chapter 686 of the laws of 2003, is amended to read as follows:

Commercial claims other than claims arising out of consumer transactions shall be commenced upon the payment by the claimant of a filing fee of twenty-five dollars [and the cost of mailings as herein provided] for claims in the amount of one thousand dollars or less and thirty dollars for claims in the amount of more than one thousand dollars, without the service of a summons and, except by special order of the court, without the service of any pleading other than a required certification verified as to its truthfulness by the claimant on a form prescribed by the state office of court administration and filed with the clerk, that no more than five such actions or proceedings (including the instant action or proceeding) have been instituted during that calendar month, and a statement of its cause of action by the claimant or someone in its behalf to the clerk, who shall reduce the same to a concise, written form and record it in a docket kept especially for such purpose. Such procedure shall provide that the commercial claims part of the court shall have no jurisdiction over, and shall dismiss, any case with respect to which the required certification is not made upon the attempted institution of the action or proceeding. Such

procedure shall provide for the sending of notice of such claim by ordinary first class mail and certified mail with return receipt requested to the party complained against at his or her residence, if he or she resides within the county in which the court is located, and his or her residence is known to the claimant, or at his or her office or place of regular employment within such county if he or she does not reside therein or his or her residence within the county is not known to the claimant. If, after the expiration of twenty-one days, such ordinary first class mailing has not been returned as undeliverable, the party complained against shall be presumed to have received notice of such claim. Such notice shall include a clear description of the procedure for filing a counterclaim pursuant to subdivision (d) of this section.

§ 6. The first unnumbered paragraph of subdivision (b) of section 1803-A of the uniform city court act, as amended by chapter 686 of the laws of 2003, is amended to read as follows:

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

§ 7. This act shall take effect ten days after it shall have become a law and shall apply to

all actions commenced on or after such date.

28. Warrants of Arrest Based on Simplified Informations  
(CPL 120.20)

This measure would amend section 120.20 of the Criminal Procedure Law to preclude a criminal court from issuing a warrant of arrest based on any simplified information.

Section 120.20 currently excludes only simplified traffic informations from the class of accusatory instruments that can support issuance of an arrest warrant. As is noted by Professor Peter Preiser in the Practice Commentaries to this section, see CPL 120.20 Practice Commentaries (McKinney's 2004), the failure to exclude the other simplified informations (parks and environmental conservation) is most likely because they did not exist when the Criminal Procedure Law was first enacted. Failure to add the other simplified informations when they were created was probably an oversight. Nevertheless, because these later authorized simplified informations, like the simplified traffic information, do not establish the threshold reasonable cause necessary to justify the issuance of a warrant of arrest, they should also be excluded by CPL 120.20.

Proposal

AN ACT to amend the criminal procedure law, in relation to issuance of a warrant of arrest when a criminal action has been commenced in a local criminal court by the filing of a simplified information

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

follows:

Section 1. The opening paragraph of 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:

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, 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:

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

29. Grounds for Vacating Default Judgments Entered Pursuant to Vehicle and Traffic Law Section 1806-a (VTL § 1806-a)

This measure would amend section 1806-a of the Vehicle and Traffic Law to authorize grounds for vacatur of a default judgment entered against a person charged with a traffic infraction.

Section 1806-a authorizes a court outside New York City having jurisdiction over traffic matters to enter a plea of guilty on behalf of a defendant charged with a traffic infraction and to render a default judgment of a fine within an amount authorized by law after the defendant fails to answer the charge within the time specified. The statute further provides that any such default judgment shall be civil in nature, but shall be treated as a conviction for purposes of the proceeding under the Vehicle and Traffic Law.

The civil nature of a default judgment entered pursuant to section 1806-a in the context of a criminal proceeding has caused confusion among courts and defendants who seek to vacate such judgments. Some defendants move pursuant to CPLR 5015, while others move pursuant to CPL 440.10. This amendment will dispel that confusion by providing a motion procedure specifically applicable to default judgments entered pursuant to section 1806-a of the Vehicle and Traffic Law.

The measure sets forth the two grounds that may be asserted to vacate the default: excusable default and failure to provide proper notice. To ensure ultimate finality of the proceeding, the measure further provides that a motion to vacate pursuant to this section must be made within one year after the defendant obtains knowledge of entry of the judgment, but in no event more than five years after such entry.

