



## 2024 Annual Conference

*Niagara Falls, New York*

# Addressing Rare Administrative and Legal Issues in Local Court

**Date: Tuesday, September 24, 2024**

**Instructors:**

**Joshua Shapiro, Esq.**

**Jennifer L. B. Katz, Esq.**

**MCLE: 1.0 Skills**

This program has been approved for credit in  
New York State for all attorneys  
including those who are Newly Admitted  
(less than 24 months) and administered by  
the Onondaga County Bar Association

**Joshua S. Shapiro Esq.** is the Special Counsel for the Town and Village Courts to the Administrative Judge of the Sixth Judicial District. In that role he primarily works with the District Supervising Judges, providing support and assistance to the 174 Town and Village Courts located within the Sixth District. Prior to that position Joshua spent 11 years as an Assistant District Attorney, beginning his career with the Suffolk County District Attorney and ending with the Broome County District Attorney, where he prosecuted violent felony offenses and homicides. During his career he has tried numerous criminal cases in Village, Town, District, County, and Supreme Courts in both Suffolk and Broome counties, running the gamut from simple misdemeanors up to and including murder cases. Joshua graduated from Binghamton University in 2003 and earned his JD from the University of Richmond School of Law in 2006. Joshua is admitted to practice law in New York State.

**Jennifer L. B. Katz Esq.** is the Chief Clerk of Binghamton City Court in the Sixth Judicial District. She administratively oversees the largest court in the Sixth Judicial District with three full time Judges and a staff of 20 employees. Before joining the NYS Court System, Jennifer was the Director of Employee Relations for Broome County. She has over a decade of experience with negotiating union contracts and handling employee performance issues. Jennifer graduated with a degree in management from Binghamton University, earned her JD from the University of Buffalo School of Law, and her MHRM from Rutgers University.

## ADDRESSING RARE ADMINISTRATIVE AND LEGAL ISSUES IN LOCAL COURT

**COURSE:** Addressing Rare Administrative and Legal Issues in Local Court

**Credit/Category:** 1.0 Skills

**1:00-1:05** Introduction (Joshua Shapiro)

**1:05-1:10** Media Case Requests (Joshua Shapiro & Jennifer Katz)

- I. Public Access to Courtrooms; (Joshua Shapiro)
- II. Records Requests; (Jennifer Katz – 2 minutes)
- III. Requests for Audio-visual recording; (Joshua Shapiro)
  - a. Part 131 of the Rules of the Chief Judge
- IV. Procedure; (Joshua Shapiro)
- V. Restrictions; (Joshua Shapiro)

**1:10-1:15** Stop-Arm & Automated Work Zone Speed Offenses (Joshua Shapiro & Jennifer Katz)

- I. Overview of VTL 1174-a (Joshua Shapiro)
- II. Overview of VTL 1180-3 (Joshua Shapiro)
- III. Administrative Considerations (Jennifer Katz – 2 minutes)

**1:15 – 1:18** Out of County Warrant Endorsement Requests (Joshua Shapiro)

- I. CPL 120.70(2)

**1:18-1:21** Arraignments (Joshua Shapiro)

- I. Missing District Attorney
- II. Missing Defense Attorney & CPL 500.10(2)

**1:21 – 1:26** Failures to Appear (Joshua Shapiro & Jennifer Katz)

- I. Adjournments;
- II. Arrest Warrants;
- III. Bench Warrants;
- IV. Bail Forfeiture (Jennifer Katz – 2 minutes)

**1:26-1:30** Impaired/Uncooperative Defendants (Joshua Shapiro)

- I. Impaired Defendants;
- II. Uncooperative Defendants
  - a. Sovereign Citizens
  - b. "First Amendment Auditors"

**1:30 – 1:32** Impossible to data enter non-existent charges (Jennifer Katz)

**1:32 – 1:37** Rent Undertakings (Joshua Shapiro & Jennifer Katz)

- I. Legal Considerations (Joshua Shapiro 3 Minutes);
- II. Administrative Considerations (Jennifer Katz, 2 Minutes);

**1:37 – 1:40:** Ex-Parte Communications (Jennifer Katz);

**1:40 – 1:45:** Fugitive From Justice Complaints (Joshua Shapiro)

- I. Arrests without a warrant, CPL 570.34;
- II. Issuing a Judicial Warrant of Arrest, CPL 570.32;
- III. Verification, CPL 100.30;
- IV. Procedure at Arraignment;

**1:45-1:50:** Lightning Round Administrative Issues (Jennifer Katz)

- I. Copies of Accusatory Instruments;
- II. Incorrect RAP sheets;
- III. Disposal of ancient documents;
- IV. Personal Checks;
- V. Cash;
- VI. Overpayments;
- VII. Liberty Recorder Malfunctions;

**1:50-1:53:** Records Management (Jennifer Katz)

- I. Misdemeanor Case Files;
- II. Felony Case Files;
- III. VTL Files;

**1:53 – 1:55** Drivers License Suspension Reform Act (Joshua Shapiro)

- I. CPL 420.10(6) Civil Judgments

**1:55-2:00** Paperless Alternatives (Jennifer Katz)

- I. Considerations
- II. Procedures
- III. Planning

# **Addressing Rare Administrative and Legal Issues in Local Court**

*Presented By:*

**Joshua S. Shapiro, Esq., Special Counsel for  
Town and Village Courts, 6<sup>th</sup> Judicial District**

**Jennifer L. B. Katz, Esq., Chief Clerk of  
Binghamton City Court, 6<sup>th</sup> Judicial District**

## **What will be covered today:**

1. How to react to “once in a blue moon” legal scenarios;
2. How to react to “once in a blue moon” administrative scenarios;
3. Records management;
4. Considerations when going paperless.

## **What do I do when...? Goals**

- How to legally and clerically handle strange situations that arise.
- Legal support and reasoning behind clerical procedures.
- Leave the presentation with a cheat sheet of what to do in unusual circumstances.

## **...I have a media case?**

- All courtrooms are open to the public (including the media) unless the matter is AEYO
- All court records are open to the public and available upon request unless they are sealed
  - Search & Copy fees may be charged

## **Requests for audio-visual recording of proceedings**

- Governed by Part 131 of the Rules of the Chief Administrative Judge
- It is the policy of the UCS to facilitate audio-visual coverage of court proceedings to the fullest extent permitted by the New York Civil Rights Law and other statutes, as interpreted by New York Courts. (Part 131.1(a)).

## **Part 131 Restrictions**

- No recording of proceedings in which witnesses are testifying;
- No recording that would disrupt the orderly flow of court proceedings, or which would "detract from or interfere with the dignity or decorum of the court."
- No recording that would compromise the safety of persons having business before the court;
- No recording of any jurors!
- No more than two motion picture cameras per proceeding and no more than two still photographers (consider directing a "pool" camera);
- No distracting light or sound;

## **Part 131 Restrictions (cont)**

- No recording of conferences that occur between attorneys and their clients, between co-counsel of a client, or between counsel and the judge;
- No recording of in-chambers conferences;
- No recording during voir dire at a jury trial;
- No recording of any sex offense victims;
- No recording if it would endanger the subject of the recording;
- No recording of any proceedings closed to the public;
- No recording of any suppression hearing without the prior consent of all parties;

## **Part 131.3 Procedure**

1. Written or oral application by the media to the presiding judge;
2. Consultation with counsel to all parties to the proceeding;
3. Review of any statements or affidavits presented concerning the coverage;
4. Consent of the parties is not required;
5. Mandatory pretrial conference required



## **Part 131.3 Standard**

1. In determining an application for coverage, the presiding judge must consider all relevant factors including but not limited to:
  - a) The type of case involved;
  - b) Whether the coverage would cause harm to any participant;
  - c) Whether the coverage would interfere with the fair administration of justice, the advancement of a fair trial, or the rights of the parties;
  - d) Whether the coverage would interfere with any law enforcement activity;
  - e) Whether the proceedings would involve lewd or scandalous matters;
  - f) The objections of any of the parties, victims or other participants in the proceeding of which coverage is sought;
  - g) The physical structure of the courtroom and the likelihood that any equipment required to conduct coverage of proceedings can be installed and operated without disturbance to those proceedings or any other proceedings in the courthouse; and
  - h) The extent to which the coverage would be barred by law in the judicial proceeding of which coverage is sought.
  - i) The judge must also consider and give great weight to the fact that any party, victim or other participant in the proceeding is a child

### **...A school bus stop-arm / automated work zone speed offense has been filed**

- Stop-arm offenses: Governed by VTL 1174-a
- Automated Work Zone Speed Enforcement offenses: Governed by VTL 1180-E

### **VTL 1174-a**

- Action is commenced by a “Notice of Liability served via first class mail;”
- A sworn “technician’s certificate” shall be prima facie evidence of the facts contained therein. VTL 1174-a(4)(d);
- Action is civil in nature;
- Penalties: \$250 for first offense, \$275 for second offence in 18 months, \$300 for third offense in 18 months;
- May be commenced in any local criminal court with jurisdiction over the traffic offense;
- Failure to contest is deemed an admission of liability and a default judgment may be entered thereon;
- There is a presumption that the registered owner was the operator of the motor vehicle;

### **VTL 1180-e**

- Statute is nearly identical to VTL 1174-a

## **Administrative Considerations**

- Scheduling
- Calendaring
- Pre-trial conferences
- Entry of Judgment
- Collection of Penalty: No court should collect penalty, payment is made to the agency bringing the action or their designee;

## **...The police want you to endorse an out-of-county warrant**

- C.P.L. 120.70(2): A warrant of arrest issued by a city court, a town court or a village court may be executed:
  - a) In the county of issuance or in any adjoining county; or
  - b) Anywhere else in the state upon the written endorsement thereon of a local criminal court of the county in which the arrest is to be made. When so endorsed, the warrant is deemed the process of the endorsing court as well as that of the issuing court

## **...I want to remand?**

- Qualifying
- Not qualifying
  - Willful and persistent
  - Exceptions
  - Judicial discretion
- Nominal bail

## **...when there isn't a DA present?**

- The District Attorney has a right to be heard concerning bail on all felony cases;
  - The District Attorney can waive this right, either explicitly or implicitly;
- The District Attorney may be heard concerning bail on misdemeanor cases;
  - Discretion of the court;

### **...when there isn't a PD present?**

- Defendant has the right to an attorney at every arraignment. C.P.L. 500.10(2)
- If no attorney is available due to extraordinary circumstances, consider:
  - a) Adjournment of proceedings if possible;
  - b) Virtual arraignment if permissible;
  - c) Securing order determination with adjournment to earliest possible next business day for continuation of proceedings;

### **...when a defendant fails to appear?**

- Adjourn and send an appearance ticket
- Arrest warrant
  - No show for arraignment
  - Multiple failures to appear
- Bench warrant
  - New charges
  - Violation
  - Multiple failures to appear
- Forfeiting Bail

### **...when a defendant appears impaired?**

- Very High Standard: That the defendant is so impaired that he cannot understand the nature of the proceedings;
- Adjourn if necessary;

### **...when a defendant is uncooperative?**

- Defendant has the right to be present at the proceedings but can forfeit that right;
- Give Ample Warnings on the Record!
- Summary Contempt is possible but usually inadvisable;

**...when a defendant claims I  
don't have jurisdiction over  
them?**

- "Sovereign" Citizens;
- "First Amendment Auditors;"

**...when an accusatory instrument  
cites a charge that does not  
exist?**

- If a local criminal court accusatory instrument filed with a local criminal court pursuant to section 140.20, 140.25 or 140.40 is not sufficient on its face... and if the court is satisfied that on the bases of the available facts or evidence it would be impossible to draw and file an accusatory instrument which is sufficient on its face, it must dismiss such accusatory instrument and discharge the defendant. C.P.L. 140.45

### **...when a tenant wants to pay rent to the court?**

- In a judgment for non-payment of rent, the court shall vacate a warrant upon tender or deposit with the court of the full rent due at any time prior to its execution, unless the petitioner establishes that the tenant withheld the rent due in bad faith. RPAPL 749(3)

### **...when a tenant wants to pay rent to the court?**

- Money must be accepted by clerk of court;
- Place in bail/bond account (if applicable);
- Issue stay of warrant;
- Schedule matter for prompt conference and/or hearing;
  - Issues at hearing are whether:
    - Amount is total amount of rent due as of date of judgment; and
    - Whether rent was withheld “in bad faith.”



## **...when the SPCA wants an undertaking in an Animal Cruelty case (AML 373(6))?**

- The American Society for the Prevention of Cruelty to Animals or any duly incorporated society for the prevention of cruelty to animals can take any animal which was the subject of abuse into it's care and custody. AML 373(2)

## **Undertaking Procedure**

1. SPCA or DA files a petition with the court asking the court to direct the defendant to post a security;
  - a. Shall be in the amount "sufficient to secure payment for all reasonable expenses expected to be incurred by the impounding organization in caring and providing for the animal(s) pending disposition of the charges;
  - b. Includes estimated medical care and boarding of the animal(s) for at least 30 days;
2. The court schedules a hearing on the petition within 10 business days of the filing of such petition;
  - a. Petition must be served by the petitioner on the defendant and the District Attorney;
3. Petitioner has the burden at the hearing of proving by a preponderance of the evidence that the person from whom the animal was seized violated a provision of the Agriculture & Markets Law Article 26;
4. Security must be posted with the clerk within 5 business days.
5. The court may order the immediate forfeiture of the seized animal(s) to the impounding organization if the person ordered to post the security fails to do so.

