

COMMITTEE ON JUDICIARY
Subcommittee on Adjudication

November 15, 1973

Members Present: Representative George F. Cole, Chairman
Senator Elizabeth W. Browne
Senator George Eivers
Representative Lewis B. Hampton
Representative Norma Paulus

Excused: Senator John D. Burns

Staff Present: Mr. Donald L. Paillette, Project Director

Others Present: Senator C. R. Hoyt
Mr. Douglas A. Haldane, Research Attorney,
Judicial Reform Commission

Agenda: "The New York Administrative Adjudication
System." Report and discussion.

Representative George F. Cole, presiding Chairman, called the meeting to order at 9:30 a.m. in Room 14, State Capitol.

Chairman Cole announced that the co-chairmen and staff members have been busy gathering information on the New York administrative adjudication system and, to some extent, systems from other states that have such programs. He mentioned, also, that Mr. Paillette has been working with Judge Herbert Schwab in assembling an advisory committee, which would work with this subcommittee and the subcommittee on revision. A reporting system, with district courts of eight counties around the state participating, has also been established. These courts will keep records for the first three months of next year and should be submitting to the committee complete and accurate records as to the number of traffic cases filed and processed and information as to the disposition of the cases.

The nominees for the advisory committee are as follows:

Chairman: Hon. Herbert M. Schwab, Chief Judge,
Court of Appeals,

Hon. Philip T. Abraham, District Court Judge, Multnomah
County,

Mr. James Mattis, League of Oregon Cities,

Mr. Jack Frost, District Attorney, Linn County,

Mr. Barnes Ellis, Oregon State Bar Representative,

Hon. Nita Bellows, President, Justices of the Peace
Association,

Mr. Jerry Orrick, Association of Oregon Counties,

Lt. Paul Miner, President, Oregon Peace Officers' Assn.,

Mr. Douglas Houser, Judicial Administration Committee.

Senator Browne moved that the subcommittee approve the membership of the advisory committee. The motion was unanimously adopted.

Mr. Paillette stated that some materials on administrative adjudication have been obtained from the U.S. Department of Transportation, which, through the National Highway Traffic Safety Administration, has been very interested the last few years in examining the procedural ways of handling traffic cases and with particular attention being given to the adjudication system that has been in effect in the State of New York since the middle of 1970. The New York system is unique, and there is no other like it in the United States. New York has not had criminal penalties for traffic infractions, minor moving offenses, since about 1934. Although several other states have systems where minor traffic offenses are decriminalized, the cases are handled through the courts.

Mr. Paillette mentioned that he felt the Department of Transportation report on the "New York Administrative Adjudication System" is probably the best available. He mentioned that he also mailed to the members a copy of "A Report of the Status and Potential Implications of Decriminalization of Moving Traffic Violations" and that the booklet is current and contains information on New York and other states, which was compiled in a study that was commissioned by the U.S. Department of Transportation. Another pamphlet to which Mr. Paillette made reference was from the Ad Hoc Task Force on Adjudication of the National Highway Safety Advisory Committee. He pointed out that both booklets take the position that decriminalization is desirable and that some other method of adjudication, presumably an administrative adjudication system, if not implemented, at least should be examined by the states.

The summary in the members' books, Mr. Paillette mentioned, contained information on some of the more salient features of the New York system, and a copy is attached as Exhibit A.

Mr. Paillette indicated that the Department of Motor Vehicles in New York has been very helpful in explaining their program and some of the problems they have. The Director, Mr. Robert Hogan, who met with Senator Browne, Representative Cole and Mr. Paillette, has been very helpful in explaining the New York system. New York officials have been generally very pleased with how their system has worked, not only from the standpoint of administration, but the motoring public and the police agencies involved also seem satisfied with the program. It frees the police agencies from a great deal of court time.

Mr. Paillette stressed that he felt it was important to understand what is being done in New York. Although Oregon differs vastly from New York, some of the programs being used there might be adapted to Oregon--particularly in the metropolitan areas.

The reason the New York system operates as efficiently as it does, in Mr. Paillette's opinion and based on what is known about the system so far, is because of the computer-based program in Albany.

In answer to a question by Rep. Paulus, Mr. Paillette stated that once a ticket is issued to a motorist, the complaint is filed in one of the hearings offices. At the end of the day, citations are sent to the Albany office. At that time, the complaint against the motorist is fed into the computer. The motorist can go into the hearings office in the community where he lives and plead guilty, plead guilty with explanation or plead not guilty and ask for a hearing. This is then also fed to the computer. Also, he can, if he prefers, mail in his guilty plea to the hearing office, which ultimately reaches the master data bank, or he can mail it to Albany. These are received in Albany from many different sources. Mr. Paillette

indicated that attached Exhibit B, Administrative Adjudication Bureau statistics, shows figures relating to mail pleas of guilty received in Albany and in New York.

