Report of the Advisory Committee on Local Courts

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

January 2014

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I. INTRODUCTION: CONTINUING A NEW APPROACH

The Local Courts Advisory Committee is one of five standing advisory committees established by the Chief Administrative Judge of the Courts pursuant to Judiciary Law § 212(1)(q). The Committee advises the Chief Administrative Judge on legal and operational issues relating to the New York City Civil Court, New York City Criminal Court, District Courts, City Courts outside New York City, and Town and Village Courts. The Committee serves as a 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. In addition to its legislative program, the Committee reviews and makes recommendations with respect to existing court rules and forms. During 2013, the Committee comprised 18 members, including judges, clerks and attorneys serving and practicing in New York's local courts. As in the past, the Committee reviewed a wide range of issues relating to these courts, including practice and procedure, facilities, staffing and resources.

New Proposals for 2014

The Committee is committed to following the approach it adopted last year of significantly streamlining and carefully honing its list of recommended legislative measures to ensure that each one reflects a high priority. This year the Committee is recommending ten legislative measures, three of which are new. The first new proposal would authorize the removal of pending actions from a local court to another local problem solving court within the same County. Allowing local courts to transfer cases to other local courts that offer specialized support services and resources for non-felony defendants will promote more effective and efficient adjudication of those cases. The second measure would waive pre-sentence investigations ("PSIs") and reports for courts and probation departments outside New York City where a negotiated sentence of imprisonment for a term of 365 days or less is mutually agreed upon by the parties, with the consent of the judge, and no sentence of probation is imposed. The Committee believes that the legislative purposes underlying waiver of PSIs in New York City – cost- and time-savings for courts and probation departments – are equally applicable outside New York City. The Committee's final proposal would give judges additional needed discretion

when presiding over dangerous dog proceedings. The foregoing measures are based on the Committee's own studies, examination of decisional law, and suggestions received from the bench and bar, as well as members of the public.

Continued Honing of Priorities

In an effort to ensure that each legislative priority receives maximum attention and consideration from the Legislature and the public, the Committee has reviewed its prior Annual Reports and further streamlined its submission for 2014, which now contains at total of ten legislative measures. As the Committee observed last year, prior Annual Reports had grown to exceed 40 submissions, many of which had been resubmitted over the years, and an increasing number of proposals were not being introduced in either House of the Legislature. The 2014 Annual Report reflects a more focused approach, offering for consideration only those measures that reflect the Committee's priorities and appear to have a reasonable chance of favorable consideration.

The Committee's legislative program for 2014 focuses on initiatives that, if enacted, would promote more effective and comprehensive adjudication, close outmoded jurisdictional gaps, enhance judicial efficiency and save time and money across multiple areas of practice.

In the service of promoting efficiency and modernization, the Committee proposes to amend the State Constitution to authorize the temporary assignment of a judge of the District Court to serve as an Acting Supreme Court Justice in the judicial department of his or her residence; allow appeals from local criminal courts to intermediate appellate courts based on recordings and settled transcripts rather than outmoded affidavits of errors; allow all local criminal courts rather than only New York City Criminal Court to hold single-judge trials in B misdemeanors; and, authorize Judicial Hearing Officers to accept certain guilty pleas.

In order to better promote the administration of justice and address the collateral consequences of court proceedings while bringing offenders to justice, the Committee recommends measures to allow courts to suspend the driver's license of persons who fail without

justification to appear to answer charges of unlawful possession of alcohol, or who fail to complete their sentences timely; authorize the sealing of court records in a criminal matter where the charges are dismissed on the People's motion; and, authorize the imposition of the sentence of a fine and conditional discharge upon conviction for the offense of driving while impaired.

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

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II. NEW LEGISLATION

1. Removal of Action from One Local Criminal Court to Another Local Criminal Court Established as a Problem-solving Court (CPL 170.15(4))

Criminal Procedure Law section 170.15(4) presently authorizes the transfer of cases from one local criminal court to another local criminal court where the transferee court is a drug treatment court. This measure would amend CPL 170.15(4) to expand a local criminal court's ability to transfer cases to another local problem-solving court, including but not limited to a drug court, mental health court, veterans court, adolescent diversion part, domestic violence misdemeanor part, sex offense court, community court or human trafficking court, in order to take advantage of the specialized support services and resources available in those courts for defendants charged with non-felony offenses. The existing requirement that a transfer take place upon the motion of the defendant and with the consent of the district attorney would remain unchanged.