### **...when I receive ex-parte communication?**

- In courts with a clerk, clerk may return communication without presenting to the judge;
- In courts without a clerk, judge should disclose existence of communication to the parties;
  - Consideration if information contains sensitive information
  - Advisory Committee on Judicial Ethics 1 (866)-795-8343, [part100@nycourts.gov](mailto:part100@nycourts.gov)

### **...when a Fugitive Complaint is filed in my court?**

- Governed by CPL Article 570 which sets for the procedure for the “arrest and delivering up of a person charged with a crime in one state or territory of the United States who presently is at large in another state or territory of the United States.”

## **Three Mechanisms For Arrest**

1. Warrantless Arrest, C.P.L. § 570.34
2. Judicial Warrant of Arrest, C.P.L. §570.32;
3. Governor's Warrant, C.P.L. §570.18;

## **Warrantless Arrest**

1. "Warrantless" refers to no locally endorsed warrant issued within New York State;

2. Governed by CPL § 570.34:

–The arrest of a person in this state may be lawfully made also by any police officer or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year; but when so arrested the accused must be taken before a local criminal court with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and, thereafter, his answers shall be heard as if he had been arrested on a warrant.

## **Warrantless Arrest**

1. Crime in the other state must be one that is “punishable by death or by imprisonment of more than one year.”

–In Other Words... A felony.

2. Complaint “must be made against him under oath setting for the ground for the arrest.”

–Fugitive From Justice Complaint

## **Fugitive From Justice Complaint**

1. Complaint “must be made against him under oath setting for the ground for the arrest.”

–“Oath” includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated. C.P.L. §1.20(38)

2. Must include the out of state warrant.

## Methods of Verification of FFJ Complaints

1. Sworn to before the court with which it is filed;
2. Sworn to before a desk officer in charge at a police station or police headquarters or any of his superior officers;
3. Such instrument may bear a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law...;
4. Such instrument may be sworn before a notary public.

C.P.L. § 100.30

## Arrest Pursuant to a Judicial Warrant

1. Refers to a locally endorsed warrant issued within New York State;
2. Governed by CPL § 570.32:

—Whenever any person within this state shall be charged on the oath of any credible person before any local criminal court of this state with the commission of any crime in any other state and, except in cases arising under section 570.14 or 570.16, with having fled from justice, or, with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or, whenever complaint shall have been made before any local criminal court in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such other state with the commission of the crime, and, except in cases arising under section 570.14 or 570.16, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation or parole and is believed to be in this state, the local criminal court shall issue a warrant directed to any police officer directing him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other local criminal court which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to such warrant.

## **Requirements for Local Warrant of Arrest**

1. Charged on the oath of a credible person (FFJ Complaint);
2. Accused of committing a “crime” in any other state; and
3. Accused of having “fled from justice”
  - a. Exception: C.P.L. 570.14 – Defendant left state involuntarily;
  - b. Exception: CPL 570.16 – Defendant not present in state at time crime was committed, if conduct constituting crime took place AND conduct would be a crime under New York Law if the consequences of the conduct took place in New York.

OR:

## **Requirements for Local Warrant of Arrest**

1. Charged on the oath of a credible person (FFJ Complaint);
2. Accused of having been convicted of a crime;
3. Accused of having escaped from confinement, or broken the terms of his bail, probation or parole

## **Procedure At Arraignment**

1. Local Criminal Court must determine whether the “person held is the person charged with having committed the crime alleged, and whether the person “fled from justice.” C.P.L. 570.36\*
2. Standard / Burden of Proof is “It appears that the person held is the person charged with having committed the crime alleged, and fled from justice.”
3. After finding, the local criminal court commits the defendant (without ball) to the county jail for a period not to exceed 30 days.

**\*ID Hearing May Be Necessary**

## **...When Lightning Round**

1. When an agency is filing a copy of an accusatory instrument?
2. When someone comes to me claiming that the RAP sheet is wrong?
3. When I want to clean out my chambers and come across very old documents?
4. When someone pays with a personal check?
5. When someone sends cash in the mail?
6. When someone overpays?
7. When I forget to turn the Liberty Recorder on?

## **Records Management:**

- Governed by the Division of Professional and Court Services Office of Records Management
- You must submit a Records Disposition Authorization to dispose of anything
- Keep any files that end in the year "0" (this is considered a sample year)
- Keep anything prior to 1950

<https://www.nycourts.gov/legacyPDFs/admin/recordsmanagement/LowerCriminal.pdf>  
(212) 428-2878

## **Criminal Misdemeanors:**

- Disposed Cases
  - Retain for 25 years
- Cases terminated in Favor of the Defendant
  - Retain for 6 years (even if it is a sample year)
- Undisposed Cases
  - Retain for fifty years



## **Felony Arraignments:**

- Disposed Cases
  - Retain for 25 years from date of disposition
- Cases Held for Grand Jury
  - One year from date of disposition
- Cases terminated in Favor of the Defendant
  - Retain for 6 years
- Undisposed Cases
  - Retain for 75 years

## **Motor Vehicle/Traffic Infractions:**

- Disposed Cases
  - DWAI: Retain for 10 years from date of disposition
  - All other infractions: Retain for 6 years from date of disposition
- Adjudicated but not Satisfied
  - Retain for 20 years
- Undisposed Cases
  - Retain for 20 years

## **Driver's License Suspension Reform Act**

1. No suspensions/scoffs for failure to pay a fine;
2. Consider Alternatives such as a civil judgment, CPL 420.10(6);
  - a. The Court issues a written order of judgment;
  - b. The Court issues an order directing the district attorney to file a certified copy of such order with the county clerk;
  - c. May be issued for fines, restitution or reparation;
  - d. May not be issued for suspension lift fee

## **Civil Case Files:**

- Retain for 25 years from date of initiation

<https://www.nycourts.gov/legacyPDFs/admin/recordsmanagement/LowerCivil.pdf>

## **Going Paperless**

- Certification for Electronic Records Form

[https://ww2.nycourts.gov/sites/default/files/document/files/2022-04/ElecRecCertForm-rev2021DIGITAL\\_0\\_0.pdf](https://ww2.nycourts.gov/sites/default/files/document/files/2022-04/ElecRecCertForm-rev2021DIGITAL_0_0.pdf)

## **Considerations**

- Assess filing procedures
- Use of control dates
- Naming Conventions
- Scan for a future transition

## **Assess Filing Procedures**

- How are your files currently being organized?
  - Alphabetically
  - Appearance (month)
  - Separated
    - Traffic
    - Grand jury control
    - Warrants

## **Use of Control Dates**

- How do you know when the next appearance is?
- If you no longer had files, how would you know what the status of your cases?
  - Reports available?
- Control dates on everything.

## **Naming Conventions**

- All scanned documents should be named the same thing
  - Judge should be able to easily identify
- Whole files vs. separate documents
- Check mark to indicate that the document has been scanned

## **Plan for a Future Transition**

- Act as if you are fileless, even while you are required to maintain paper files.
- Scan as each document comes in.
- Label consistently for ease of transition.
- Control dates on every case.

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## Rules of the Chief Administrative Judge

### *PART 131. Audio-Visual Coverage Of Judicial Proceedings*

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131.1 Purpose; general provisions

131.2 Definitions

131.3 Application for audio-visual coverage

131.4 Review

131.5 Mandatory pretrial conference.

131.6 Use and deployment of equipment and personnel by the news media.

131.7 Additional restrictions on coverage

131.8 Supervision of audio-visual coverage

131.9 Appellate courts.

131.10 Forms

Section 131.1 Purpose; general provisions.

(a) In order to maintain the broadest scope of public access to the courts, to preserve public confidence in the Judiciary, and to foster public understanding of the role of the Judicial Branch in civil society, it is the policy of the Unified Court System to facilitate the audio-visual coverage of court proceedings to the fullest extent permitted by the New York Civil Rights Law and other statutes, as interpreted by New York courts, pursuant to the rules set forth below.

(b) Audio-visual coverage of proceedings in which the testimony of parties or witnesses by subpoena or other compulsory process is or may be taken is prohibited. (See, Civil Rights Law §52.)

(c) Audio-visual coverage of party or witness testimony in any court proceeding (other than a plea at an arraignment) is prohibited.

(d) Nothing in these rules is intended to restrict any preexisting right of the news media to appear at and to report on judicial proceedings in accordance with law.

(e) Nothing in these rules is intended to restrict the power and discretion of the presiding trial judge to control the conduct of judicial proceedings.

(f) No judicial proceeding shall be scheduled, delayed, reenacted or continued at the request of, or for the convenience of, the news media.

(g) In addition to their specific responsibilities as provided in these rules, all presiding trial judges and all administrative judges shall take whatever steps are necessary to insure that audio-visual coverage is conducted without disruption of court activities, without detracting from or interfering with the dignity or decorum of the court, courtrooms and court facilities, without compromise of the safety of persons having business before the court, and without adversely affecting the administration of justice.

Historical Note

Sec. filed July 14, 1986; renum. 133.1, new filed Dec. 2, 1987; amds. filed: Oct. 17, 1989; Nov. 12, 1992; March 23, 1995 eff. March 23, 1995. Amended (b).

Amended on Feb 1, 2016, effective March 1, 2016.



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### Section 131.2 Definitions.

For purposes of this Part:

- (a) "Administrative judge" shall mean the administrative judge of each judicial district; the administrative judge of Nassau County or of Suffolk County; the administrative judge of the Civil Court of the City of New York, the Criminal Court of the City of New York or the Family Court of the City of New York; or the presiding judge of the Court of Claims.
- (b) "Audio-visual coverage" or "coverage" shall mean the electronic broadcasting or other transmission to the public of radio or television signals from the courtroom, or the recording of sound or light in the courtroom for later transmission or reproduction, or the taking of motion pictures in the courtroom by the news media. To the extent required by law, it shall also mean the taking of still pictures.
- (c) "News media" shall mean any news-reporting or news-gathering agency and any employee or agent associated with such agency, including television, radio, radio and television networks, news services, newspapers, magazines, trade papers, in-house publications, professional journals, or any other news-reporting or news-gathering agency, the function of which is to inform the public or some segment thereof.
- (d) "Presiding trial judge" shall mean the justice or judge presiding over judicial proceedings at which audio-visual coverage is authorized pursuant to this Part.
- (e) "Judicial proceedings" shall mean the proceedings of a court or a judge thereof conducted in a courtroom or any other facility being used as a courtroom.
- (f) "Child" shall mean a person who has not attained the age of 16 years.
- (g) "Arrestment" shall have the same meaning as such term is defined in subdivision nine of section 1.20 of the Criminal Procedure Law.

#### Historical Note

Sec. filed Dec. 2, 1987; ams. filed: Oct. 17, 1989; Nov. 12, 1992 eff. Nov. 5, 1992. Amended (i); added (j)-(k).

Amended on Feb 1, 2016, effective March 1, 2016.



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### Section 131.3 Application for audio-visual coverage.

- (a) Coverage of judicial proceedings shall be permitted only upon order of the presiding trial judge approving an oral or written application made by a representative of the news media for permission to conduct such coverage.
- (b) Upon receipt of an application, the presiding trial judge shall conduct such review as may be appropriate, including:
- (1) consultation with the news media applicant;
  - (2) consultation with counsel to all parties to the proceeding of which coverage is sought, who shall be responsible for identifying any concerns or objections of the parties, prospective witnesses, and victims, if any, with respect to the proposed coverage, and advising the court thereof;

(3) review of all statements or affidavits presented to the presiding trial judge concerning the proposed coverage.

Where the proceedings of which coverage is sought involve a child, a victim, or a party, any of whom object to such coverage, and in any other appropriate instance, the presiding trial judge may hold such conferences and conduct any direct inquiry as may be fitting.

(c) Except as otherwise provided by law or section 131.7 of this Part, consent of the parties or other participants in judicial proceedings of which coverage is sought is not required for approval of an application for such coverage.

(d) In determining an application for coverage, the presiding trial judge shall consider all relevant factors, including but not limited to:

- (1) the type of case involved;
- (2) whether the coverage would cause harm to any participant;
- (3) whether the coverage would interfere with the fair administration of justice, the advancement of a fair trial, or the rights of the parties;
- (4) whether the coverage would interfere with any law enforcement activity;
- (5) whether the proceedings would involve lewd or scandalous matters;
- (6) the objections of any of the parties, victims or other participants in the proceeding of which coverage is sought;
- (7) the physical structure of the courtroom and the likelihood that any equipment required to conduct coverage of proceedings can be installed and operated without disturbance to those proceedings or any other proceedings in the courthouse; and
- (8) the extent to which the coverage would be barred by law in the judicial proceeding of which coverage is sought.

The presiding trial judge also shall consider and give great weight to the fact that any party, victim, or other participant in the proceeding is a child.

(e) Following review of an application for coverage of a judicial proceeding, the presiding trial judge, as soon as practicable, shall issue an order, in writing or on the record in open court, approving such application, in whole or in part, or denying it. Such order shall contain any restrictions imposed by the judge on the audio-visual coverage and shall contain a statement advising the parties that any violation of the order is punishable by contempt pursuant to article 19 of the Judiciary Law. Such order shall be included in the record of such proceedings and, unless it wholly approves the application and no party or victim objected to coverage, it shall state the basis for its determination.

(f) Before denying an application for coverage, the presiding trial judge shall consider whether such coverage properly could be approved with the imposition of special limitations, including but not limited to:

- (1) delayed broadcast of the proceedings subject to coverage provided, however, where delayed broadcast is directed, it shall be only for the purpose of assisting the news media to comply with the restrictions on coverage provided by law or by the presiding trial judge; or
- (2) modification or prohibition of video or audio-visual coverage of portions of the proceedings.