The members were interested in how the computer in Albany works, what controls prevail as to the type of information fed to the computer and whether any print-out sheets were available for study. They were told that none were available in the form of a printed page. What they do have is similar to the Oregon Motor Vehicles Department's. Chairman Cole mentioned that they do have a cross-check to be certain that there is an accurate record of individuals as to names, birthdates, operators' numbers, etc. These records are double checked to make certain they are accurate before being fed to the computer. If a birthdate and operator's number don't match, and the error cannot be corrected at the computer center, the information is returned to the precinct where the citation was issued for correction before it is given to the computer. Precautions are taken to make certain information is correct.

In answer to a question by Representative Paulus, Mr. Paillette stated that when an officer issues a citation and the information is submitted to the computer, a report on the motorist's driving record is then sent to the officer. If the motorist had been driving with a suspended license, then the officer, who had been a witness to the offense, files another complaint. In this way, the officer isn't prejudiced at the time the motorist is stopped

The members were concerned whether an officer, at the time a motorist is stopped, could radio in for information regarding an offender. It was the opinion of the committee members that in some instances this would be important in case the motorist appeared suspicious. Mr. Paillette answered that this was possible and that information regarding stolen cars was available. Chairman Cole added that information regarding suspended licenses was also available through the computer. However, switched license plates and stolen cars are handled separately because of sheer volume.

New York drivers' licenses are in two parts, according to Mr. Paillette, with one part containing a driving record. However, it was felt that this wasn't too effective, because the citing officer isn't supposed to look at the driving record.

In answer to a question by Senator Eivers, the committee members were told that if a cited motorist fails to appear or plead on a scheduled date, he is warned that his license will be suspended if he doesn't appear. If this warning is ignored, he is notified that his license is suspended, and it cannot be renewed. If the motorist is stopped again, he is cited for driving with a suspended license. Mr. Hogan had mentioned that suspended licenses created a real problem in New York City; one driver's license can be used by a dozen different people by being traded back and forth.

Senator Hoyt expressed concern that if an officer should apprehend a motorist for a minor traffic infraction and issue a citation, the motorist may, in fact, be driving with a suspended

license, and the officer would have no knowledge of this fact. Under circumstances such as these, the driver may never be contacted or found again. Chairman Cole replied that an officer doesn't know now, when a motorist is stopped, whether he has a suspended license. Senator Browne stated that it is possible to have a unit installed in a car now to get a read-out on a driving record. Representative Paulus added that hopefully arrests could be made in the future by motorcycle and not by car and that such a unit could be used on such a vehicle.

The procedure of handling cases in the New York hearings offices is interesting. They have fixed penalties for various violations. Ordinarily, a person can simply pay a fine if he wants to plead guilty. Albany has a stipulation that if a motorist acquires three moving violations in 18 months, an appearance is required. He can't simply pay a fine by sending it in. He is required to appear before a hearings officer, because he is subject to suspension. A letter is sent from Albany stating that an appearance is required at a particular time. The arresting officer also receives this notice. People appear at the hearings offices to pay fines all the time rather than mailing them in. Usually there are four or five hearings going on at the same time in one office--hearings of guilty pleas with explanations. Statistics show that about 55 percent of the people want to say something. Also, there are the contested hearings for those who want to plead not guilty. The process is informal, and the cases are handled quickly.

Senator Eivers made reference to the figures that show that only seven percent of the cases in New York are contested and was interested in knowing if there was any information to show what the percentage was prior to the adoption of the adjudication system. He was also interested in knowing if there was information stating what the percentage of contested cases was for Portland. He was also interested in knowing what percentage of the cases in Oregon are contested and then how many are appealed. Rep. Cole answered that there wasn't much change for the contested cases in court as opposed to the contested cases in the hearings offices. The figures were something like 40,000 as opposed to 35,000. Senator Eivers stated that since there is the right to appeal, it would seem to be more cumbersome than the system we have now. Chairman Cole answered that a copy of the transcript is sent to the Appeals Board for an appeal and that the case isn't retried as it would be in Oregon. The Appeals Board then makes a determination. Those who appeal beyond this point usually have a serious problem with their records. Mr. Paillette stressed that a person doesn't get more than one appeal as a matter of right. If a person wishes a judicial review, his case is processed under civil practice rules. He would then have to show grounds for judicial review.

Representative Hampton was interested in knowing if there has been any ruling in New York as to whether a determination of guilt of a traffic violation may be used as prior adjudication of an issue in a civil case. Chairman Cole said that Mr. Hogan had mentioned that

a case was before their Supreme Court at the time he had talked to him. Representative Hampton suggested that a provision be made in whatever revision is made by this subcommittee that no such prior adjudication could be used, and this would tend to discourage those persons who tend to delay while a civil case is going on and appeal whatever is decided.

Chairman Cole stressed that the New York system is not as complicated, because the courts are not involved to a great extent. There are hearings officers, boards of appeal and ultimately the courts, which are used only under limited circumstances. We now have the district or justice court, the circuit court and the Court of Appeals.

Representative Paulus brought up the question as to whether there might be a constitutional problem in using appointed officers rather than elected judges. After some discussion, the committee agreed that this question should be resolved.