This measure recognizes that the growth and efficacy of problem-solving courts in New York and around the country have improved the administration of justice, enabling judges and court staff to better address the needs of litigants and communities. Problem-solving courts take different forms and provide different services depending on the problems they are designed to address. In general they seek to resolve the underlying issues that bring people into the court system through use of intensive judicial monitoring, treatment where appropriate, coordination with outside service providers, removal of barriers between courts, and increased communication and coordination with stakeholders. Certain problem-solving courts such as drug and mental health courts focus on treatment and rehabilitation, while others, including domestic violence courts, employ vigorous judicial monitoring and mandated programs and probation to ensure compliance and accountability. For some local criminal courts, it is neither economical nor practical to provide the kinds of intensive services and monitoring that a problem-solving court routinely provides. Accordingly, it makes sense for that local court, with the parties' consent, to

transfer certain cases to local problem-solving courts in the county that possess the appropriate resources and services to adjudicate such cases.

In sum, this measure authorizing the transfer of cases from one local criminal court to another local criminal court designated a problem-solving court by the Chief Administrator of the Courts would improve the administration of justice by eliminating unnecessary jurisdictional barriers that currently prevent local courts and litigants from making efficient use of existing resources and services within a county.

Legislative history: None. New proposal.

Proposal

AN ACT to amend the criminal procedure law, in relation to removal of an action from one local criminal court to another local criminal court established as a problem-solving court

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

Section 1. Subdivision 4 of section 170.15 of the criminal procedure law, as amended by chapter 67 of the laws of 2000, is amended to read as follows:

4. Notwithstanding any provision of this section to the contrary, in any county outside a city having a population of one million or more, upon or after arraignment of a defendant on an information, a simplified information, a prosecutor's information or a misdemeanor complaint pending in a local criminal court, such court may, upon motion of the defendant and with the consent of the district attorney, order that the action be removed from the court in which the matter is pending to another local criminal court in the same county which has been designated a

problem-solving court by the chief administrator of the courts, including but not limited to a drug court, mental health court, veterans court, adolescent diversion part, domestic violence court, human trafficking court, sex offense court, or community court [by the chief administrator of the courts], and such [drug] problem-solving court may then conduct such action to judgement or other final disposition; provided, however, that an order of removal issued under this subdivision shall not take effect until five days after the date the order is issued unless, prior to such effective date, the [drug] problem-solving court notifies the court that issued the order that:

(a) it will not accept the action, in which event the order shall not take effect, or

(b) it will accept the action on a date prior to such effective date, in which event the order shall take effect upon such prior date.

Upon providing notification pursuant to paragraph (a) or (b) of this subdivision, the [drug] problem-solving court shall promptly give notice to the defendant, his or her counsel and the district attorney.

§ 2. This act shall take effect immediately.

2. Extending to Probation Departments and Courts Outside New York City Waiver of Pre-sentence Investigations and Reports in Certain Cases. (CPL 390.20)

This measure would amend the Criminal Procedure Law, as recently amended by chapter 556 of the laws of 2013, to eliminate, outside New York City, the requirement of pre-sentence investigations ("PSIs") and reports where a negotiated sentence of imprisonment for a term of 365 days or less is mutually agreed upon by the parties, with the consent of the judge, and no sentence of probation will be imposed.

Prior to enactment of chapter 556, probation departments throughout the state were required to conduct PSIs and prepare written reports for all defendants convicted in felony cases, and in misdemeanor cases where a sentence of imprisonment was imposed for a term in excess of 180 days. CPL 390.20. Section 6 of chapter 556 amended section 390.20 to establish an exception to these requirements where a negotiated sentence of imprisonment for a term of 365 days or less has been reached as a result of a conviction or revocation of a probation sentence, and where probation will not be imposed under either scenario. However, this exception was limited to "any city having a population of one million or more." The present measure would broaden that exception to encompass any probation department or court outside New York City without regard to population.

This measure recognizes that the legislative purposes underlying chapter 556 – eliminating the costly requirement of PSIs for negotiated sentences and allowing for probation departments to more appropriately reassign probation officers – are equally applicable in the 61 cities and 57 counties located outside New York City. The current PSI requirements necessitate additional court hearings, delay sentencing and expend public resources in conducting investigations and preparing reports that rarely affect final sentencing outcomes. The Committee believes that probation departments and courts outside New York City should be treated no differently than those in New York City with regard to an expensive, time-consuming mandate shown to have little impact on sentencing.