Historical Note

Sec. filed Dec. 2, 1987 eff. Dec. 1, 1987.

Amended on Feb 1, 2016, effective March 1, 2016.





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**Section 131.4 Review.**

No judicial proceeding shall be delayed or continued to allow for review of an order denying coverage in whole or in part.

**Historical Note**

Sec. filed Dec. 2, 1987; amd. filed Oct. 17, 1989 eff. Oct. 11, 1989. Amended (d).

Amended on [Feb 1, 2016](#), effective March 1, 2016.



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**Section 131.5 Mandatory pretrial conference.**

(a) Where a presiding trial judge has approved, in whole or in part, an application for coverage of any judicial proceeding, the judge, before any such coverage is to begin, shall conduct a pretrial conference for the purpose of reviewing, with counsel to all parties to the proceeding and with representatives of the news media who will provide such coverage, any objections to coverage that have been raised, the scope of coverage to be permitted, the nature and extent of the technical equipment and personnel to be deployed, and the restrictions on coverage to be observed. The court may include in the conference any other person whom it deems appropriate, including prospective witnesses and their representatives.

(b) Where two or more representatives of the news media are parties to an approved application for coverage, no such coverage may begin until all such representatives have agreed upon a pooling arrangement for their respective news media prior to the pretrial conference. Such pooling arrangement shall include the designation of pool operators and replacement pool operators for the electronic and motion picture media and for the still photography media, as appropriate. It also shall include procedures for the cost-sharing and dissemination of audio-visual material and shall make due provision for educational users' needs for full coverage of entire proceedings. The presiding trial judge shall not be called upon to mediate or resolve any dispute as to such arrangement. Nothing herein shall prohibit a person or organization that was not party to an approved application for coverage from making appropriate arrangements with the pool operator to be given access to the audio-visual material produced by the pool.

(c) In determining the scope of coverage to be permitted, the presiding trial judge shall be guided by a consideration of all relevant factors, including those prescribed in subdivision (d) of section 131.3 of this Part. Wherever necessary or appropriate, the presiding trial judge shall, at any time before or during the proceeding, proscribe coverage or modify, expand, impose, or remove special limitations on coverage.

**Historical Note**

Sec. filed Dec. 2, 1987 eff. Dec. 1, 1987.

Amended on [Feb 1, 2016](#), effective March 1, 2016.



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**Section 131.6 Use and deployment of equipment and personnel by the news media.**

(a) Limitations upon use of equipment and personnel in the courtroom.

- (1) No more than two electronic or motion picture cameras and two camera operators shall be permitted in any proceeding.
  - (2) No more than two photographers to operate one still camera each shall be permitted in any proceeding.
  - (3) No more than one audio system for broadcast purposes shall be permitted in any proceeding. Audio pickup for all news media purposes shall be effectuated through existing audio systems in the court facility. If no technically suitable audio system is available, microphones and related wiring essential for media purposes shall be supplied by those persons providing coverage. Any microphones and sound wiring shall be unobtrusive and placed where designated by the presiding trial judge.
  - (4) Notwithstanding the provisions of paragraphs (1)-(3) of this subdivision, the presiding trial judge on a finding of special circumstances may modify any restriction on the amount of equipment or number of operating personnel in the courtroom, compatible with the dignity of the court or the judicial process.
- (b) Sound and light criteria.
- (1) Only electronic and motion picture cameras, audio equipment and still camera equipment that do not produce distracting sound or light may be employed to cover judicial proceedings.
  - (2) No motorized drives, moving lights, flash attachments, or sudden lighting changes shall be permitted during coverage of judicial proceedings.
  - (3) No light or signal visible or audible to trial participants shall be used on any equipment during coverage to indicate whether it is operating.
  - (4) With the concurrence of the presiding trial judge and the administrative judge, modifications and additions may be made in light sources existing in the court facility, provided such modifications or additions are installed and maintained at media expense and are not distracting or otherwise offensive.
- (c) Location of equipment and personnel. Electronic and motion picture cameras, still cameras, and camera personnel shall be positioned in such locations as shall be designated by the presiding trial judge. The areas designated shall provide the news media with reasonable access to the persons they wish to cover while causing the least possible interference with court proceedings. Equipment that is not necessary for audio-visual coverage from inside the courtroom shall be located in an area outside the courtroom.
- (d) Movement of equipment and media personnel. During the proceedings, operating personnel shall not move about, nor shall there be placement, movement or removal of equipment, or the changing of film, film magazines or lenses. All such activities shall take place each day before the proceeding begins, after it ends, or during a recess.
- (e) Identifying insignia. Identifying marks, call letters, words, and symbols shall be concealed on all equipment. Persons operating such equipment shall not display any identifying insignia on their clothing.
- (f) Other restrictions. The presiding trial judge may impose any other restriction on the use and deployment of equipment and personnel as may be appropriate.

Historical Note

Sec. filed Dec. 2, 1987; amd. filed Nov. 12, 1992 eff. Nov. 5, 1992. Amended (f).

Amended on [Feb 1, 2016](#), effective March 1, 2016.



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**Section 131.7 Additional restrictions on coverage.**

- (a) No audio pickup or audio broadcast of conferences that occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding trial judge, shall be permitted without the prior express consent of all participants in the conference.
- (b) No conference in chambers shall be subject to coverage.
- (c) No coverage of the selection of the prospective jury during voir dire shall be permitted.
- (d) No coverage of the jury, or of any juror or alternate juror, while in the jury box, in the courtroom, in the jury deliberation room, or during recess, or while going to or from the deliberation room at any time, shall be permitted provided, however, that, upon consent of the foreperson of a jury, the presiding trial judge may, in his or her discretion, permit audio coverage of such foreperson delivering a verdict.
- (e) No coverage shall be permitted of the victim in a prosecution for rape, sodomy, sexual abuse, or other sex offense under article 130 or section 255.25 of the Penal Law; notwithstanding the initial approval of a request for audio-visual coverage of such a proceeding, the presiding trial judge shall have discretion throughout the proceeding to limit any coverage that would identify the victim.
- (f) No coverage of any participant shall be permitted if the presiding trial judge finds that such coverage is liable to endanger the safety of any person.
- (g) No coverage of any judicial proceedings that are by law closed to the public, or that may be closed to the public and that have been closed by the presiding trial judge, shall be permitted.
- (h) No coverage of any suppression hearing shall be permitted without the prior consent of all parties to the proceeding.

**Historical Note**

Sec. filed Dec. 2, 1987; amds. filed: Oct. 17, 1989; Nov. 12, 1992 eff. Nov. 5, 1992. Amended (d), (g), (j); added (k).

Amended on [Feb 1, 2016](#), effective March 1, 2016.



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**Section 131.8 Supervision of audio-visual coverage.**

- (a) Coverage of judicial proceedings shall be subject to the continuing supervision of the presiding trial judge. No coverage shall take place within the courtroom, whether during recesses or at any other time, when the presiding trial judge is not present and presiding.
- (b) Notwithstanding the approval of an application for permission to provide coverage of judicial proceedings, the presiding trial judge shall have discretion throughout such proceedings to revoke such approval or to limit the coverage authorized in any way.

**Historical Note**

Sec. filed Dec. 2, 1987; amd. filed Oct. 17, 1989 eff. Oct. 11, 1989. Added (c).

Amended on [Feb 1, 2016](#), effective March 1, 2016.



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**Section 131.9 Appellate courts.**

These rules shall not apply to coverage of proceedings in appellate courts or affect the rules governing such coverage contained in Part 29 of the Rules of the Chief Judge (22 NYCRR Part 29).

Historical Note

Sec. filed Dec. 2, 1987 eff. Dec. 1, 1987.

Amended on [Feb 1, 2016](#), effective March 1, 2016.



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**Section 131.10 Forms.**

The Chief Administrator will promulgate and make available forms for applications and judicial orders pursuant to section 131.3 of this Part.

Historical Note

Sec. filed Dec. 2, 1987; ams. filed: Oct. 17, 1989; Nov. 12, 1992 eff. Nov. 5, 1992.

Amended on [Feb 1, 2016](#), effective March 1, 2016.



McKinney's Consolidated Laws of New York Annotated  
Vehicle and Traffic Law (Refs & Annos)  
Chapter Seventy-One. Of the Consolidated Laws (Refs & Annos)  
Title VII. Rules of the Road  
Article 29. Special Stops Required

McKinney's Vehicle and Traffic Law § 1174-a

§ 1174-a. Owner liability for failure of operator to stop for  
a school bus displaying a red visual signal and stop-arm

Effective: September 5, 2019  
Currentness

<[Expires and deemed repealed Dec. 1, 2024, pursuant to L.2019, c. 145, § 25.]>

(a) 1. Notwithstanding any other provision of law, a county, city, town or village located within a school district ("district") is hereby authorized and empowered to adopt and amend a local law or ordinance establishing a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with section eleven hundred seventy-four of this chapter when meeting a school bus marked and equipped as provided in subdivisions twenty and twenty-one-c of section three hundred seventy-five of this chapter and operated in such county, city, town or village, in accordance with the provisions of this section. Such demonstration program shall empower such county, city, town or village to install and operate school bus photo violation monitoring systems which may be stationary or mobile, and which may be installed, pursuant to an agreement with a school district within such county, city, town or village, on school buses owned and operated by such school district or privately owned and operated for compensation under contract with such district. Provided, however, that (a) no stationary school bus photo violation monitoring system shall be installed or operated by a county, city, town or village except on roadways under the jurisdiction of such county, city, town or village, and (b) no mobile school bus photo violation monitoring system shall be installed or operated on any such school buses unless such county, city, town or village and such district enter into an agreement for such installation and operation.

1-a. Any county, city, town or village, located within a school district, that has adopted a local law or ordinance pursuant to this section establishing a demonstration program imposing liability on the owner of a vehicle for failure of an operator thereof to comply with section eleven hundred seventy-four of this chapter when meeting a school bus marked and equipped as provided in subdivisions twenty and twenty-one-c of section three hundred seventy-five of this chapter and operated in such county, city, town or village may enter into an agreement with the applicable school district for the installation, maintenance and use of school bus photo violation monitoring systems on school buses pursuant to this section and section twenty-two of the chapter of the laws of two thousand nineteen which added this section, for the proper handling and custody of photographs, microphotographs, videotapes, other recorded images and data produced by such systems, and for the forwarding of such photographs, microphotographs, videotapes, other recorded images and data to the applicable county, city, town or village. Any agreement entered into hereunder shall be approved by each participating county, city, town or village by a majority vote of the voting strength of its governing body and by resolution of the district pursuant to section sixteen hundred four, section seventeen hundred nine, section twenty-five hundred three, section twenty-five hundred fifty-four or section twenty-five hundred ninety-h of the education law, as applicable. Provided, however, that where a district has entered an agreement as provided hereunder with a county, no cities, towns or villages within the same county may enter into, or be a party to, any agreement with such district pursuant to this section. Provided further, however, that no county shall enter an agreement with any city school district wholly contained within a city. Nothing in this section shall be construed to prevent a county, city, town, village or district at

any time to withdraw from or terminate an agreement entered pursuant to this section and section twenty-two of the chapter of the laws of 2019 which added this section.

1-b. The total cost to the district of the installation, maintenance and use of school bus photo violation monitoring systems pursuant to this section shall be borne entirely by the county, city, town or village within the district which is a party to such agreement. On or before September first of each year, the district shall determine and certify to each county, city, town or village with which it has entered into an agreement pursuant to this section the total cost to the district for the school year ending the preceding June thirtieth of installing, maintaining and using such systems within each such county, city, town or village, respectively, for the proper handling and custody of photographs, microphotographs, videotapes, other recorded images and data produced by such systems, and for the forwarding of such photographs, microphotographs, videotapes, other recorded images and data to the applicable county, city, town or village. On or before the following December first of each year, each such county, city, town or village shall pay to the district such cost so certified to it on or before the preceding September first. Not later than twenty days after each such payment is submitted or is due, whichever occurs first, the district shall submit to the director of the budget and the chairpersons of the fiscal committees of the legislature a report for each such county, city, town and village showing the amount of costs so certified and the amount of payments so received or due. If a county, city, town or village fails to make the payment required to the district by the twentieth day after the date such payment was due, (i) the district shall notify the director of the budget and the chairpersons of the fiscal committees of the legislature of such occurrence within twenty-four hours of such day; and (ii) the demonstration program shall be suspended within such county, city, town, or village until such time as such county, city, town, or village makes the payment required to the district. The district shall notify the director of the budget and the chairpersons of the fiscal committees of the legislature of such payment within seven business days of its receipt. Provided, however, that any notice of liability issued prior to such date shall not be voided.

2. Any image or images captured by school bus photo violation monitoring systems shall be inadmissible in any disciplinary proceeding convened by any school district or any school bus contractor thereof, and any proceeding initiated by the department involving licensure privileges of school bus operators. Any school bus photo violation monitoring device mounted on a school bus shall be directed outwardly from such school bus to capture images of vehicles operated in violation of section eleven hundred seventy-four of this chapter, and images produced by such device shall not be used for any other purpose.

3. (i) Any participating school district shall be prohibited from accessing any photographs, microphotographs, videotapes, other recorded images or data from school bus photo violation monitoring systems but shall provide, pursuant to an agreement with a county, city, town or village as provided in this section, for the proper handling and custody of such photographs, microphotographs, videotapes, other recorded images and data produced by such systems, and for the forwarding of such photographs, microphotographs, videotapes, other recorded images and data to the applicable county, city, town or village for the purpose of determining whether a motor vehicle was operated in violation of subdivision (a) of section eleven hundred seventy-four of this title and imposing monetary liability on the owner of such motor vehicle therefor.