Mr. Haldane was asked if he would care to add anything to the discussion. He replied that the circuit court has the power to hire personnel to help with the ongoing business of the court. This is the justification used in Multnomah County in hiring a hearings referee in juvenile court. Hiring of hearings officers could be justified on that basis. If the right to appeal is available, then that stipulation would be satisfied. The system in New York probably wouldn't qualify because the appeal right is not in the court system.

Representative Paulus mentioned again that an Attorney General's opinion should be requested so there would be no question under the present constitutional provisions. The example of the juvenile court system in Multnomah County is a little different than trying to change a whole state system.

In answer to a question as to how fines are collected in New York, Chairman Cole said that a license can be suspended until a fine is paid. Mr. Paillette added that one of the strong features of the New York system is that administrative action can be taken on the spot. If a person is found guilty, he is before a hearings officer and is required to pay. If he doesn't, then his license is suspended. Senator Eivers replied that he felt this could be done in Oregon under the present judicial system right now, if the means were made possible. Representative Hampton stated that in our existing judicial system there would not be the unity of command and direct supervisory power to carry out such a system. Judges are independent and may react in various ways to a particular situation. Senator Browne added that under the present system in Oregon, there would still be the jury and prosecutor questions. Chairman Cole asked if there are any reports that indicate where the problem dealing with prosecutions might have been eliminated. Mr. Paillette answered that he was in the process of securing a copy of California's laws and that the committee has

received a copy of the existing California code. He stated that he believed that in California the plan is to have only the police officer appear on a contested case and not involve the district attorney. Pennsylvania is working on this type of system but is just in drafting stage.

Chairman Cole mentioned that the New York system is unique not only because it is the first one, but because it is so large. As a practical matter, in order to put a system as large as this into effect, an agency needed to be selected and given the responsibility, the funds and the authority to carry out the plans. So far, it has worked out quite well, and the system is now paying for itself. Mr. Paillette added that fines collected in New York for a one year period, April 1972 to March 1973, totaled 5.5 million dollars. Senator Hoyt stated that these figures reflected a normal growth over the period of 1971-72 and didn't necessarily represent a larger income. He stressed that the only way to really save is to have a better enforcement system, greater traffic safety to save the time of judges for more important matters. Chairman Cole answered that the New York system had 18 judges at \$41,000 a year and now has 25 hearings officers at a maximum of \$20,000, and the extra judges handle misdemeanor criminal matters.

Senator Browne commented that in New York no DUIL cases were tried last year. The prosecutors and courts would have nothing to do with them. They were all reduced to reckless driving, and there were no trials. Mr. Paillette added that the ordinary fine is \$50 for DUIL cases.

Senator Hoyt expressed his concern that a reckless driver could still continue to operate a vehicle with the practice of switching license plates and drivers' licenses. He was assured that the driver would be picked up if a second offense is committed, which is the same as in Oregon now. If a motorist is driving with a suspended license, there is no way for an officer to know this unless the driver is stopped for another offense and a report is requested from the Motor Vehicles Department. Senator Hoyt added that he isn't satisfied with a system where a driver with a suspended license is stopped and is allowed to continue driving until a check is made with Motor Vehicles as to his driving status. Senator Eivers added that the answer to this problem would be for the adoption of a system that would enable an officer, who has stopped a motorist, to somehow get an immediate print-out with special equipment installed in the patrol car. Senator Browne stated that a picture on a driver's license would also help solve this problem. Representative Hampton mentioned the possibility of having a thumb print on a driver's license and then an apprehended motorist could be thumb printed and the prints compared. The general consensus of the subcommittee was that thumb printing would probably be difficult to implement.

Chairman Cole noted that a police officer, if he is suspicious of an apprehended driver, can call in for information. However, if

an officer stops a motorist for an ordinary offense such as running a red light, he simply issues a citation. He simply doesn't take the time to call in for information on every motorist stopped. Mr. Paillette stated that the same situation exists as far as a criminal record is concerned. An officer can ask for a records check, but it simply isn't practical to do so every time someone is stopped.

The Subcommittee recessed from 10:45 to 11:05.

Chairman Cole mentioned that one of the concerns in Oregon would be the remittance of a share of the fines to the cities. New York City didn't receive any funds the first two years the program was in effect. Apparently, this wasn't a problem as far as New York City was concerned. Last year, New York City received one million dollars. All the money collected from fines went to the state, and the first two years the cost of the newly installed program was so high that no funds were available to remit to the cities. The program is now paying for itself, and money is available so that a portion is available to the cities. The program is operated by the state and is paid for by the state; fines are collected by the state to pay for the cost of the program. The concern is that cities and counties in Oregon depend on the revenue collected as fines to support their law enforcement programs. Until reports are available from Rochester and Buffalo, there is no way to know how the loss of revenues affects those cities. This is a question that would need to be resolved in Oregon.