It is important to note that neither chapter 556 nor this measure would make any other change in statutory requirements concerning PSIs or affect a judge's discretion to order a PSI in any case where the judge believes it is appropriate to do so, including any case where the statute would no longer automatically require a PSI.

Proposal

AN ACT to amend the criminal procedure law, in relation to waiver of pre-sentence investigations and reports

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

Section 1. Subdivision 5 of section 390.20 of the criminal procedure law, as added by chapter 556 of the laws of 2013, is amended to read as follows:

5. Negotiated sentence of imprisonment. [In any city having a population of one million or more and nothwithstanding] Notwithstanding the provisions of subdivision one or two of this section, a pre-sentence investigation and written report thereon shall not be required where a negotiated sentence of imprisonment for a term of three hundred sixty-five days or less has been mutually agreed upon by the parties with the consent of the judge, as a result of a conviction or revocation of a sentence of probation.

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

3. Dangerous Dog Proceedings: Providing Courts with Discretion to Direct Seizure of a Dog after an Evidentiary Hearing.
(Agriculture and Markets Law § 123(2))

Pursuant to the Agriculture and Markets Law ("AML"), a "dangerous dog" proceeding is commenced by the filing of an *ex parte* sworn statement describing an attack or threatened attack by a dog. AML § 123(2) requires the judge reviewing the statement to make an immediate determination whether there is probable cause to believe the dog is dangerous. If so, the court "shall issue an order to any dog control officer, peace officer . . . or police officer directing such officer to immediately seize such dog and hold the same pending judicial determination." Whether or not the judge finds probable cause for seizure, he or she is required to hold a hearing on the complaint within five days.

Under the statute, where the court finds probable cause that a dog is dangerous the court is required to direct seizure of the dog prior to holding an evidentiary hearing or giving the respondent an opportunity to be heard. While seizure may be appropriate in many cases, mandatory seizure is not always practical or feasible. In addition, the statute is silent concerning whether the court may direct seizure of the dog following a hearing. Thus, where a judge does not find probable cause that a dog is dangerous until the conclusion of the evidentiary hearing, the statute does not at that point authorize seizure of the dog. While the court must make an immediate snapshot determination regarding seizure based upon unproven allegations at the outset of the proceeding, it has no ability to issue a seizure order after making a final determination that the dog is dangerous based on the evidence presented at the hearing. This loophole poses both public safety and enforcement concerns: where the dog has not been seized and the respondent does not comply with court-ordered conditions, such as subjecting the dog to spaying or neutering, professional evaluation or secure confinement, it would appear that the court would have to hold the dog's owner in contempt to ensure compliance.

In view of the foregoing concerns, AML § 123(2) should be amended to give the court discretion whether to direct seizure of a dog at the outset of the proceeding, and to authorize the court to direct seizure of a dangerous dog following a hearing on the merits.

Proposal

AN ACT to amend the agriculture and markets law, in relation to dangerous dog proceedings.

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

Section 1. The first unlettered paragraph of subdivision 2 of section 123 of the agriculture and markets law, as amended by chapter 59 of the laws of 2010, is amended to read as follows:

2. Any person who witnesses an attack or threatened attack, or in the case of a minor, an adult acting on behalf of such minor, may, and any dog control officer or police officer as provided in subdivision one of this section shall, make a complaint under oath or affirmation to any municipal judge or justice of such attack or threatened attack. Thereupon, the judge or justice shall immediately determine if there is probable cause to believe the dog is a dangerous dog and, if so [shall] may issue an order to any dog control officer, peace officer, acting pursuant to his or her special duties, or police officer directing such officer to immediately seize such dog and hold the same pending judicial determination as provided in this section. Whether or not the judge or justice finds there is probable cause for such seizure, he or she shall, within five days and upon written notice of not less than two days to the owner of the dog, hold a hearing on the complaint. The petitioner shall have the burden at such hearing to prove the dog is a "dangerous dog" by clear and convincing evidence. If satisfied that the dog is a dangerous dog, the judge or justice may issue an order to any dog control officer, peace officer, acting pursuant to his or her special duties, or police officer directing such officer to immediately seize

such dog and hold the same pending adequate proof satisfactory to the court of compliance with any other order of the court pursuant to this subdivision or subdivision three of this section, and further shall [then] order neutering or spaying of the dog, microchipping of the dog and one or more of the following as deemed appropriate under the circumstances and as deemed necessary for the protection of the public:

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

IV. PREVIOUSLY ENDORSED MEASURES

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

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

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

Redressing this outdated distinction between the New York City courts and the District Courts on Long Island would help meet particular judicial and operational needs in the busy courts of Nassau and Suffolk County. For example, in Nassau County, there has been a shortage of Supreme Court Justices available for assignment to the Felony Drug Treatment Court, a problem-solving court administered by the Nassau County Court. Allowing temporary service of District Court judges would promote the kind of flexibility in judicial assignments that is required for the effective discharge of judicial business.

Proposal

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

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

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

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

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

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

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

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

In People v Bartholemew, 31 Misc 3d 698 (Broome Co Ct 2011), the County Court, sitting as an intermediate appellate court, held that a criminal defendant appealing from an order of the Binghamton City Court could not appeal from a mechanical recording of the City Court's proceedings, and instead had to proceed by an affidavit of errors. The Court held that filing and serving the affidavit of errors is a jurisdictional prerequisite to an intermediate appellate court's hearing of the appeal, and that failure to file the affidavit of errors – even given a certified transcript of the proceeding below – was a non-waivable jurisdictional defect. Id. at 701,

following People v Duggan, 69 NY2d 931 (1987); see also Cash v Maggio, 38 Misc 3d 971, (Livingston Co Ct 2012) (no appeal from Justice Court to County Court except upon affidavit of errors despite presence of mechanical record of proceeding below).

Conversely, in People v Schumacher, 35 Misc 3d 1206 (Sullivan Co Ct 2012), the County Court, sitting as an intermediate appellate court, held that a criminal defendant appealing from a Justice Court could indeed appeal using the mechanical recording of the proceeding below. Disagreeing with the Bartholemew court, Schumacher reasoned that rigid adherence to the provisions of CPL article 460 governing appeals from local criminal court to an intermediate appellate court would "undermine the spirit of the [Judiciary's proceedings-recording] Order of 2008," which seeks to transition "local courts to a modernized and streamlined process." Id. The court reasoned that a criminal appellant "need not adhere to a statutory scheme that was appropriate when one used a quill and ink to generate a subjective affidavit of errors based on recollection of court proceedings; New York's local courts now have an economic, accurate, and expedited way, by mechanical recordings, to provide appellants with a transcribed record equivalent to a stenographic recording." Id.

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

Mechanical recording of local criminal court proceedings has become so common and well-proved that a settled transcript from those recordings is a more reliable basis to prosecute an appeal than subjectively reconstructing trial proceedings by manual affidavit of errors. Enacted in 1971, the existing statute governing intermediate appeals predates mechanical recordings by decades; in the current era of mechanical recording, the statute creates jurisdictional traps and much inefficiency for parties and courts alike. There is no defensible policy or practical reason

that appellants possessing an accurate recording and transcript thereof nevertheless must proceed on an affidavit of errors, especially given that the consequence of relying on the former is a non-waivable jurisdictional defect that can doom an appeal. Such outcomes are especially disfavored given that, for misdemeanors and violations, State policy is to minimize cost and complexity in service of access-to-justice objectives. Because preparing an affidavit of errors can be more costly than routine settlement of a transcript, this measure also would promote more cost-effective access to justice in local criminal courts in which there is no court stenographer.

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

Proposal

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

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

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

2. An appeal taken as of right to a county court or to an appellate term of the supreme court from a judgment, sentence or order of a local criminal court in a case in which the underlying proceedings were recorded by a court stenographer or by mechanical or electronic

means is taken in the manner provided in subdivision one; except that where no clerk is employed by such local criminal court the appellant must file the notice of appeal with the judge of such court, and must further file a copy thereof with the clerk of the appellate court to which the appeal is being taken.

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

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

When an appeal is taken by a defendant pursuant to section 450.10 or subdivision two of section 460.10, a transcript shall be prepared and settled and shall be filed with the criminal court by the court reporter. The expense for such transcript and any reproduced copies of such transcript shall be paid by the defendant. Where the defendant is granted permission to proceed as a poor person by the appellate court, the court reporter shall promptly make and file with the criminal court a transcript of the stenographic minutes of such proceedings as the appellate court shall direct. The expense of transcripts and any reproduced copies of transcripts prepared for poor persons under this section shall be a state charge payable out of funds appropriated to the office of court administration for that purpose. The appellate court shall where such is necessary for perfection of the appeal, order that the criminal court furnish a reproduced copy of such transcript to the defendant or his or her counsel.