(ii) Photographs, microphotographs, videotapes, other recorded images and data produced by school bus photo violation monitoring systems shall be destroyed (A) ninety days after the date of the alleged imposition of liability if a notice of liability is not issued for such alleged imposition of liability pursuant to this section or (B) upon final disposition of a notice of liability issued pursuant to this section.

4. A county, city, town or village establishing a demonstration program pursuant to this section shall adopt and enforce measures to protect the privacy of drivers, passengers, pedestrians and cyclists whose identity and identifying information may be captured by a school bus photo violation monitoring device. Such measures shall include:

(i) utilization of necessary technologies to ensure, to the extent practicable, that photographs produced by such school bus photo violation monitoring systems shall not include images that identify the driver, the passengers, the contents of the vehicle, pedestrians and cyclists. Provided, however, that no notice of liability issued pursuant to this section shall be dismissed solely because a photograph or photographs allow for the identification of the contents of a vehicle, provided that such county, city, town or village has made a reasonable effort to comply with the provisions of this paragraph;

(ii) a prohibition on the use or dissemination of vehicles' license plate information and other information and images captured by school bus photo violation monitoring systems except: (A) as required to establish liability under this section or collect payment of penalties; (B) as required by court order; or (C) as otherwise required by law;

(iii) the installation of signage in conformance with standards established in the MUTCD at each roadway entrance of the jurisdictional boundaries of such county, city, town or village giving notice that school bus photo violation monitoring systems are used to enforce restrictions on vehicles violating section eleven hundred seventy-four of this chapter. For the purposes of this paragraph, the term "roadway" shall not include state expressway routes or state interstate routes but shall include controlled-access highway exit ramps that enter the jurisdictional boundaries of a county, city, town or village; and

(iv) oversight procedures to ensure compliance with the aforementioned privacy protection measures.

(b) In any such county, city, town or village which has adopted a local law or ordinance pursuant to subdivision (a) of this section, the owner of a vehicle shall be liable for a penalty imposed pursuant to this section if such vehicle was used or operated with the permission of the owner, express or implied, in violation of subdivision (a) of section eleven hundred seventy-four of this article, and such violation is evidenced by information obtained from a school bus photo violation monitoring system; provided however that no owner of a vehicle shall be liable for a penalty imposed pursuant to this section where the operator of such vehicle has been convicted of the underlying violation of subdivision (a) of section eleven hundred seventy-four of this article.

(c) For purposes of this section, the following terms shall have the following meanings: "county" shall have the meaning provided in section three of the county law, except that such term shall not include any county wholly contained within a city; "manual on uniform traffic control devices" or "MUTCD" shall mean the manual and specifications for a uniform system of traffic control devices maintained by the commissioner of transportation pursuant to section sixteen hundred eighty of this chapter; "owner" shall have the meaning provided in article two-B of this chapter; and "school bus photo violation monitoring system" shall mean a device that is capable of operating independently of an enforcement officer which is installed to work in conjunction with a school bus stop-arm and which automatically produces two or more photographs, two or more microphotographs, a videotape or other recorded images of a vehicle at the time it is used or operated in violation of subdivision (a) of section eleven hundred seventy-four of this article.

(d) A certificate, sworn to or affirmed by a technician employed by the county, city, town or village in which the charged violation occurred, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a school bus photo violation monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to a local law or ordinance adopted pursuant to this section.

(e) An owner liable for a violation of subdivision (a) of section eleven hundred seventy-four of this article pursuant to a local law or ordinance adopted pursuant to this section shall be liable for monetary penalties in accordance with a schedule of fines and penalties to be set forth in such local law or ordinance, except that if a city by local law has authorized the adjudication of such owner liability by a parking violations bureau, such schedule shall be promulgated by such bureau. The liability of the owner pursuant to this section shall be two hundred fifty dollars for a first violation, two hundred seventy-five dollars for a second violation both of which were committed within a period of eighteen months, and three hundred dollars for a third or subsequent violation all of which were committed within a period of eighteen months; provided, however, that such local law or ordinance may provide for an additional penalty not in excess of twenty-five dollars for each violation for the failure to respond to a notice of liability within the prescribed time period.

(f) An imposition of liability under a local law or ordinance adopted pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.

(g) 1. A notice of liability shall be sent by first class mail to each person alleged to be liable as an owner for a violation of subdivision (a) of section eleven hundred seventy-four of this article pursuant to this section. Personal delivery on the owner shall not be required. A manual or automatic record of mailing prepared in the ordinary course of business shall be prima facie evidence of the facts contained therein.

2. A notice of liability shall contain the name and address of the person alleged to be liable as an owner for a violation of subdivision (a) of section eleven hundred seventy-four of this article pursuant to this section, the registration number of the vehicle involved in such violation, the location where such violation took place, the date and time of such violation and the identification number of the camera which recorded the violation or other document locator number.

3. The notice of liability shall contain information advising the person charged of the manner and the time in which he or she may contest the liability alleged in the notice. Such notice of liability shall also contain a warning to advise the persons charged that failure to contest in the manner and time provided shall be deemed an admission of liability and that a default judgment may be entered thereon.

4. The notice of liability shall be prepared and mailed by the county, city, town or village in which the violation occurred, or by any other entity authorized by such county, city, town or village to prepare and mail such notification of violation.

(h) Adjudication of the liability imposed upon owners by this section shall be by a traffic violations bureau established pursuant to section three hundred seventy of the general municipal law where the violation occurred or, if there be none, by the court having jurisdiction over traffic infractions where the violation occurred, except that if a city has established an administrative tribunal to hear and determine complaints of traffic infractions constituting parking, standing or stopping violations such city may, by local law, authorize such adjudication by such tribunal.

(i) If an owner receives a notice of liability pursuant to this section for any time period during which the vehicle was reported to the police as having been stolen, it shall be a valid defense to an allegation of liability for a violation of subdivision (a) of section eleven hundred seventy-four of this article pursuant to this section that the vehicle had been reported to the police as stolen prior to the time the violation occurred and had not been recovered by such time. For purposes of asserting the defense



provided by this subdivision it shall be sufficient that a certified copy of the police report on the stolen vehicle be sent by first class mail to the traffic violations bureau, court having jurisdiction or parking violations bureau.

(j) 1. In such county, city, town or village where the adjudication of liability imposed upon owners pursuant to this section is by a traffic violations bureau or a court having jurisdiction, an owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to subdivision (g) of this section shall not be liable for the violation of subdivision (a) of section eleven hundred seventy-four of this article, provided that he or she sends to the traffic violations bureau or court having jurisdiction a copy of the rental, lease or other such contract document covering such vehicle on the date of the violation, with the name and address of the lessee clearly legible, within thirty-seven days after receiving notice from the bureau or court of the date and time of such violation, together with the other information contained in the original notice of liability. Failure to send such information within such thirty-seven day time period shall render the owner liable for the penalty prescribed by this section. Where the lessor complies with the provisions of this paragraph, the lessee of such vehicle on the date of such violation shall be deemed to be the owner of such vehicle for purposes of this section, shall be subject to liability for the violation of subdivision (a) of section eleven hundred seventy-four of this article pursuant to this section and shall be sent a notice of liability pursuant to subdivision (g) of this section.

2. (i) In a city which, by local law, has authorized the adjudication of liability imposed upon owners by this section by a parking violations bureau, an owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to subdivision (g) of this section shall not be liable for the violation of subdivision (a) of section eleven hundred seventy-four of this article, provided that:

(A) prior to the violation, the lessor has filed with the bureau in accordance with the provisions of section two hundred thirty-nine of this chapter; and

(B) within thirty-seven days after receiving notice from the bureau of the date and time of a liability, together with the other information contained in the original notice of liability, the lessor submits to the bureau the correct name and address of the lessee of the vehicle identified in the notice of liability at the time of such violation, together with such other additional information contained in the rental, lease or other contract document, as may be reasonably required by the bureau pursuant to regulations that may be promulgated for such purpose.

(ii) Failure to comply with clause (B) of subparagraph (i) of this paragraph shall render the owner liable for the penalty prescribed in this section.

(iii) Where the lessor complies with the provisions of this paragraph, the lessee of such vehicle on the date of such violation shall be deemed to be the owner of such vehicle for purposes of this section, shall be subject to liability for such violation pursuant to this section and shall be sent a notice of liability pursuant to subdivision (g) of this section.

(k) 1. If the owner liable for a violation of subdivision (a) of section eleven hundred seventy-four of this article pursuant to this section was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator.

2. Notwithstanding any other provision of this section, no owner of a vehicle shall be subject to a monetary fine imposed pursuant to this section if the operator of such vehicle was operating such vehicle without the consent of the owner at the time such operator failed to comply with section eleven hundred seventy-four of this chapter. For purposes of this subdivision there

shall be a presumption that the operator of such vehicle was operating such vehicle with the consent of the owner at the time such operator failed to comply with section eleven hundred seventy-four of this chapter.

(l) Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of subdivision (a) of section eleven hundred seventy-four of this article.

(m) In any such county, city, town or village which adopts a demonstration program pursuant to subdivision (a) of this section, such county, city, town or village shall submit an annual report on the results of the use of a school bus photo violation monitoring system to the governor, the temporary president of the senate and the speaker of the assembly on or before June first, two thousand nineteen and on the same date in each succeeding year in which the demonstration program is operable. Such report shall include, but not be limited to:

1. the number of buses and a description of the routes where stationary and mobile school bus photo violation monitoring systems were used;
2. the aggregate number, type and severity of accidents reported at locations where a school bus photo violation monitoring system is used for the year preceding the installation of such system, to the extent the information is maintained by the department of motor vehicles of this state;
3. the aggregate number, type and severity of accidents reported at locations where a school bus photo violation monitoring system is used, to the extent the information is maintained by the department of motor vehicles of this state;
4. the number of violations recorded at each location where a school bus photo violation monitoring system is used and in the aggregate on a daily, weekly and monthly basis;
- 4-a. the number of convictions for violations of subdivision (a) of section eleven hundred seventy-four of this article recorded at each location where a school bus photo violation monitoring system is used on an annual basis, to the extent the information is maintained by the department of motor vehicles of this state;
5. the total number of notices of liability issued for violations recorded by such systems;
6. the number of fines and total amount of fines paid after the first notice of liability issued for violations recorded by such systems;
7. the number of violations adjudicated and results of such adjudications including breakdowns of dispositions made for violations recorded by such systems which shall be provided at least annually to such county, city, town or village by the respective courts, bureaus and agencies conducting such adjudications;
8. the total amount of revenue realized by such city, town or village from such adjudications;
9. the expenses incurred by such city, town or village in connection with the program;

10. the quality of the adjudication process and its results including the total number of hearings scheduled, re-scheduled, and held; the total number of persons scheduled for such hearings; the total number of cases where fines were paid on or before the hearing date; and the total number of default judgments entered. Such information shall be provided at least annually to such county, city, town or village by the respective courts, bureaus and agencies conducting such adjudications; and

11. a description of public education activities conducted to warn motorists of the dangers of overtaking and passing stopped school buses.


(n) It shall be a defense to any prosecution for a violation of subdivision (a) of section eleven hundred seventy-four of this article pursuant to a local law or ordinance adopted pursuant to this section that such school bus stop-arms were malfunctioning at the time of the alleged violation.

**Credits**

(Added L.2019, c. 145, § 9, eff. Sept. 5, 2019.)

McKinney's Vehicle and Traffic Law § 1174-a, NY VEH & TRAF § 1174-a

Current through L.2019, chapter 491. Some statute sections may be more current, see credits for details.

 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated  
Vehicle and Traffic Law (Refs & Annos)  
Chapter Seventy-One. Of the Consolidated Laws (Refs & Annos)  
Title VII. Rules of the Road  
Article 30. Speed Restrictions

McKinney's Vehicle and Traffic Law § 1180-e

§ 1180-e. Owner liability for failure of operator to comply with certain posted maximum speed limits

Effective: October 6, 2021

Currentness

<[Expires and deemed repealed Oct. 6, 2026, pursuant to L.2021. c. 421, § 16.]>

(a) 1. Notwithstanding any other provision of law, the commissioner of transportation is hereby authorized to establish a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with posted maximum speed limits in a highway construction or maintenance work area located on a controlled-access highway (i) when highway construction or maintenance work is occurring and a work area speed limit is in effect as provided in paragraph two of subdivision (d) or subdivision (f) of section eleven hundred eighty of this article or (ii) when highway construction or maintenance work is occurring and other speed limits are in effect as provided in subdivision (b) or (g) or paragraph one of subdivision (d) of section eleven hundred eighty of this article. Such demonstration program shall empower the commissioner to install photo speed violation monitoring systems within no more than twenty highway construction or maintenance work areas located on controlled-access highways and to operate such systems within such work areas (iii) when highway construction or maintenance work is occurring and a work area speed limit is in effect as provided in paragraph two of subdivision (d) or subdivision (f) of section eleven hundred eighty of this article or (iv) when highway construction or maintenance work is occurring and other speed limits are in effect as provided in subdivision (b) or (g) or paragraph one of subdivision (d) of section eleven hundred eighty of this article. The commissioner, in consultation with the superintendent of the division of state police, shall determine the location of the highway construction or maintenance work areas located on a controlled-access highway in which to install and operate photo speed violation monitoring systems. In selecting a highway construction or maintenance work area in which to install and operate a photo speed violation monitoring system, the commissioner shall consider criteria including, but not limited to, the speed data, crash history, and roadway geometry applicable to such highway construction or maintenance work area. A photo speed violation monitoring system shall not be installed or operated on a controlled-access highway exit ramp.