Proposal

AN ACT to amend the vehicle and traffic law, in relation to vacating a default judgment against a person charged with a traffic infraction

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

follows:

Section 1. Section 1806-a of the vehicle and traffic law is amended by adding a new subdivision 2-a to read as follows:

2-a. The court that entered a judgment pursuant to this section may, on motion by a

defendant, vacate such judgment upon the ground of:

(a) excusable default, if the motion is made within one year after the defendant obtains knowledge of entry of the judgment, but in no event more than five years after such entry, provided, however, that no defendant shall be required to establish a meritorious defense to prevail on a motion made pursuant to this paragraph; or

(b) failure by the traffic violations bureau or, if there be none, the clerk of the court, to comply with the notice requirements set forth in subdivision one of this section.

§ 2. This act shall take effect immediately.

30. Grounds for Vacating a Default Judgment Against a Corporate Defendant for Failure to Appear  
(CPL 440.10)

This measure would amend section 440.10 of the Criminal Procedure Law to authorize a court to entertain an application to vacate a plea of guilty and sentence imposed when a corporate defendant fails to appear. To ensure ultimate finality of the proceeding, a motion to vacate pursuant to this section must be made within one year after the defendant obtains knowledge of entry of the judgment, but in no event more than five years after such entry. None of the grounds currently set forth in section 440.10 for vacating a judgment in a criminal case specifically addresses a default judgment entered against a corporate defendant.

In almost all cases, when a criminal defendant fails to appear voluntarily to answer a charge, the court must take steps, such as issuing a warrant of arrest, to secure the defendant's appearance. The court cannot proceed to enter a guilty plea and sentence the non-appearing defendant. With respect to corporate defendants, however, section 600.20 of the CPL specifically authorizes the court to enter a plea of guilty and impose sentence in the event such a defendant fails to appear at the appointed time.

In some cases, a corporate defendant fails to appear simply because no notice of the proceeding was received prior to the appearance date. This problem arises because section 600.10 of the CPL authorizes service of a summons or an appearance ticket on the Secretary of State in addition to designated corporate officers. The Secretary of State then must promptly forward such process to the corporation at the address on file in the Department of State for that purpose. If the address on file for the corporation is not current, the corporation may not receive the process in time to appear and defend the criminal action.

A defaulting corporate defendant that fails to appear can be subject to significant fines. In one reported case, People v Sage Realty, Inc., 155 Misc.2d 832 (N.Y.C. Crim. Ct. 1992), the corporate defendant failed to appear and was sentenced to pay a \$10,000 fine.

Section 440.10 of the CPL does not specifically address a motion to vacate a default judgment entered against a corporate defendant. In fact, both the prosecutor and the corporate defendant in People v. Sage Realty, Inc., relied on the law governing the reopening of default judgments in civil cases as controlling authority. While the court in that case found that the motion as made properly was phrased to state a constitutional claim, a ground recognized by CPL 440.10, this measure will make it clear that motions by corporate defendants to vacate defaults under CPL 600.20 generally are cognizable by the court, will clarify the procedure to be followed by corporate defendants in making such motions, and will fix time constraints on when the motion may be made.

The amendment also provides that no defendant making a motion to vacate a guilty plea and sentence is required to establish a meritorious defense to the criminal charge to prevail on the

motion. While such a requirement is imposed when defendants seek to vacate a default judgment in civil cases for excusable default, it is not appropriate in a criminal proceeding, where the burden of proof rests with the prosecution.

### Proposal

AN ACT to amend the criminal procedure law, in relation to vacating a plea of guilty and sentence imposed by the court upon failure to appear by a corporate defendant

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

Section 1. Paragraph (h) of subdivision 1 of section 440.10 of the criminal procedure law is amended to read as follows:

(h) The judgment was obtained in violation of a right of the defendant under the constitution of this state or of the United States[.] ; or

§ 2. Subdivision 1 of section 440.10 of the criminal procedure law is amended by adding a new paragraph (i) to read as follows:

(i) The judgment was entered by the court pursuant to section 600.20 upon failure to appear by a corporate defendant and such corporate defendant has established that such failure to appear was excusable. A motion pursuant to this paragraph must be made within one year after the corporate defendant obtains knowledge of entry of the judgment, but in no event more than five years after such entry; provided, however, no such motion may be made once the corporate defendant takes and perfects an appeal from the judgment. The corporate defendant shall not be required to establish a meritorious defense to prevail pursuant to this paragraph.