§ 3. This act shall take effect on the first day of November next succeeding the date on which it shall have become law, and shall apply to all actions in which a notice of appeal from a

local criminal court to an intermediate appellate court is filed on or after such date.

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

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

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

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

While fully cognizant that under-age offenders are minors for whom our law must take an especially measured approach, New York State must ensure that courts have effectual remedies at their disposal when persons charged with under-age possession of alcohol fail to appear or complete court-ordered sentences. By doing so, the Legislature would promote respect for the law and the courts generally, and help prevent more serious offenses and concomitant risk to life.

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

This measure represents an amended version of a previous related offering: S.3188 and A.5722 of 2012. The prior measure also would have applied the license-suspension remedy to violations of Penal Law 221.05 (unlawful possession of marijuana). The current measure, by contrast, focuses exclusively on under-age possession of alcohol with intent to consume. It is cognizant that continuing to drive with a suspended license could expose the defendant to additional penalties. While such additional penalties may be appropriate under the circumstances, the Legislature is invited to weigh the collateral consequences of such further penalties and collaborate with the Judiciary to craft an amendment to this measure that would limit such collateral consequences in light of a defendant's under-age status.

Proposal

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

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

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

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

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

§ 2. Paragraph (a) of subdivision 4-a of section 510 of the vehicle and traffic law, as amended by chapter 63 of the laws of 2003, is amended to read as follows:

(a) Upon receipt of a court notification of the failure of a person to appear within sixty days of the return date or new subsequent adjourned date, pursuant to an appearance ticket charging said person with a violation of any of the provisions of this chapter (except one for

parking, stopping, or standing), or any violation of the tax law or of subdivision three of section sixty-five-c of the alcohol beverage control law or of the transportation law regulating traffic or of any lawful ordinance or regulation made by a local or public authority, relating to traffic (except one for parking, stopping or standing) or the failure to pay a fine imposed by a court, or in the case of a violation of subdivision three of section sixty-five-c of the alcohol beverage control law, the failure to complete an alcohol awareness program or complete community service imposed by the court as a sentence for such violation, the commissioner or his or her agent may suspend the driver's license or privileges of such person pending receipt of notice from the court that such person has appeared in response to such appearance ticket or has paid such fine or completed such alcohol awareness program or community service. Such suspension shall take effect no less thirty days from the day upon which notice thereof is sent by the commissioner to the person whose driver's license or privileges are to be suspended. Any suspension issued pursuant to this paragraph shall be subject to the provisions of paragraph (j-1) of subdivision two of section five hundred three of this [chapter] title.

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

(i) When a license issued pursuant to this article, or a privilege of operating a motor vehicle or of obtaining such a license, has been suspended based upon a failure to answer an appearance ticket or a summons or failure to pay a fine, penalty or mandatory surcharge, pursuant to subdivision three of section two hundred twenty-six, subdivision four of section two hundred twenty-seven[, subdivision four-a of section five hundred ten] or subdivision five-a of section eighteen hundred nine of this chapter, or upon a failure to answer an appearance ticket or summons, pay a fine, complete an alcohol awareness program or complete community service

imposed by a court pursuant to subdivision four-a of section five hundred ten of this chapter, such suspension shall remain in effect until a termination of a suspension fee of seventy dollars is paid to the court or tribunal that initiated the suspension of such license or privilege. In no event may the aggregate of the fees imposed by an individual court pursuant to this paragraph for the termination of all suspensions that may be terminated as a result of a person's answers, appearances or payments made in such cases pending before such individual court exceed four hundred dollars. For the purposes of this paragraph, the various locations of the administrative tribunal established under article two-A of this chapter shall be considered an individual court.

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

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

Such suspension shall be made upon notice to such person and shall remain in effect until such person appears in court, pays such fine or completes such program or community service to the satisfaction of the court.

§ 5. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law and shall apply where the unlawful possession of an alcoholic beverage with intent to consume occurred on or after such effective date.

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

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

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

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

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

the conditional discharge provides the court with a very useful tool for addressing substance abuse problems that may underlie an individual defendant's conviction for driving while impaired.