2. Notwithstanding any other provision of law, after holding a public hearing in accordance with the public officers law and subsequent approval of the establishment of a demonstration program in accordance with this section by a majority of the members of the entire board of the thruway authority, the chair of the thruway authority is hereby authorized to establish a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with posted maximum speed limits in a highway construction or maintenance work area located on the thruway (i) when highway construction or maintenance work is occurring and a work area speed limit is in effect as provided in paragraph two of subdivision (d) or subdivision (f) of section eleven hundred eighty of this article or (ii) when highway construction or maintenance work is occurring and other speed limits are in effect as provided in subdivision (b) or (g) or paragraph one of

subdivision (d) of section eleven hundred eighty of this article. Such demonstration program shall empower the chair to install photo speed violation monitoring systems within no more than ten highway construction or maintenance work areas located on the thruway and to operate such systems within such work areas (iii) when highway construction or maintenance work is occurring and a work area speed limit is in effect as provided in paragraph two of subdivision (d) or subdivision (f) of section eleven hundred eighty of this article or (iv) when highway construction or maintenance work is occurring and other speed limits are in effect as provided in subdivision (b) or (g) or paragraph one of subdivision (d) of section eleven hundred eighty of this article. The chair, in consultation with the superintendent of the division of state police, shall determine the location of the highway construction or maintenance work areas located on the thruway in which to install and operate photo speed violation monitoring systems. In selecting a highway construction or maintenance work area in which to install and operate a photo speed violation monitoring system, the chair shall consider criteria including, but not limited to, the speed data, crash history, and roadway geometry applicable to such highway construction or maintenance work area. A photo speed violation monitoring system shall not be installed or operated on a thruway exit ramp.

3. No photo speed violation monitoring system shall be used in a highway construction or maintenance work area unless (i) on the day it is to be used it has successfully passed a self-test of its functions; and (ii) it has undergone an annual calibration check performed pursuant to paragraph five of this subdivision. The commissioner or chair, as applicable, shall install signs giving notice that a photo speed violation monitoring system is in use, in conformance with standards established in the MUTCD.

4. Operators of photo speed violation monitoring systems shall have completed training in the procedures for setting up, testing, and operating such systems. Each such operator shall complete and sign a daily set-up log for each such system that he or she operates that (i) states the date and time when, and the location where, the system was set up that day, and (ii) states that such operator successfully performed, and the system passed, the self-tests of such system before producing a recorded image that day. The commissioner or the chair, as applicable, shall retain each such daily log until the later of the date on which the photo speed violation monitoring system to which it applies has been permanently removed from use or the final resolution of all cases involving notices of liability issued based on photographs, microphotographs, video or other recorded images produced by such system.

5. Each photo speed violation monitoring system shall undergo an annual calibration check performed by an independent calibration laboratory which shall issue a signed certificate of calibration. The commissioner or the chair, as applicable, shall keep each such annual certificate of calibration on file until the final resolution of all cases involving a notice of liability issued during such year which were based on photographs, microphotographs, videotape or other recorded images produced by such photo speed violation monitoring system.

6. (i) Such demonstration program shall utilize necessary technologies to ensure, to the extent practicable, that photographs, microphotographs, videotape or other recorded images produced by such photo speed violation monitoring systems shall not include images that identify the driver, the passengers, or the contents of the vehicle. Provided, however, that no notice of liability issued pursuant to this section shall be dismissed solely because such a photograph, microphotograph, videotape or other recorded image allows for the identification of the driver, the passengers, or the contents of vehicles where the commissioner or the chair, as applicable, shows that they made reasonable efforts to comply with the provisions of this paragraph in such case.

(ii) Photographs, microphotographs, videotape or any other recorded image from a photo speed violation monitoring system shall be for the exclusive use of the commissioner or the chair, as applicable, for the purpose of the adjudication of liability imposed pursuant to this section and of the owner receiving a notice of liability pursuant to this section, and shall be destroyed by the commissioner or chair, as applicable, upon the final resolution of the notice of liability to which such photographs, microphotographs, videotape or other recorded images relate, or one year following the date of issuance of such notice of liability, whichever is later. Notwithstanding the provisions of any other law, rule or regulation to the contrary, photographs,

microphotographs, videotape or any other recorded image from a photo speed violation monitoring system shall not be open to the public, nor subject to civil or criminal process or discovery, nor used by any court or administrative or adjudicatory body in any action or proceeding therein except that which is necessary for the adjudication of a notice of liability issued pursuant to this section, and no public entity or employee, officer or agent thereof shall disclose such information, except that such photographs, microphotographs, videotape or any other recorded images from such systems:

(A) shall be available for inspection and copying and use by the motor vehicle owner and operator for so long as such photographs, microphotographs, videotape or other recorded images are required to be maintained or are maintained by such public entity, employee, officer or agent; and

(B)(1) shall be furnished when described in a search warrant issued by a court authorized to issue such a search warrant pursuant to article six hundred ninety of the criminal procedure law or a federal court authorized to issue such a search warrant under federal law, where such search warrant states that there is reasonable cause to believe such information constitutes evidence of, or tends to demonstrate that, a misdemeanor or felony offense was committed in this state or another state, or that a particular person participated in the commission of a misdemeanor or felony offense in this state or another state, provided, however, that if such offense was against the laws of another state, the court shall only issue a warrant if the conduct comprising such offense would, if occurring in this state, constitute a misdemeanor or felony against the laws of this state; and

(2) shall be furnished in response to a subpoena duces tecum signed by a judge of competent jurisdiction and issued pursuant to article six hundred ten of the criminal procedure law or a judge or magistrate of a federal court authorized to issue such a subpoena duces tecum under federal law, where the judge finds and the subpoena states that there is reasonable cause to believe such information is relevant and material to the prosecution, or the defense, or the investigation by an authorized law enforcement official, of the alleged commission of a misdemeanor or felony in this state or another state, provided, however, that if such offense was against the laws of another state, such judge or magistrate shall only issue such subpoena if the conduct comprising such offense would, if occurring in this state, constitute a misdemeanor or felony in this state; and

(3) may, if lawfully obtained pursuant to this clause and clause (A) of this subparagraph and otherwise admissible, be used in such criminal action or proceeding.

(b) If the commissioner or chair establishes a demonstration program pursuant to subdivision (a) of this section, the owner of a vehicle shall be liable for a penalty imposed pursuant to this section if such vehicle was used or operated with the permission of the owner, express or implied, within a highway construction or maintenance work area located on a controlled-access highway or on the thruway in violation of paragraph two of subdivision (d) or subdivision (f), or when other speed limits are in effect in violation of subdivision (b) or (g) or paragraph one of subdivision (d), of section eleven hundred eighty of this article, such vehicle was traveling at a speed of more than ten miles per hour above the posted speed limit in effect within such highway construction or maintenance work area, and such violation is evidenced by information obtained from a photo speed violation monitoring system; provided however that no owner of a vehicle shall be liable for a penalty imposed pursuant to this section where the operator of such vehicle has been convicted of the underlying violation of subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this article.

(c) For purposes of this section, the following terms shall have the following meanings:

1. "chair" shall mean the chair of the New York state thruway authority;

2. "commissioner" shall mean the commissioner of transportation;

3. "controlled-access highway" shall mean a controlled-access highway as defined by section one hundred nine of this chapter under the commissioner's jurisdiction which has been functionally classified by the department of transportation as principal arterial -- interstate or principal arterial -- other freeway/expressway on official functional classification maps approved by the federal highway administration pursuant to part 470.105 of title 23 of the code of federal regulations, as amended from time to time;

4. "manual on uniform traffic control devices" or "MUTCD" shall mean the manual and specifications for a uniform system of traffic control devices maintained by the commissioner of transportation pursuant to section sixteen hundred eighty of this chapter;

5. "owner" shall have the meaning provided in article two-B of this chapter;

6. "photo speed violation monitoring system" shall mean a vehicle sensor installed to work in conjunction with a speed measuring device which automatically produces two or more photographs, two or more microphotographs, a videotape or other recorded images of each vehicle at the time it is used or operated in a highway construction or maintenance work area located on a controlled-access highway or on the thruway in violation of subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this article in accordance with the provisions of this section;

7. "thruway authority" shall mean the New York state thruway authority, a body corporate and politic constituting a public corporation created and constituted pursuant to title nine of article two of the public authorities law; and

8. "thruway" shall mean generally a divided highway under the jurisdiction of the thruway authority for mixed traffic with access limited as the authority may determine and generally with grade separations at intersections.

(d) A certificate, sworn to or affirmed by a technician employed by the commissioner or chair as applicable, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a photo speed violation monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall include at least two date and time stamped images of the rear of the motor vehicle that include the same stationary object near the motor vehicle and shall be available for inspection reasonably in advance of and at any proceeding to adjudicate the liability for such violation pursuant to this section.

(e) An owner liable for a violation of subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to a demonstration program established pursuant to this section shall be liable for monetary penalties not to exceed fifty dollars for a first violation, seventy-five dollars for a second violation both of which were committed within a period of eighteen months, and one hundred dollars for a third or subsequent violation all of which were committed within a period of eighteen months; provided, however, that an additional penalty not in excess of twenty-five dollars for each violation may be imposed for the failure to respond to a notice of liability within the prescribed time period.

(f) An imposition of liability under the demonstration program established pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.

(g) 1. A notice of liability shall be sent by first class mail to each person alleged to be liable as an owner for a violation of subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to this section, within fourteen business days if such owner is a resident of this state and within forty-five business days if such owner is a non-resident. Personal delivery on the owner shall not be required. A manual or automatic record of mailing prepared in the ordinary course of business shall be prima facie evidence of the facts contained therein.

2. A notice of liability shall contain the name and address of the person alleged to be liable as an owner for a violation of subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to this section, the registration number of the vehicle involved in such violation, the location where such violation took place, the date and time of such violation, the identification number of the camera which recorded the violation or other document locator number, at least two date and time stamped images of the rear of the motor vehicle that include the same stationary object near the motor vehicle, and the certificate charging the liability.

3. The notice of liability shall contain information advising the person charged of the manner and the time in which he or she may contest the liability alleged in the notice. Such notice of liability shall also contain a prominent warning to advise the person charged that failure to contest in the manner and time provided shall be deemed an admission of liability and that a default judgment may be entered thereon.

4. The notice of liability shall be prepared and mailed by the commissioner or chair as applicable, or by any other entity authorized by the commissioner or chair to prepare and mail such notice of liability.

(h) Adjudication of the liability imposed upon owners of this section shall be by a traffic violations bureau established pursuant to section three hundred seventy of the general municipal law where the violation occurred or, if there be none, by the court having jurisdiction over traffic infractions where the violation occurred, except that if a city has established an administrative tribunal to hear and determine complaints of traffic infractions constituting parking, standing or stopping violations such city may, by local law, authorize such adjudication by such tribunal.

(i) If an owner receives a notice of liability pursuant to this section for any time period during which the vehicle or the number plate or plates of such vehicle was reported to the police department as having been stolen, it shall be a valid defense to an allegation of liability for a violation of subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to this section that the vehicle or the number plate or plates of such vehicle had been reported to the police as stolen prior to the time the violation occurred and had not been recovered by such time. For purposes of asserting the defense provided by this subdivision, it shall be sufficient that a certified copy of the police report on the stolen vehicle or number plate or plates of such vehicle be sent by first class mail to the traffic violations bureau, court having jurisdiction or parking violations bureau.

(j) 1. Where the adjudication of liability imposed upon owners pursuant to this section is by a traffic violations bureau or a court having jurisdiction, an owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to subdivision (g) of this section shall not be liable for the violation of subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to this section, provided that he or she sends to the traffic violations bureau or court having jurisdiction



a copy of the rental, lease or other such contract document covering such vehicle on the date of the violation, with the name and address of the lessee clearly legible, within thirty-seven days after receiving notice from the bureau or court of the date and time of such violation, together with the other information contained in the original notice of liability. Failure to send such information within such thirty-seven day time period shall render the owner liable for the penalty prescribed by this section. Where the lessor complies with the provisions of this paragraph, the lessee of such vehicle on the date of such violation shall be deemed to be the owner of such vehicle for purposes of this section, shall be subject to liability for the violation of subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to this section and shall be sent a notice of liability pursuant to subdivision (g) of this section.

2. (i) In a city which, by local law, has authorized the adjudication of liability imposed upon owners by this section by a parking violations bureau, an owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to subdivision (g) of this section shall not be liable for the violation of subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this article, provided that:

(A) prior to the violation, the lessor has filed with the bureau in accordance with the provisions of section two hundred thirty-nine of this chapter; and

(B) within thirty-seven days after receiving notice from the bureau of the date and time of a liability, together with the other information contained in the original notice of liability, the lessor submits to the bureau the correct name and address of the lessee of the vehicle identified in the notice of liability at the time of such violation, together with such other additional information contained in the rental, lease or other contract document, as may be reasonably required by the bureau pursuant to regulations that may be promulgated for such purpose.

(ii) Failure to comply with clause (B) of subparagraph (i) of this paragraph shall render the owner liable for the penalty prescribed in this section.

(iii) Where the lessor complies with the provisions of this paragraph, the lessee of such vehicle on the date of such violation shall be deemed to be the owner of such vehicle for purposes of this section, shall be subject to liability for such violation pursuant to this section and shall be sent a notice of liability pursuant to subdivision (g) of this section.