In answer to a question by Representative Hampton, Chairman Cole replied that in a statewide program a case may be cited into any court. If a motorist, who lives in Salem, is stopped in Medford, his case may be referred to Marion County. This could apply to a "guilty with explanation" plea and not for a trial. Mr. Paillette added that in New York a date is set and a motorist is notified of the date by the Albany office. This is a firm commitment, and the motorist and officer know that the hearing will be on that date. It is possible to secure one postponement only. Also, in New York, a cited individual, who wishes to plead guilty with explanation, may appear at any time within 10 days at the appropriate hearings office. Contested cases are not heard at night, but it is possible to plead guilty with explanation at night, and the Manhattan office is open one night a week for this purpose. Mr. Paillette stated that he couldn't recall if all the offices in New York City were open the one evening.

Senator Browne replied to Representative Hampton that the complaints are filed with the computer, and a hearing officer dials for the information, which is projected on his screen.

Mr. Paillette explained that in New York State a person is cited for a violation of the State Traffic Code, and it is called a "traffic infraction". As long as it occurs in New York, it is the same kind of offense no matter where in the state it should take place.

Senator Hoyt suggested that a simple solution to disbursement of funds would be for the money to go to the agency that hires the citing officer. If a city policeman does the citing, then the money would go to the city. If a state policeman should do the citing, then the city wouldn't get any money. In answer to a question by Senator Hoyt, Chairman Cole stated that the costs involved in our present program, as far as cities are concerned, are those pertaining to local law enforcement and the local courts and prosecutors.

Chairman Cole stated that if Oregon should adopt such a system as New York's, it would have to be established where the hearings offices would be located and how the revenue from fines would be divided. It would be necessary to establish whether they would be divided among all local governments on the basis of population. Definite decisions would have to be made.

Mr. Paillette suggested that for the purpose of receiving guilty pleas and the processing of the mail pleas, a central location could be established. For the purpose of receiving guilty with explanation pleas, cities of certain size could have hearings officers, and if a particular city didn't have a hearings officer, then possibly it could be handled through a court. This could be done if the procedures were essentially the same and as long as the court could get the information as far as the citations were concerned. Also, if a particular offense carried a definite penalty, this could be easily handled by a court. Representative Hampton suggested that the court could establish a finding only and have the consequences handled by the central agency.

Senator Eivers stated that most cases, if they involve offenses such as speed, usually aren't contested. The DUIs and the reckless driving cases go to criminal court as they do in New York. His feeling was that the subcommittee needs to acquire statistics as to the types and number of cases handled in Oregon. Mr. Paillette added that this type of information is what the subcommittee hopes to acquire from the survey the district judges are being asked to conduct. Eight counties have been selected to participate. He and Douglas Bray, Court Administrator's Office, have met with the judges.

The eight counties selected to participate are: Multnomah, Washington, Marion, Umatilla, Klamath, Lane, Coos and Clackamas. These counties should give a good sampling of the kinds of cases handled. Klamath is backed up on cases and those figures will probably be a little inflated as far as DUI cases are concerned. Umatilla should be fairly typical of an eastern Oregon county. These counties will report a complete breakdown on their traffic cases--DUIs, reckless driving and minor cases. They will provide information as to whether they are tried by a jury, how much time is spent by the court on these cases, how many are dismissed, etc. They will start reporting the first of January and will report through

March 1974. The subcommittee will also receive a complete report on the statistics of the Motor Vehicles Department for 1972, which will be ready for this subcommittee shortly. The MVD will also do a complete report for 1973. All courts report certain information to MVD, and although this information won't be as comprehensive as that which will be furnished by the district judges, it will show convictions and types of offenses. In answer to a question by Senator Hoyt, Chairman Cole said that the district court study will give statistics on the changing of DUIs to reckless driving. Senator Hoyt was also informed that the subcommittee isn't paying for these reports. The district courts and the Motor Vehicles Department are anxious to cooperate on this study.

Mr. Paillette informed the group that when he and Mr. Bray met with the district judges, they had a preliminary form made out and an instruction sheet, and they went through it with the judges for their ideas. He further stated that they are in the process of revising the reporting form and the instruction sheet. The judges were informed that this subcommittee is very desirous to have this information and that only with accurate data will the subcommittee be able to make some decisions with any degree of certainty. The judges were also informed that the subcommittee will be relying on this information. The information will be sent directly to the Court Administrator's office, and it will be compiled there. The subcommittee will furnish staff help if needed. Mr. Paillette pointed out that the statistics are only as good as the data that goes into them. If the figures are carefully compiled and accurate only then will the reports be of any help.

Representative Hampton stated that the reduced speed limit could possibly result in fewer citations, which could distort the figures on the district judges' reports.