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

Proposal

AN ACT to amend the penal law, in relation to authority to impose a sentence of a fine and conditional discharge upon conviction for the offense of driving while ability impaired

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

Section 1. Paragraph (d) of subdivision 1 of section 60.20 of the penal law, as added by chapter 477 of the laws of 1970, is amended by adding a new paragraph (e) to read as follows:

(d) A sentence of intermittent imprisonment, as provided in article eighty-five[.]; or

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

§ 2. This act shall take effect on the thirtieth day after it shall have become a law and shall apply only where the traffic infraction was committed on or after such effective date.

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

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

Judicial hearing officers are retired judges appointed to perform certain designated judicial functions in civil and criminal courts pursuant to Article 22 of the Judiciary Law for the purpose of freeing judges to conduct more trials. People v. Scalza, 76 N.Y.2d 604, 608 (1990).

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

Experience has shown that after a case has been assigned to a judicial hearing officer under this provision the defendant frequently decides to plead guilty in lieu of proceeding to trial. This presents a problem in that section 350.20 does not expressly authorize a judicial hearing officer to accept a guilty plea; as a result, the matter must be returned to the judge from whom it originated for a final disposition. Return of the case to the originating judge defeats the very purpose of the original assignment, namely, to free the judge to dispose of matters involving more serious offenses.

This proposal would authorize the judicial hearing officer to accept a guilty plea by amending section 350.20 to provide that a judicial hearing officer shall have jurisdiction over the proceeding as defined in sections 1.20(24) and 10.30(1) of the Criminal Procedure Law. Section

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

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

Proposal

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

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

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

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

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

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

§ 3. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law and shall apply only to accusatory instruments filed on or after such effective date.

6. Expand Statewide the Current Authority for Single-Judge Trials in B Misdemeanor Cases
(CPL 340.40(2))

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

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

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

This measure would save substantial time and money in a number of ways. By freeing up limited jury resources, this measure would enlarge the misdemeanor trial capacity of the State's local criminal courts. By authorizing single-judge trials for offenses less than six months, this measure would shorten the time from arraignment to trial, reduce costs associated with impaneling juries, and ensure an adequate supply of jurors for the trial of more serious misdemeanors and felony charges. These fiscal and administrative advantages would especially benefit District Courts on Long Island, upstate City Courts and busy suburban Justice Courts.

Proposal

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

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

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

2. In any local criminal court a defendant who has entered a plea of not guilty to an information which charges a misdemeanor must be accorded a jury trial, conducted pursuant to article three hundred sixty, except that [in the New York city criminal court,] the trial of an information which charges a misdemeanor for which the authorized term of imprisonment is not more than six months must be a single judge trial. The defendant may at any time before trial waive a jury trial in the manner prescribed in subdivision two of section 320.10, and consent to a single judge trial.

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

7. Sealing Court Records of Action Dismissed on Motion of Prosecutor (CPL 160.50)

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

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

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

By authorizing the sealing of court records upon the prosecutor's motion to dismiss or

election not to proceed, this measure would extend the protections of section 160.50 to a person whose criminal case is terminated in his or her favor under these circumstances.

Proposal

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

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

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

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

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

(i) prior to the filing of an accusatory instrument in a local criminal court against such person or after the filing of the accusatory instrument but prior to an arraignment, the prosecutor elects not to prosecute such person. In such event, the prosecutor shall serve a certification of such disposition upon the division of criminal justice services and upon the appropriate police

department or law enforcement agency which, upon receipt thereof, shall comply with the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of this section in the same manner as is required thereunder with respect to an order of a court entered pursuant to said subdivision one.

§ 3. This act shall take effect immediately.

IV. FUTURE MATTERS

The Committee welcomes and stands ready to review ideas and suggestions proposed by judges, court employees, practitioners, bar associations and members of the public concerning all issues relating to the jurisdiction and operations of the Local Courts across New York State. Additionally, the Committee will continue to confer with the Chief Administrative Judge's other Advisory Committees whenever they may have a corresponding interest in issues relating to the jurisdiction and operations of the local courts. In 2014, the Committee looks forward to working with Chief Administrative Judge Prudenti to fill a number of vacancies arising from retirements and changes in elective status.

Respectfully submitted,

Hon. Joseph J. Cassata, Jr. – Chair

Daniel Alessandrino	Hon. William J. O'Brien
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Hon. Peter Moulton	Joseph Vitolo

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