(k) 1. If the owner liable for a violation of subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to this section was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator.

2. Notwithstanding any other provision of this section, no owner of a vehicle shall be subject to a monetary fine imposed pursuant to this section if the operator of such vehicle was operating such vehicle without the consent of the owner at the time such operator operated such vehicle in violation of subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this article. For purposes of this subdivision there shall be a presumption that the operator of such vehicle was operating such vehicle with the consent of the owner at the time such operator operated such vehicle in violation of subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this article.

(l) Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this article.

(m) If the commissioner or chair adopts a demonstration program pursuant to subdivision (a) of this section the commissioner or chair, as applicable, shall conduct a study and submit a report on or before May first, two thousand twenty-four and a report on or before May first, two thousand twenty-six on the results of the use of photo devices to the governor, the temporary president of the senate and the speaker of the assembly. The commissioner or chair shall also make such reports available on their public-facing websites, provided that they may provide aggregate data from paragraph one of this subdivision if the commissioner or chair finds that publishing specific location data would jeopardize public safety. Such report shall include:

1. the locations where and dates when photo speed violation monitoring systems were used;
2. the aggregate number, type and severity of crashes, fatalities, injuries and property damage reported within all highway construction or maintenance work areas on controlled-access highways or on the thruway, to the extent the information is maintained by the commissioner, chair or the department of motor vehicles of this state;
3. the aggregate number, type and severity of crashes, fatalities, injuries and property damage reported within highway construction or maintenance work areas where photo speed violation monitoring systems were used, to the extent the information is maintained by the commissioner, chair or the department of motor vehicles of this state;
4. the number of violations recorded within all highway construction or maintenance work areas on controlled-access highways or on the thruway, in the aggregate on a daily, weekly and monthly basis to the extent the information is maintained by the commissioner, chair or the department of motor vehicles of this state;
5. the number of violations recorded within each highway construction or maintenance work area where a photo speed violation monitoring system is used, in the aggregate on a daily, weekly and monthly basis;
6. to the extent the information is maintained by the commissioner, chair or the department of motor vehicles of this state, the number of violations recorded within all highway construction or maintenance work areas on controlled-access highways or on the thruway that were:
  - (i) more than ten but not more than twenty miles per hour over the posted speed limit;
  - (ii) more than twenty but not more than thirty miles per hour over the posted speed limit;
  - (iii) more than thirty but not more than forty miles per hour over the posted speed limit; and
  - (iv) more than forty miles per hour over the posted speed limit;
7. the number of violations recorded within each highway construction or maintenance work area where a photo speed violation monitoring system is used that were:

(i) more than ten but not more than twenty miles per hour over the posted speed limit;

(ii) more than twenty but not more than thirty miles per hour over the posted speed limit;

(iii) more than thirty but not more than forty miles per hour over the posted speed limit; and

(iv) more than forty miles per hour over the posted speed limit;

8. the total number of notices of liability issued for violations recorded by such systems;

9. the number of fines and total amount of fines paid after the first notice of liability issued for violations recorded by such systems, to the extent the information is maintained by the commissioner, chair or the department of motor vehicles of this state;

10. the number of violations adjudicated and the results of such adjudications including breakdowns of dispositions made for violations recorded by such systems, to the extent the information is maintained by the commissioner, chair or the department of motor vehicles of this state;

11. the total amount of revenue realized by the state or thruway authority in connection with the program;

12. the expenses incurred by the state or the thruway authority in connection with the program;

13. an itemized list of expenditures made by the state and the thruway authority on work zone safety projects undertaken in accordance with subdivisions eleven and twelve of section eighteen hundred three of this chapter; and

14. the quality of the adjudication process and its results, to the extent the information is maintained by the commissioner, chair or the department of motor vehicles of this state.

(n) It shall be a defense to any prosecution for a violation of subdivision (b), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to this section that such photo speed violation monitoring system was malfunctioning at the time of the alleged violation.

#### Credits

(Added L.2021, c. 421, § 12, eff. Oct. 6, 2021.)

McKinney's Vehicle and Traffic Law § 1180-e, NY VEH & TRAF § 1180-e

Current through L.2024, chapters 1 to 57, 59, 61 to 117. Some statute sections may be more current, see credits for details.

McKinney's Consolidated Laws of New York Annotated  
Criminal Procedure Law (Refs & Annos)  
Chapter 11-a. Of the Consolidated Laws (Refs & Annos)  
Part Two. The Principal Proceedings  
Title H. Preliminary Proceedings in Local Criminal Court  
Article 120. Warrant of Arrest (Refs & Annos)

McKinney's CPL § 120.70

§ 120.70 Warrant of arrest; where executable

Effective: October 1, 2019

Currentness

1. A warrant of arrest issued by a district court, by the New York City criminal court, the youth part of a superior court or by a superior court judge sitting as a local criminal court may be executed anywhere in the state.
2. A warrant of arrest issued by a city court, a town court or a village court may be executed:
  - (a) In the county of issuance or in any adjoining county; or
  - (b) Anywhere else in the state upon the written endorsement thereon of a local criminal court of the county in which the arrest is to be made. When so endorsed, the warrant is deemed the process of the endorsing court as well as that of the issuing court.

**Credits**

(L.1970, c. 996, § 1. Amended L.2017, c. 59, pt. WWW, § 15.)

McKinney's CPL § 120.70, NY CRIM PRO § 120.70

Current through L.2024, chapters 1 to 57, 59, 61 to 117. Some statute sections may be more current, see credits for details.

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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated  
Real Property Actions and Proceedings Law (Refs & Annos)  
Chapter 81. Of the Consolidated Laws (Refs & Annos)  
Article 7. Summary Proceeding to Recover Possession of Real Property (Refs & Annos)

McKinney's RPAPL § 749

§ 749. Warrant

Effective: June 14, 2019

Currentness

1. Upon rendering a final judgment for petitioner, the court shall issue a warrant directed to the sheriff of the county or to any constable or marshal of the city in which the property, or a portion thereof, is situated, or, if it is not situated in a city, to any constable of any town in the county, describing the property, stating the earliest date upon which execution may occur pursuant to the order of the court, and commanding the officer to remove all persons named in the proceeding, provided upon a showing of good cause, the court may issue a stay of re-letting or renovation of the premises for a reasonable period of time.

2. (a) The officer to whom the warrant is directed and delivered shall give at least fourteen days' notice, in writing and in the manner prescribed in this article for the service of a notice of petition, to the person or persons to be evicted or dispossessed and shall execute the warrant on a business day between the hours of sunrise and sunset.

(b) Such officer shall check such property for the presence of a companion animal prior to executing such warrant and coordinate with such person or persons to be evicted or dispossessed to provide for the safe and proper care of such companion animal or animals. If such persons to be evicted or dispossessed cannot be found after reasonable efforts are made to coordinate with such persons, or if such person is found and declines to take possession of such animal or animals, such officer shall promptly coordinate with the duly incorporated humane society, duly incorporated society for the prevention of cruelty to animals or pound maintained by or under contract or agreement with the municipality in which the animal was found for the safe removal of such companion animal or animals. Such officer shall make reasonable efforts to provide notice to the person or persons to be evicted regarding the location of such companion animal or animals. Disposition of such companion animal or animals shall be in accordance with the provisions of sections one hundred seventeen and three hundred seventy-four of the agriculture and markets law, and all other laws, rules and regulations that govern the humane treatment of animals. "Companion animal," as used in this paragraph, shall have the same meaning as provided in subdivision five of section three hundred fifty of the agriculture and markets law.

3. Nothing contained herein shall deprive the court of the power to stay or vacate such warrant for good cause shown prior to the execution thereof, or to restore the tenant to possession subsequent to execution of the warrant. In a judgment for non-payment of rent, the court shall vacate a warrant upon tender or deposit with the court of the full rent due at any time prior to its execution, unless the petitioner establishes that the tenant withheld the rent due in bad faith. Petitioner may recover by action any sum of money which was payable at the time when the special proceeding was commenced and the reasonable value of the use and occupation to the time when the warrant was issued, for any period of time with respect to which the agreement does not make any provision for payment of rent.

**Credits**

(Added L.1962, c. 312, § 21. Amended L.1963, c. 891; L.1964, c. 404; L.1966, c. 750, § 1; L.1975, c. 192, § 1; L.2009, c. 256, § 1, eff. Aug. 27, 2009; L.2018, c. 205, § 1, eff. Aug. 23, 2018; L.2019, c. 36, pt. M, § 19, eff. June 14, 2019.)


McKinney's R. P. A. P. L. § 749, NY RP ACT & PRO § 749

Current through L.2024, chapters 1 to 57, 59, 61 to 117. Some statute sections may be more current, see credits for details.

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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated  
Agriculture and Markets Law (Refs & Annos)  
Chapter 69. Of the Consolidated Laws  
Article 26. Animals (Refs & Annos)

McKinney's Agriculture and Markets Law § 373

§ 373. Seizure of animals lost, strayed, homeless, abandoned or improperly confined or kept

Effective: October 1, 2018

Currentness

1. Any police officer or agent or officer of the American Society for the Prevention of Cruelty to Animals or any duly incorporated society for the prevention of cruelty to animals, may lawfully take possession of any lost, strayed, homeless or abandoned animal found in any street, road or other public place.

1-a. Any police officer in Lewis county may lawfully take possession of any lost, strayed, homeless or abandoned domestic animal, as defined in section one hundred eight of this chapter, found in any street, road or other public place.

2. Any such police officer or agent or officer may also lawfully take possession of any animal in or upon any premises other than a street, road or other public place, which for more than twelve successive hours has been confined or kept in a crowded or unhealthy condition or in unhealthful or unsanitary surroundings or not properly cared for or without necessary sustenance, food or drink, provided that a complaint stating just and reasonable grounds is made under oath or affirmation to any magistrate authorized to issue warrants in criminal cases, and that such warrant authorizing entry and search is issued and delivered by such magistrate; if just and reasonable cause is shown, the magistrate shall immediately issue such warrant.

3. Any such police officer or agent or officer may also lawfully take possession of any unwanted animal from the person in possession or custody thereof.

4. When any person arrested is, at the time of such arrest, in charge of any animal or of any vehicle drawn by or containing any animal, any agent or officer of said society or societies or any police officer may take charge of such animal and of such vehicle and its contents, and deposit the same in a safe place or custody, or deliver the same into the possession of the police or sheriff of the county or place wherein such arrest was made, who shall thereupon assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a charge thereon.

5. Nothing herein contained shall restrict the rights and powers derived from section one hundred seventeen of this chapter relating to seizure of unlicensed dogs and the disposition to be made of animals so seized or taken, nor those derived from any other general or special law relating to the seizure or other taking of dogs and other animals by a society for the prevention of cruelty to animals.

6. a. If any animal is seized and impounded pursuant to the provisions of this section, section three hundred fifty-three-d of this article or section three hundred seventy-five of this article for any violation of this article, upon arraignment of charges, or within a reasonable time thereafter, the duly incorporated society for the prevention of cruelty to animals, humane society, pound, animal shelter or any authorized agents thereof, hereinafter referred to for the purposes of this section as the "impounding organization", may file a petition with the court in which criminal charges have been filed requesting that the person from whom an animal is seized or the owner of the animal be ordered to post a security. The district attorney prosecuting the charges may file and obtain the requested relief on behalf of the impounding organization if requested to do so by the impounding organization. The security shall be in an amount sufficient to secure payment for all reasonable expenses expected to be incurred by the impounding organization in caring and providing for the animal pending disposition of the charges. Reasonable expenses shall include, but not be limited to, estimated medical care and boarding of the animal for at least thirty days. The amount of the security, if any, shall be determined by the court after taking into consideration all of the facts and circumstances of the case including, but not limited to the recommendation of the impounding organization having custody and care of the seized animal and the cost of caring for the animal. If a security has been posted in accordance with this section, the impounding organization may draw from the security the actual reasonable costs to be incurred by such organization in caring for the seized animal.

b. (1) Upon receipt of a petition pursuant to paragraph a of this subdivision the court shall set a hearing on the petition to be conducted within ten business days of the filing of such petition. The petitioner shall serve a true copy of the petition upon the defendant and the district attorney if the district attorney has not filed the petition on behalf of the petitioner. The petitioner shall also serve a true copy of the petition on any interested person. For purposes of this subdivision, interested person shall mean an individual, partnership, firm, joint stock company, corporation, association, trust, estate or other legal entity who the court determines may have a pecuniary interest in the animal which is the subject of the petition. The petitioner or the district attorney acting on behalf of the petitioner, shall have the burden of proving by a preponderance of the evidence that the person from whom the animal was seized violated a provision of this article. The court may waive for good cause shown the posting of security.

(2) If the court orders the posting of a security, the security shall be posted with the clerk of the court within five business days of the hearing provided for in subparagraph one of this paragraph. The court may order the immediate forfeiture of the seized animal to the impounding organization if the person ordered to post the security fails to do so. Any animal forfeited shall be made available for adoption or euthanized subject to subdivision seven-a of section one hundred seventeen of this chapter or section three hundred seventy-four of this article.