Chairman Cole mentioned that Judicial Administration reports, as far as district courts are concerned, do not give any information as to cases tried, only which cases are disposed or terminated. It is hoped that this information will be acquired. Senator Hoyt commented that critical information would be that relating to plea bargaining. He was told that in New York they do not have plea bargaining in minor cases and that 40 to 45 percent have been found guilty. Mr. Paillette referred the subcommittee members to Exhibit B, which contains information on guilty and not guilty pleas. A discussion followed on Exhibit B. The comment was made that of 18,000 guilty findings only 400 appealed to the board. In answer to a question, Chairman Cole replied that there were several hearings officers in the Manhattan office, and a person wouldn't know which one he might get. However, they don't move from one office to another. Also, in the Manhattan office the hearings officers work under uniform procedures. Each hearing room, reported Senator Browne, has a tape which records the

sessions, and the master referee can listen in on any particular hearing room. The tape cannot be turned off.

Mr. Paillette stated that a hearings officer gets all types of cases except for the majors such as DUIL, reckless driving and hit and run.

In New York, reported Chairman Cole, 1,000 lawyers took the civil service exam to qualify as hearings officers. The top 40 were selected three years ago, and another examination is scheduled now.

Senator Hoyt stated that his concern is with the serious cases and felt that more work should be done in handling them. He was wondering if the New York system now was an improvement over the way the majors were handled previously. According to Senator Hoyt, the criteria considered important would be how many serious cases get to court and how many are convicted. Mr. Paillette answered that he thought they do get to trial faster, but according to Mr. Hogan, the attitude of prosecutors towards DUILs and other major offenses has not changed.

Mr. Paillette stressed that the main purpose behind changes in vehicle laws is to effect traffic safety. This is a way to improve driver attitudes.

Senator Browne stated that her impression of the New York system is that the criminal courts couldn't care less about traffic. It is of no concern to them. A system that could be used as far as DUILs are concerned, if an administrative system were in effect, would be to put reckless in the administrative system and then an offender couldn't cop out in the courts on a DUIL charge.

Senator Hoyt next asked how could there be assurance that the criminal courts would do a better job. Chairman Cole answered that it is a question of enforcement and penalty and the following through of a suspension. Suspended licenses mean little in our system now, because people with suspended licenses often continue to drive. These matters would be brought to court faster under an improved adjudication method.

Senator Eivers suggested that perhaps paying a fine could be made more attractive to an offender so that he would prefer to pay and not take his case to court. This could be done with cases that are not serious, and it would leave the judges free to handle the more serious crimes. Driving with a suspended license is about one of the worst offenses, because it is a flagrant disregard for the law. Chairman Cole added that the driver is entitled to a trial, and he will continue to drive until convicted.

In answer to a question by Chairman Cole, Mr. Paillette replied that until the subcommittee has received firm data from the courts, he was interested in what the subcommittee would like to do, or have the staff do, in exploring the different alternatives. He stated that he wasn't there to sell the committee on administrative adjudication, and he really didn't feel anybody else was either. It was his understanding that the Legislature wanted the Judiciary Committee to examine all possibilities and alternatives available. The committee could decriminalize and reduce penalties and still function through the courts, or a modified administrative adjudication system could be enacted. Another possibility would be to set up an adjudication system on a pilot basis in Multnomah County, for instance.

Chairman Cole, in answer to a question by Representative Hampton, replied that the Judiciary Committee has been assigned revision of the traffic code and the consideration of administrative adjudication. He indicated that the other subcommittee is working on revision and their reports will be submitted to the full committee for consideration. The committee will probably be receiving a couple of bills before the special session to work on.

Representative Hampton stated that he would like to have for the next meeting a chart outlining a tentative administrative adjudication system for Oregon to achieve the following objectives:

1. To permit an individual, who is cited for a minor vehicle violation, to send his money and plea of guilty to a central state office instead of a designated court,
2. To permit an appearance for a plea of guilty before administrative officers stationed throughout the state on a basis of population,
3. To establish a system for hearing of a not guilty plea with hearings officers stationed around the state.

This would be something to work on and something to start with. As data is received from the district courts, it could then be incorporated in the study.

Representative Paulus indicated the reason she wanted the constitutionality issue explored was so the subcommittee would have a clear understanding from the beginning just how far it can go in making changes and what constitutional amendment might be necessary.

She stated that she would be interested in learning more about the present MVD and how it functions. Chairman Cole stated that the MVD has been contacted to submit a report regarding information they have gathered and information they can now present.

Senator Eivers suggested that the subcommittee go to the MVD office and look over the facilities. The members were in agreement, and the suggestion was made to include the state police in the tour.

Mr. Paillette said that he had talked to Judge Thomas W. Hansen, and the subcommittee could also visit the Marion County District Court.

After some discussion, the subcommittee members were in agreement that visits to various facilities should be made.

Senator Hoyt recalled that in the past there has been some tentative legislation to abolish the municipal courts, and he learned that this possibility was a source of alarm to some of the smaller communities. He indicated that the implications to a small community would be different than a larger community and that this area should be explored thoroughly before any changes are made. Chairman Cole added that a law was passed to allow small communities to contract with district courts to handle their violations, but that he didn't know of any municipality that had taken advantage of the new law. He indicated that a problem with such an arrangement is that a district judge doesn't have the time to handle municipal cases, since he really doesn't have the time to handle his own docket.