§ 3. Paragraph (b) of subdivision 2 of section 440.10 of the criminal procedure law is amended to read as follows:

(b) Except when a motion pursuant to paragraph (i) of subdivision one is pending, [T]the judgment is, at the time of the motion, appealable or pending on appeal, and sufficient facts appear on the record with respect to the ground or issue raised upon the motion to permit adequate review thereof upon such an appeal; or

§ 4. Paragraph (c) of subdivision 2 of section 440.10 of the criminal procedure law, as added by chapter 996 of the laws of 1970, is amended to read as follows:

(c) Except when a motion pursuant to paragraph (i) of subdivision one is pending, [A]although sufficient facts appear on the record of the proceedings underlying the judgment to have permitted, upon appeal from such judgment, adequate review of the ground or issue raised upon the motion, no such appellate review or determination occurred owing to the defendant's unjustifiable failure to take or perfect an appeal during the prescribed period or to his or her unjustifiable failure to raise such ground or issue upon an appeal actually perfected by him or her; or

§ 5. This act shall take effect immediately.

31. Imposition of Mandatory Surcharges and Crime Victim Assistance Fees  
When a Defendant is Sentenced to Make Restitution or Reparation  
(PL § 60.35(6))

This measure would amend subdivision 6 of section 60.35 of the Penal Law to clarify its provisions exempting defendants who have paid restitution or made reparations from having to pay a mandatory surcharge and a crime victim assistance fee. As amended, subdivision 6 would exempt outright only a defendant who pays restitution or makes reparation at or prior to sentencing. Defendants who are sentenced to pay restitution or make reparation, but who do not do so at sentencing, must pay a mandatory surcharge and a crime victim assistance fee; but they will be entitled thereafter to a refund once the restitution is paid or the reparation is made.

For some years, there was disagreement among the Departments of the Appellate Division with respect to whether a defendant who has not made restitution or reparation prior to sentencing and who is ordered to do so as part of the sentence imposed for conviction of an offense may at the same time be ordered to pay a mandatory surcharge and a crime victim assistance fee. The First and Third Departments had held that courts are prohibited from imposing a mandatory surcharge and a crime victim assistance fee when restitution or reparation is directed. See People v. Espola, 238 A.D.2d 281 (1<sup>st</sup> Dept. 1997); People v. Allen, 236 A.D.2d 653 (3<sup>rd</sup> Dept. 1997); People v. Meade, 195 A.D.2d 756 (3<sup>rd</sup> Dept. 1993); People v. Moore, 176 A.D.2d 968 (3<sup>rd</sup> Dept. 1991). The Second and Fourth Departments had held that both can be imposed simultaneously. A defendant who thereafter pays restitution or makes reparation can obtain a refund of the mandatory surcharge/crime victim assistance fee. People v. Cabrera, 243 A.D.2d 720 (2d Dept. 1997).

In a recent decision, the Court of Appeals resolved these disagreements and held that section 65.35(6) of the Penal Law does permit a sentencing court to order both restitution and the mandatory surcharge/crime victim assistance fee when the defendant has not paid restitution or made reparation at the time of sentencing. See People v. Quinones, 95 N.Y.2d 349 (2000).

This measure would clarify section 65.35(6) so that it is consistent with the Court of Appeals' decision.

Proposal

AN ACT to amend the penal law, in relation to mandatory surcharges and crime victim assistance fees

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

Section 1. Subdivision 6 of section 60.35 of the penal law, as amended by chapter 56 of

the laws of 2004, is amended to read as follows:

6. Notwithstanding any other provision of this section, where [a person]:

(a) as of a person's sentencing, the court finds that he or she has made restitution or reparation [pursuant to section 60.27 of this article], such person shall not be required to pay a mandatory surcharge or a crime victim assistance fee; or

(b) following sentencing, a person makes restitution or reparation pursuant to section 60.27 of this article, such person may apply for resentencing and, upon such application, the court shall revoke so much of the person's sentence as required payment of a mandatory surcharge and/or a crime victim assistance fee.

§ 2. This act shall take effect immediately and shall apply to all defendants sentenced on or after such effective date.

#### **IV. FUTURE MATTERS**

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

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

Respectfully submitted,

Hon. Joseph J. Cassata, Jr. – Chair

Daniel Alessandrino  
Jack Baer  
Hon. Robert G. Bogle  
Hon. Ralph J. Eannace, Jr.  
Hon. Mark G. Farrell  
Hon. Madeleine A. Fitzgibbon  
Hon. David O. Fuller, Jr.  
Frank Jordan  
Hon. Raymond B. Mars

Hon. Michael F. McKeon  
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