(3) In the case of an animal other than a companion animal or pet, if a person ordered to post security fails to do so, the court may, in addition to the forfeiture to a duly incorporated society for the prevention of cruelty to animals, humane society, pound, animal shelter or any authorized agents thereof, and subject to the restrictions of sections three hundred fifty-four, three hundred fifty-seven and three hundred seventy-four of this article, order the animal which was the basis of the order to be sold, provided that all interested persons shall first be provided the opportunity to redeem their interest in the animal and to purchase the interest of the person ordered to post security, subject to such conditions as the court deems appropriate to assure proper care and treatment of the animal. The court may reimburse the person ordered to post security and any interested persons any money earned by the sale of the animal less any costs including, but not limited to, veterinary and custodial care. Any animal determined by the court to be maimed, diseased, disabled or infirm so as to be unfit for sale or any useful purpose shall be forfeited to a duly incorporated society for the prevention of cruelty to animals or a duly incorporated humane society or authorized agents thereof, and be available for adoption or shall be euthanized subject to section three hundred seventy-four of this article.

(4) Nothing in this section shall be construed to limit or restrict in any way the rights of a secured party having a security interest in any animal described in this section. This section expressly does not impair or subordinate the rights of such a secured lender having a security interest in the animal or in the proceeds from the sale of such animal.



c. In no event shall the security prevent the impounding organization having custody and care of the animal from disposing of the animal pursuant to section three hundred seventy-four of this article prior to the expiration of the thirty day period covered by the security if the court makes a determination of the charges against the person from whom the animal was seized prior thereto. Upon receipt of a petition from the impounding organization, the court may order the person from whom the animal was seized or the owner of the animal to post an additional security with the clerk of the court to secure payment of reasonable expenses for an additional period of time pending a determination by the court of the charges against the person from whom the animal was seized. The person who posted the security shall be entitled to a refund of the security in whole or part for any expenses not incurred by such impounding organization upon adjudication of the charges. The person who posted the security shall be entitled to a full refund of the security, including reimbursement by the impounding organization of any amount allowed by the court to be expended, and the return of the animal seized and impounded upon acquittal or dismissal of the charges, except where the dismissal is based upon an adjournment in contemplation of dismissal pursuant to section 215.30 of the criminal procedure law. The court order directing such refund and reimbursement shall provide for payment to be made within a reasonable time from the acquittal or dismissal of charges.

7. Notwithstanding any other provision of this section to the contrary, the court may order a person charged with any violation of this article to provide necessary food, water, shelter and care for any animal which is the basis of the charge, without the removal of the animal from its existing location, until the charges against the person are adjudicated. Until a final determination of the charges is made, any law enforcement officer, officer of a duly incorporated society for the prevention of cruelty to animals, or its authorized agents, may be authorized by an order of the court to make regular visits to where the animal is being kept to ascertain if the animal is receiving necessary food, water, shelter and care. Nothing shall prevent any law enforcement officer, officer of a duly incorporated society for the prevention of cruelty to animals, or its authorized agents, from applying for a warrant pursuant to this section to seize any animal being held by the person charged pending the adjudication of the charges if it is determined that the animal is not receiving the necessary food, water, shelter or care.

#### Credits

(Added L.1971, c. 545, § 3. Amended L.1978, c. 220, § 6; L.1980, c. 674, § 5; L.1981, c. 811, § 1; L.1997, c. 79, §§ 1, 2, eff. May 27, 1997; L.1997, c. 256, § 2, eff. July 21, 1997; L.2001, c. 229, § 1, eff. Sept. 4, 2001; L.2008, c. 586, § 2, eff. January 23, 2009; L.2010, c. 59, pt. T, §§ 23, 24, eff. Jan. 1, 2011; L.2013, c. 531, §§ 2, 3, eff. March 18, 2014; L.2018, c. 289, § 1, eff. Oct. 1, 2018.)

McKinney's Agriculture and Markets Law § 373, NY AGRI & MKTS § 373

Current through L.2024, chapters 1 to 57, 59, 61 to 117. Some statute sections may be more current, see credits for details.

McKinney's Consolidated Laws of New York Annotated  
Criminal Procedure Law (Refs & Annos)  
Chapter 11-a. Of the Consolidated Laws (Refs & Annos)  
Part Three. Special Proceedings and Miscellaneous Procedures  
Title Q. Procedures for Securing Attendance at Criminal Actions and Proceedings of Defendants Not  
Securable by Conventional Means--and Related Matters  
Article 570. Securing Attendance of Defendants Who Are Outside the State but Within the United States--  
Rendition to Other Jurisdictions of Defendants Within the State--Uniform Criminal Extradition Act (Refs &  
Annos)

McKinney's CPL § 570.34

§ 570.34 Arrest of accused without warrant therefor

Currentness

The arrest of a person in this state may be lawfully made also by any police officer or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year; but when so arrested the accused must be taken before a local criminal court with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and, thereafter, his answers shall be heard as if he had been arrested on a warrant.

**Credits**

(L.1970, c. 996, § 1.)

McKinney's CPL § 570.34, NY CRIM PRO § 570.34

Current through L.2024, chapters 1 to 57, 59, 61 to 117. Some statute sections may be more current, see credits for details.

McKinney's Consolidated Laws of New York Annotated  
Criminal Procedure Law (Refs & Annos)  
Chapter 11-a. Of the Consolidated Laws (Refs & Annos)  
Part Three. Special Proceedings and Miscellaneous Procedures  
Title Q. Procedures for Securing Attendance at Criminal Actions and Proceedings of Defendants Not  
Securable by Conventional Means--and Related Matters  
Article 570. Securing Attendance of Defendants Who Are Outside the State but Within the United States--  
Rendition to Other Jurisdictions of Defendants Within the State--Uniform Criminal Extradition Act (Refs &  
Annos)

McKinney's CPL § 570.32

§ 570.32 Arrest of accused before making of requisition

Currentness


Whenever any person within this state shall be charged on the oath of any credible person before any local criminal court of this state with the commission of any crime in any other state and, except in cases arising under section 570.14 or 570.16, with having fled from justice, or, with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or, whenever complaint shall have been made before any local criminal court in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such other state with the commission of the crime, and, except in cases arising under section 570.14 or 570.16, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation or parole and is believed to be in this state, the local criminal court shall issue a warrant directed to any police officer directing him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other local criminal court which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to such warrant.

**Credits**

(L.1970, c. 996, § 1.)

McKinney's CPL § 570.32, NY CRIM PRO § 570.32

Current through L.2024, chapters 1 to 57, 59, 61 to 117. Some statute sections may be more current, see credits for details.

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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated  
Criminal Procedure Law (Refs & Annos)  
Chapter 11-a. Of the Consolidated Laws (Refs & Annos)  
Part Three. Special Proceedings and Miscellaneous Procedures  
Title Q. Procedures for Securing Attendance at Criminal Actions and Proceedings of Defendants Not  
Securable by Conventional Means--and Related Matters  
Article 570. Securing Attendance of Defendants Who Are Outside the State but Within the United States--  
Rendition to Other Jurisdictions of Defendants Within the State--Uniform Criminal Extradition Act (Refs &  
Annos)

McKinney's CPL § 570.18

§ 570.18 Issuance of warrant of arrest by governor; recitals therein

Currentness

If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any police officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

**Credits**

(L.1970, c. 996, § 1.)

McKinney's CPL § 570.18, NY CRIM PRO § 570.18

Current through L.2024, chapters 1 to 57, 59, 61 to 117. Some statute sections may be more current, see credits for details.

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McKinney's Consolidated Laws of New York Annotated  
Criminal Procedure Law (Refs & Annos)  
Chapter 11-a. Of the Consolidated Laws (Refs & Annos)  
Part Two. The Principal Proceedings  
Title L. Sentence  
Article 420. Fines, Restitution and Reparation (Refs & Annos)

McKinney's CPL § 420.10

§ 420.10 Collection of fines, restitution or reparation

Effective: August 2, 2021  
Currentness

1. Alternative methods of payment. When the court imposes a fine upon an individual, it shall designate the official other than the district attorney to whom payment is to be remitted. When the court imposes restitution or reparation and requires that the defendant pay a designated surcharge thereon pursuant to the provisions of subdivision eight of section 60.27 of the penal law, it shall designate the official or organization other than the district attorney, selected pursuant to subdivision eight of this section, to whom payment is to be remitted.

(a) The court may direct:

(i) That the defendant pay the entire amount at the time sentence is pronounced;

(ii) That the defendant pay the entire amount at some later date; or

(iii) That the defendant pay a specified portion at designated periodic intervals.

(b) When the court imposes both (i) a fine and (ii) restitution or reparation and such designated surcharge upon an individual and imposes a schedule of payments, the court shall also direct that payment of restitution or reparation and such designated surcharge take priority over the payment of the fine.

(c) Where the defendant is sentenced to a period of probation as well as a fine, restitution or reparation and such designated surcharge, the court may direct that payment of the fine, restitution or reparation and such designated surcharge be a condition of the sentence.

(d) When a court requires that restitution or reparation and such designated surcharge be made it must direct that notice be given to a person or persons to whom it is to be paid of the conditions under which it is to be remitted; the name and address of the public official or organization to whom it is to be remitted for payment and the amount thereof; and the availability of

civil proceedings for collection under subdivision six of this section. An official or organization designated to receive payment under this subdivision must report to the court any failure to comply with the order and shall cooperate with the district attorney pursuant to his responsibilities under subdivision six of this section.

(e) Where cash bail has been posted by the defendant as the principal and is not forfeited or assigned, the court at its discretion may order that bail be applied toward payment of any order of restitution or reparation or fine. If the court so orders, the bail proceeds shall be applied to payment first of the restitution or reparation and then of the fine.

2. Death of victim. In the event that the individual to whom restitution or reparation is to be made dies prior to completion of said restitution or reparation, the remaining payments shall be made to the estate of the deceased.

3. Imprisonment for failure to pay. Where the court imposes a fine, restitution or reparation, the sentence may provide that if the defendant fails to pay the fine, restitution or reparation in accordance with the direction of the court, the defendant must be imprisoned until the fine, restitution or reparation is satisfied. Such provision may be added at the time sentence is pronounced or at any later date while the fine, restitution or reparation or any part thereof remains unpaid; provided, however, that if the provision is added at a time subsequent to the pronouncement of sentence the defendant must be personally present when it is added. In any case where the defendant fails to pay a fine, restitution or reparation as directed the court may issue a warrant directing a peace officer, acting pursuant to his special duties, or a police officer, to take him into custody and bring him before the court; provided, however, if the court in which the warrant is returnable is a city, town or village court, and such court is not available, and the warrant is addressed to a police officer, such executing police officer must without unnecessary delay bring the defendant before an alternate local criminal court, as provided in subdivision five of section 120.90 of this chapter; or if the court in which the warrant is returnable is a superior court, and such court is not available, and the warrant is addressed to a police officer, such executing police officer may bring the defendant to the local correctional facility of the county in which such court sits, to be detained there until not later than the commencement of the next session of such court occurring on the next business day. Such warrant may also be delegated in the same manner as a warrant pursuant to section 530.70 of this chapter. Where a sentence provides that the defendant be imprisoned for failure to pay a fine, the court shall advise the defendant that if he is unable to pay such fine, he has a right, at any time, to apply to the court to be resentenced as provided in subdivision five of this section.

4. Period of imprisonment. When the court directs that the defendant be imprisoned until the fine, restitution or reparation be satisfied, it must specify a maximum period of imprisonment subject to the following limits:

(a) Where the fine, restitution or reparation is imposed for a felony, the period may not exceed one year;

(b) Where the fine, restitution or reparation is imposed for a misdemeanor, the period may not exceed one-third of the maximum authorized term of imprisonment;

(c) Where the fine, restitution or reparation is imposed for a petty offense, the period may not exceed fifteen days; and

(d) Where a sentence of imprisonment as well as a fine, restitution or reparation is imposed, the aggregate of the period and the term of the sentence may not exceed the maximum authorized term of imprisonment.

(e) Jail time and good behavior time shall be credited against the full period of imprisonment, if served, as provided in section 70.30 of the penal law for definite sentences.

5. Application for resentence. In any case where the defendant is unable to pay a fine, restitution or reparation imposed by the court, he may at any time apply to the court for resentence. In such case, if the court is satisfied that the defendant is unable to pay the fine, restitution or reparation it must:

(a) Adjust the terms of payment; or

(b) Lower the amount of the fine, restitution or reparation; or

(c) Where the sentence consists of probation or imprisonment and a fine, restitution or reparation, revoke the portion of the sentence imposing the fine, restitution or reparation; or

(d) Revoke the entire sentence imposed and resentence the defendant. Upon such resentence the court may impose any sentence it originally could have imposed, except that the amount of any fine, restitution or reparation imposed may not be in excess of the amount the defendant is able to pay.

In any case where the defendant applies for resentencing with respect to any condition of the sentence relating to restitution or reparation the court must order that notice of such application and a reasonable opportunity to be heard be given to the person or persons given notice pursuant to subdivision one of this section. If the court grants the defendant's application by changing the original order for restitution or reparation in any manner, the court must place the reasons therefor on the record.

For the purposes of this subdivision, the court shall not determine that the defendant is unable to pay the fine, restitution or reparation ordered solely because of such defendant's incarceration but shall consider all the defendant's sources of income including, but not limited to, moneys in the possession of an incarcerated individual at the time of his or her admission into such facility, funds earned by him or her in a work release program as defined in subdivision four of section one hundred fifty of the correction law, funds earned by him or her as provided for in section one hundred eighty-seven of the correction law and any other funds received by him or her or on his or her behalf and deposited with the superintendent or the municipal official of the facility where the person is confined.