The meeting was adjourned at 12:00 noon.

Respectfully submitted,

Anna McNeil, Clerk
Subcommittee on Adjudication

Reference Paper
Committee on Judiciary
November 1973
Donald L. Paillette

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THE NEW YORK ADMINISTRATIVE ADJUDICATION SYSTEM

I. PRE-1970

Before July 1, 1970, traffic cases in New York City were handled by procedures that were applicable to all misdemeanors or other violations of law below the level of felony. Jurisdiction over such offenses, including "traffic infractions" (a non-criminal "violation" that was created in 1934), lay with the Criminal Court of the City of New York. This court was processing over 800,000 cases involving moving traffic infractions and some 3.2 million cases involving non-moving traffic infractions.

II. LEGISLATIVE HISTORY

At the 1969 Session of the New York Legislature Senate Bill 5365 (See Appendix 1) was passed and became Chapter 1074 of the N.Y. Laws of 1969. The bill transferred responsibility for adjudicating "moving" traffic infractions to the Department of Motor Vehicles effective July 1, 1970.

A companion bill, Senate Bill 5095-A, Chapter 1075 of the Laws of 1969, made a similar transfer of "non-moving" traffic infractions such as parking, stopping, standing or jaywalking violations to the Parking Violations Bureau of New York City.

Article 2-A of the Vehicle and Traffic Law was amended by the New York Legislature in 1970 (see Appendix 2) to further simplify the administrative adjudication procedures.

III. AUTHORITY OF DEPARTMENT OF MOTOR VEHICLES

The Vehicle and Traffic Law authorizes the Department of Motor Vehicles to adjudicate moving traffic infractions occurring in cities in the state with a population of 275,000 or more. Buffalo (population approximately 600,000) and Rochester (population approximately 275,000) requested the department to extend the administrative adjudication system to those cities and since early 1973 the system has been operational there as well as in New York City.

The Commissioner of the Department of Motor Vehicles is authorized to promulgate "such regulations as shall be necessary or desirable to effect the purposes of" the traffic adjudication law, including regulations creating a schedule of fines. He is also granted authority to promulgate regulations governing the filing of complaints, entry of pleas, waiver of statutory security requirements and hearing procedures. The regulations have established an Administrative Adjudication Bureau within the Department to carry out the purposes of the statutes, and set forth the rules and procedures governing the administrative adjudication of traffic infractions.

IV. HOW THE ADMINISTRATIVE ADJUDICATION SYSTEM WORKS

The summons and complaint (see Appendix 3) is divided into three categories of offenses as follows:

Moving traffic infractions. These violations are within the jurisdiction of the Administrative Adjudication Bureau in the counties in New York City and in the cities of Rochester and Buffalo.

Parking. Parking, stopping, standing and jaywalking violations are heard in the Parking Violations Bureau of the New York City, Rochester or Buffalo Transportation Administration.

Other offenses. Traffic misdemeanors such as reckless driving and driving while intoxicated are heard in the New York City Criminal Court or the City Court of jurisdiction.

Traffic enforcement is handled by the law enforcement agencies of the city and a traffic case is ordinarily initiated by the issuance of a traffic ticket. Once the summons part of the ticket has been issued, the officer files the complaint with the Administrative Adjudication Bureau.

Uncontested cases. All complaints received are forwarded to the Albany office of the DMV to be placed in the computer-based information system. Cases are automatically scheduled to reduce demands on the officer time.

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Defendants wishing to plead guilty may mail a plea to the Albany office or file a plea in person with the clerk of one of the five offices in New York City or the office in Rochester or Buffalo. A fixed fine is paid at that time and that is the end of the case. Regulations limit this process to minor offenses committed by persons with a good driving record. Serious offenses or those involving the possibility of license suspensions require a personal appearance before a hearing officer.

Any defendant who wants to plead guilty but make an explanation may do so at an "uncontested hearing." (Approximately 55% of all pleas filed are of this nature.)

Thirty-eight percent of all pleas are guilty pleas. Some 68% of such pleas are entered by mail. Accordingly, about 93% of the over-all cases are uncontested.

Contested cases. "Contested hearings" result from pleas of not guilty and make up about seven percent of the caseload. Pleas of not guilty may be filed by mail or in person. Usually, the hearing is held on the date originally scheduled on the summons and occurs approximately one month after issuance of the summons and at the Hearing Office location in the Borough in which the summons was issued. A first postponement will be granted for reasonable cause and may be arranged by the defendant before the date of appearance, in person, by mail or by telephone. A second or subsequent

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postponement may be granted only at the discretion of the Hearing Officer, and the request must be made in person.

The hearing is very similar to a trial, although there is no "prosecutor" or "judge." The officer presents his case, followed by the defendant's explanation. The "hearing officer" or "referee" must be a lawyer and a member of the New York Bar. He occupies a Civil Service position and after six months' probation can be fired only "for cause." The salary for the referee starts at \$18,385. A senior referee earns up to \$24,000. The New York City Bureau employs 25 hearing officers.

At the contested hearing the defendant may be represented by a lawyer but none is appointed. The hearing officer actively participates in the proceedings by questioning the parties and any other witnesses involved. The hearing officer announces his decision at the end of the case, at which time, if the defendant is found guilty, the information is instantly transmitted to the Albany computer information system. The driving record of the motorist in question is transmitted back to the hearing officer's visual display unit. Only if the defendant is found guilty is the driving record available to the hearing officer. Based upon the instant case and the defendant's driving record, the hearing officer imposes an appropriate sanction. In addition to a fine the sanction may include other administrative action such as suspension or revocation of the driver's license. All sanctions are imposed on-the-spot and no further administrative action is necessary.

Failure to Appear - "Scofflaws". If a cited motorist fails to appear or plead by the initial scheduled date, the computer issues an automatic notice warning him that his driver's license will be suspended if he doesn't respond. If he then responds, his record is corrected accordingly; however, if he persists in not responding, the system places an automatic block against his license which prevents its renewal. If the offender receives a subsequent ticket, the citing officer is automatically informed by the computer that the license was suspended. The officer who observed the motorist driving while suspended then files a misdemeanor complaint and a warrant of arrest is issued. The MVD may request that a case of non-appearance be transferred to a criminal court for disposition, but in most cases the administrative procedure of denying license renewal is used. Once a person has become a scofflaw, all pleas, both guilty and not guilty, must be made in person at a Hearing Office location. Where a suspension is in effect, a scofflaw must post a \$15 security deposit upon entering a not guilty plea if he wishes to have the suspension terminated before final disposition of the charge. This deposit is refunded upon appearance on the hearing date.

Appeals. An appeal may be taken within 30 days after hearing to the Appeals Board of the Bureau, consisting of three lawyers, two of whom may be hearing officers. There

Reference Paper

The New York Administrative Adjudication System

is a \$10 fee required upon filing an appeal, plus \$15 deposit to cover cost of the transcript. An appeal may be submitted without a transcript only if no questions of fact are raised or in connection with a post-hearing application or if the only issue is the appropriateness of the penalty imposed. Where such an appeal is submitted, the decision of the Appeals Board is final. Most appeals are with transcript and no appeal is considered as finally submitted until a transcript of the hearing involved is submitted by the motorist and the charges for the transcript have been paid. Transcripts are made from master tape recordings which automatically record each day's hearings in each Hearing Office and are permanently retained. The Appeals Board is required to make a determination of the appeal, with at least two votes necessary for final action, within 60 days of the final submission of the appeal. Judicial review of appeals with transcripts is available under the New York Rules of Civil Practice.

V. SUMMARY

The key elements of the New York Administrative Adjudication System are the following:

1. Pleas are accepted by mail except where the loss of a license may occur on conviction for the offense or the motorist is a scofflaw; then personal appearance is required.
2. The plea may be guilty or not guilty or guilty with explanation.

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Reference Paper
The New York Administrative Adjudication System

3. Every defendant has a right to appear in person, and in all cases, adjudication hearing officers are authorized to impose sanctions as determined by regulation.

4. The hearing officers are lawyers.

5. The state-wide data bank links each adjudication office with the New York Motor Vehicles Department.

6. If the defendant wants to plead not guilty, he is ordered to appear at the Hearing Office in the borough where the alleged offense took place. Appearances are scheduled by date and time to reduce lost time for both the defendant and the police officer.

APPENDIX 1

ENABLING LEGISLATION AND GOVERNOR'S APPROVAL MEMORANDUM

STATE OF NEW YORK



5365

1969-1970 Regular Sessions

IN SENATE

March 25, 1969

CHAP. 1074 L. OF 1969

APP. May 26, 1969

Introduced by COMMITTEE ON RULES—(at request of Messrs. Marchi, Caemmerer, Calandra, Conklin, Goodman, Speno)—read twice and ordered printed, and when printed to be committed to the Committee on City of New York

AN ACT

To amend the vehicle and traffic law, in relation to providing for the administrative adjudication of traffic violations in cities having a population of one million or more

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

- 1 Section 1. Statement of findings and purpose. The legislature
- 2 hereby finds that the incidence of crime in the larger cities of this
- 3 state has placed an overwhelming burden upon the criminal courts
- 4 thereof. This burden, when coupled with the responsibility for
- 5 adjudicating such non-criminal offenses as traffic infractions, has
- 6 resulted in a situation in which the prompt and judicious handling
- 7 of cases becomes virtually impossible. Despite the efforts of all con-
- 8 cerned, this situation has often resulted in the lengthy incarceration
- 9 of defendants before trial, and the inability to grant a trial date for

EXPLANATION — Matter in *italics* is new; matter in brackets [] is old law to be omitted.

1 periods of up to one year, and longer. Because the injustices result-
2 ing from the present system cannot be corrected unless the workload
3 of the criminal courts is substantially reduced, the legislature finds
4 that it is necessary and desirable to establish a system for the admin-
5 istrative adjudication of traffic infractions in cities having a popula-
6 tion of one million or more. Such a system will not only contribute
7 to the more judicious disposition of criminal matters, by reducing
8 the overwhelming workload of the criminal courts, but will also pro-
9 vide for the speedy and equitable disposition of charges which allege
10 moving traffic violations.