6. Civil proceeding for collection. (a) A fine, restitution or reparation imposed or directed by the court shall be imposed or directed by a written order of the court containing the amount thereof required to be paid by the defendant. The court's order also shall direct the district attorney to file a certified copy of such order with the county clerk of the county in which the court is situate except where the court which issues such order is the supreme court in which case the order itself shall be filed by the clerk of the court acting in his or her capacity as the county clerk of the county in which the court is situate. Such order shall be entered by the county clerk in the same manner as a judgment in a civil action in accordance with subdivision (a) of rule five thousand sixteen of the civil practice law and rules. Even if the defendant was imprisoned for failure to pay such fine, restitution or reparation, or has served the period of imprisonment imposed, such order after entry thereof pursuant to this subdivision may be collected in the same manner as a judgment in a civil action by the victim, as defined in paragraph (b) of subdivision four of section 60.27 of the penal law, to whom restitution or reparation was ordered to be paid, the estate of such person or the district attorney. The entered order shall be deemed to constitute a judgment-roll as defined in section five thousand seventeen of the civil practice law and rules and immediately after entry of the order, the county clerk shall docket the entered order as a money judgment pursuant to section five thousand eighteen of such law and rules. Wherever appropriate, the district attorney shall

file a transcript of the docket of the judgment with the clerk of any other county of the state. Such a restitution or reparation order, when docketed shall be a first lien upon all real property in which the defendant thereafter acquires an interest, having preference over all other liens, security interests, and encumbrances whatsoever, except:

(i) a lien or interest running to the benefit of the government of the United States or the state of New York, or any political subdivision or public benefit corporation thereof; or

(ii) a purchase money interest in any property.

(b) The district attorney may, in his or her discretion, and must, upon order of the court, institute proceedings to collect such fine, restitution or reparation.

7. Undisbursed restitution payments. Where a court requires that restitution or reparation be made by a defendant, the official or organization to whom payments are to be remitted pursuant to subdivision one of this section may place such payments in an interest-bearing account. The interest accrued and any undisbursed payments shall be designated for the payment of restitution orders that have remained unsatisfied for the longest period of time. For the purposes of this subdivision, the term "undisbursed restitution payments" shall mean those payments which have been remitted by a defendant but not disbursed to the intended beneficiary and such payment has gone unclaimed for a period of one year and the location of the intended beneficiary cannot be ascertained by such official or organization after using reasonable efforts.

8. Designation of restitution agency. (a) The chief elected official in each county, and in the city of New York the mayor, shall designate an official or organization other than the district attorney to be responsible for the collection and administration of restitution and reparation payments under provisions of the penal law and this chapter. This official or organization shall be eligible for the designated surcharge provided for by subdivision eight of section 60.27 of the penal law.

(b) The restitution agency, as designated by paragraph (a) of this subdivision, shall be responsible for the collection of data on a monthly basis regarding the numbers of restitution and reparation orders issued, the numbers of satisfied restitution and reparation orders and information concerning the types of crimes for which such orders were required. A probation department designated as the restitution agency shall then forward such information to the office of probation and correctional alternatives within the first ten days following the end of each month. In all other cases the restitution agency shall report to the division of criminal justice services directly. The division of criminal justice services shall compile and review all such information and make recommendations to promote the use of restitution and encourage its enforcement.

#### Credits

(L.1970, c. 996, § 1. Amended L.1977, c. 694, § 1; L.1980, c. 290, § 2; L.1980, c. 584, § 1; L.1980, c. 843, § 19; L.1983, c. 515, §§ 1, 2; L.1984, c. 335, § 3; L.1984, c. 965, §§ 2, 3; L.1985, c. 134, § 28; L.1985, c. 233, §§ 1 to 5; L.1985, c. 506, § 1; L.1992, c. 378, § 1; L.1992, c. 618, §§ 6 to 8; L.2010, c. 56, pt. A, § 52, eff. June 22, 2010; L.2021, c. 322, § 241, eff. Aug. 2, 2021.)

McKinney's CPL § 420.10, NY CRIM PRO § 420.10

Current through L.2024, chapters 1 to 57, 59, 61 to 117. Some statute sections may be more current, see credits for details.



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Unconstitutional or Preempted Prior Version Held Unconstitutional as Applied by *People v. Johnston*, N.Y.City Ct., Feb. 03, 2020

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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated

Criminal Procedure Law (Refs & Annos)

Chapter 11-a. Of the Consolidated Laws (Refs & Annos)

Part Three. Special Proceedings and Miscellaneous Procedures

Title P. Procedures for Securing Attendance at Criminal Actions and Proceedings of Defendants and Witnesses Under Control of Court--Recognizance, Bail and Commitment (Refs & Annos)

Article 510. Recognizance, Bail and Commitment--Determination of Application for Recognizance or Bail, Issuance of Securing Orders, and Related Matters (Refs & Annos)

McKinney's CPL § 510.10

§ 510.10 Securing order; when required; alternatives available; standard to be applied

Effective: June 2, 2023

Currentness

The imposition of a specific type of securing order is in some cases required by law and in other cases within the discretion of the court in accordance with the principles of, and pursuant to its authority granted under, this title.

1. When a principal, whose future court attendance at a criminal action or proceeding is or may be required, comes under the control of a court, such court shall impose a securing order in accordance with this title. Except as otherwise required by law, the court shall make an individualized determination as to whether the principal poses a risk of flight to avoid prosecution, consider the kind and degree of control or restriction necessary to reasonably assure the principal's return to court, and select a securing order consistent with its determination under this subdivision. The court shall explain the basis for its determination and its choice of securing order on the record or in writing. In making a determination under this subdivision, the court must consider and take into account available information about the principal, including:

(a) The principal's activities and history;

(b) If the principal is a defendant, the charges facing the principal;

(c) The principal's criminal conviction record if any;

(d) The principal's record of previous adjudication as a juvenile delinquent, as retained pursuant to section 354.1 of the family court act, or, of pending cases where fingerprints are retained pursuant to section 306.1 of such act, or a youthful offender, if any;

(e) The principal's previous record with respect to flight to avoid criminal prosecution;

(f) If monetary bail is authorized, according to the restrictions set forth in this title, the principal's individual financial circumstances, and, in cases where bail is authorized, the principal's ability to post bail without posing undue hardship, as well as his or her ability to obtain a secured, unsecured, or partially secured bond;

(g) Any violation by the principal of an order of protection issued by any court;

(h) The principal's history of use or possession of a firearm;

(i) Whether the charge is alleged to have caused serious harm to an individual or group of individuals; and

(j) If the principal is a defendant, in the case of an application for a securing order pending appeal, the merit or lack of merit of the appeal.

2. A principal is entitled to representation by counsel under this chapter in preparing an application for release, when a securing order is being considered and when a securing order is being reviewed for modification, revocation or termination. If the principal is financially unable to obtain counsel, counsel shall be assigned to the principal.

3. In cases other than as described in subdivision four of this section, the court shall release the principal pending trial on the principal's own recognizance, unless the court finds on the record or in writing that release on the principal's own recognizance will not reasonably assure the principal's return to court. In such instances, the court shall release the principal under non-monetary conditions as provided for in subdivision three-a of section 500.10 of this title that will reasonably assure the principal's return to court. The court shall explain its choice of securing order on the record or in writing.

4. Where the principal stands charged with a qualifying offense, the court, unless otherwise prohibited by law, may in its discretion release the principal pending trial on the principal's own recognizance or under non-monetary conditions, fix bail, or order non-monetary conditions in conjunction with fixing bail, or, where the defendant is charged with a qualifying offense which is a felony, the court may commit the principal to the custody of the sheriff. A principal stands charged with a qualifying offense for the purposes of this subdivision when he or she stands charged with:

(a) a felony enumerated in section 70.02 of the penal law, other than robbery in the second degree as defined in subdivision one of section 160.10 of the penal law, provided, however, that burglary in the second degree as defined in subdivision two of section 140.25 of the penal law shall be a qualifying offense only where the defendant is charged with entering the living area of the dwelling;

(b) a crime involving witness intimidation under section 215.15 of the penal law;

(c) a crime involving witness tampering under section 215.11, 215.12 or 215.13 of the penal law;

(d) a class A felony defined in the penal law, provided that for class A felonies under article two hundred twenty of the penal law, only class A-I felonies shall be a qualifying offense;

- (e) a sex trafficking offense defined in section 230.34 or 230.34-a of the penal law, or a felony sex offense defined in section 70.80 of the penal law, or a crime involving incest as defined in section 255.25, 255.26 or 255.27 of such law, or a misdemeanor defined in article one hundred thirty of such law;
- (f) conspiracy in the second degree as defined in section 105.15 of the penal law, where the underlying allegation of such charge is that the defendant conspired to commit a class A felony defined in article one hundred twenty-five of the penal law;
- (g) money laundering in support of terrorism in the first degree as defined in section 470.24 of the penal law; money laundering in support of terrorism in the second degree as defined in section 470.23 of the penal law; money laundering in support of terrorism in the third degree as defined in section 470.22 of the penal law; money laundering in support of terrorism in the fourth degree as defined in section 470.21 of the penal law; or a felony crime of terrorism as defined in article four hundred ninety of the penal law, other than the crime defined in section 490.20 of such law;
- (h) criminal contempt in the second degree as defined in subdivision three of section 215.50 of the penal law, criminal contempt in the first degree as defined in subdivision (b), (c) or (d) of section 215.51 of the penal law or aggravated criminal contempt as defined in section 215.52 of the penal law, and the underlying allegation of such charge of criminal contempt in the second degree, criminal contempt in the first degree or aggravated criminal contempt is that the defendant violated a duly served order of protection where the protected party is a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this title;
- (i) facilitating a sexual performance by a child with a controlled substance or alcohol as defined in section 263.30 of the penal law, use of a child in a sexual performance as defined in section 263.05 of the penal law or luring a child as defined in subdivision one of section 120.70 of the penal law, promoting an obscene sexual performance by a child as defined in section 263.10 of the penal law or promoting a sexual performance by a child as defined in section 263.15 of the penal law;
- (j) any crime that is alleged to have caused the death of another person;
- (k) criminal obstruction of breathing or blood circulation as defined in section 121.11 of the penal law, strangulation in the second degree as defined in section 121.12 of the penal law or unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, and is alleged to have committed the offense against a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this title;
- (l) aggravated vehicular assault as defined in section 120.04-a of the penal law or vehicular assault in the first degree as defined in section 120.04 of the penal law;
- (m) assault in the third degree as defined in section 120.00 of the penal law or arson in the third degree as defined in section 150.10 of the penal law, when such crime is charged as a hate crime as defined in section 485.05 of the penal law;
- (n) aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law or criminal possession of a weapon on school grounds as defined in section 265.01-a of the penal law;

(o) grand larceny in the first degree as defined in section 155.42 of the penal law, enterprise corruption as defined in section 460.20 of the penal law, or money laundering in the first degree as defined in section 470.20 of the penal law;

(p) failure to register as a sex offender pursuant to section one hundred sixty-eight-t of the correction law or endangering the welfare of a child as defined in subdivision one of section 260.10 of the penal law, where the defendant is required to maintain registration under article six-C of the correction law and designated a level three offender pursuant to subdivision six of section one hundred sixty-eight-l of the correction law;

(q) a crime involving bail jumping under section 215.55, 215.56 or 215.57 of the penal law, or a crime involving escaping from custody under section 205.05, 205.10 or 205.15 of the penal law;

(r) any felony offense committed by the principal while serving a sentence of probation or while released to post release supervision;

(s) a felony, where the defendant qualifies for sentencing on such charge as a persistent felony offender pursuant to section 70.10 of the penal law;

(t) any felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, where such charge arose from conduct occurring while the defendant was released on his or her own recognizance, released under conditions, or had yet to be arraigned after the issuance of a desk appearance ticket for a separate felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, provided, however, that the prosecutor must show reasonable cause to believe that the defendant committed the instant crime and any underlying crime. For the purposes of this subparagraph, any of the underlying crimes need not be a qualifying offense as defined in this subdivision. For the purposes of this paragraph, "harm to an identifiable person or property" shall include but not be limited to theft of or damage to property. However, based upon a review of the facts alleged in the accusatory instrument, if the court determines that such theft is negligible and does not appear to be in furtherance of other criminal activity, the principal shall be released on his or her own recognizance or under appropriate non-monetary conditions; or

(u) criminal possession of a weapon in the third degree as defined in subdivision three of section 265.02 of the penal law or criminal sale of a firearm to a minor as defined in section 265.16 of the penal law.

5. Notwithstanding the provisions of subdivisions three and four of this section, with respect to any charge for which bail or remand is not ordered, and for which the court would not or could not otherwise require bail or remand, a defendant may, at any time, request that the court set bail in a nominal amount requested by the defendant in the form specified in paragraph (a) of subdivision one of section 520.10 of this title; if the court is satisfied that the request is voluntary, the court shall set such bail in such amount.

6. When a securing order is revoked or otherwise terminated in the course of an uncompleted action or proceeding but the principal's future court attendance still is or may be required and the principal is still under the control of a court, a new securing order must be issued. When the court revokes or otherwise terminates a securing order which committed the principal to the custody of the sheriff, the court shall give written notification to the sheriff of such revocation or termination of the securing order.

**Credits**

(L.1970, c. 996, § 1. Amended L.1984, c. 459, § 1; L.2019, c. 59, pt. JJJ, § 2, eff. Jan. 1, 2020; L.2020, c. 56, pt. UU, § 2, eff. July 2, 2020; L.2022, c. 56, pt. UU, subpt. B, § 2, subpt. C, § 1, eff. May 9, 2022; L.2023, c. 56, pt. VV, subpt. A, § 2, eff. June 2, 2023.)

McKinney's CPL § 510.10, NY CRIM PRO § 510.10

Current through L.2024, chapters 1 to 57, 59, 61 to 117. Some statute sections may be more current, see credits for details.

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