11 § 2. The vehicle and traffic law is hereby amended by adding
12 thereto a new article, to be article two-A, to read as follows:

13 *ARTICLE 2-A*

14 *ADJUDICATION OF TRAFFIC INFRACTIONS*

15 *Section 225. Adjudication of violations; hearing officers.*

16 *226. Summons; answer.*

17 *227. Hearings.*

18 *228. Administrative review.*

19 § 225. *Adjudication of violations; hearing officers. 1. Notwith-*
20 *standing any inconsistent provision of law, all violations of this*
21 *chapter or of a local law, ordinance, order, rule or regulation*
22 *relating to traffic, except parking, standing or stopping, which occur*
23 *within a city having a population of one million or more, and which*
24 *are classified as traffic infractions, may be heard and determined*
25 *pursuant to the regulations of the commissioner as provided in this*
26 *article. Provided, however, whenever a criminal offense and a traffic*
27 *violation classified as a traffic infraction arise out of the same*

Appendix 1

1 transaction or occurrence, a charge alleging such violation may be
2 made returnable before the court having jurisdiction over the
3 criminal offense, if the rules governing the procedure of such court
4 so provide. Nothing herein provided shall be construed to prevent a
5 court, having jurisdiction over a criminal charge relating to traffic
6 or a traffic violation, from lawfully entering a judgment of con-
7 viction, whether or not based on a plea of guilty, for any violation
8 classified as a traffic infraction.

9 2. The commissioner shall appoint such hearing officers as shall be
10 necessary to hear and determine cases as provided by this article
11 and may promulgate such regulations as shall be necessary or
12 desirable to effect the purposes of this article. Such regulations may
13 provide for a schedule of monetary penalties to be used where an
14 answer is made by mail admitting a charge, provided that no such
15 penalty shall exceed the maximum fine established by law for the
16 traffic infraction involved.

17 § 226. Summons; answer. 1. Summons. The commissioner shall
18 be authorized to prescribe by regulation the form for the summons
19 and complaint to be used for all traffic violations specified in sub-
20 division one of section two hundred twenty-five of this chapter, and
21 to establish procedures for proper administrative controls over the
22 disposition thereof. Such summons may be the same as the uniform
23 summons provided for in section two hundred seven of this chapter.
24 The chief executive officer of each local police force which is required
25 to use the summons and complaint provided for herein shall prepare
26 or cause to be prepared such records and reports as may be pre-
27 scribed by the commissioner.

1 2. Answer. (a) General. Any person who receives a summons
2 for a violation described in subdivision one of section two hundred
3 twenty-five of this chapter shall answer such summons by personally
4 appearing on the return date at the time and place specified therein.
5 Provided, however, that an answer may be made by registered or
6 certified mail, return receipt requested, within five days of the date
7 of the violation as provided in paragraphs (b) and (c) of this sub-
8 division.

9 (b) Answer by mail—admitting charge. If a person charged with
10 the violation admits to the violation as charged in the summons, he
11 may complete an appropriate form prescribed by the commissioner
12 and forward such form and summons, together with the appropriate
13 part of his license, if required by the commissioner's regulations, to
14 the office of the department specified on such summons. If a schedule
15 of penalties for violations has been established, and such schedule
16 appears on the answer form, a check or money order in the amount
17 of the penalty for the violation charged if included in such sched-
18 ule, must also be submitted with such answer. Unless permitted by
19 the regulations of the commissioner, such plea may not be made by
20 mail for a third or subsequent speeding violation occurring within
21 an eighteen month period, or for a charge of driving while ability
22 is impaired by consumption of alcohol.

23 (c) Answer by mail—denial of charges. If the person charged
24 with the violation denies part or all of the violation as charged in
25 the summons, he may complete an appropriate form prescribed by
26 the commissioner for that purpose and forward such form and sum-
27 mons, together with security in the amount of fifteen dollars, to the

1 office of the department specified on such summons. Upon receipt,
2 such answer shall be entered and a hearing date established by the
3 department. The department shall notify such person by return
4 mail of the date of such hearing. The security shall be returned upon
5 appearance at such hearing.

6 3. Failure to answer or appear. If the person charged with the
7 violation shall fail to answer the summons as provided herein, the
8 commissioner may suspend his license or driving privilege until
9 such person shall answer as provided in subdivision two of this
10 section. If a person shall fail to appear at a hearing, when such
11 is provided for pursuant to this section; the security posted to
12 secure such appearance shall be forfeited and such person's license
13 may be suspended pending appearance at a subsequent hearing,
14 or the disposition of the charges involved.

15 § 227. Hearings. 1. Every hearing for the adjudication of a traffic
16 infraction, as provided by this article, shall be held before a hearing
17 officer appointed by the commissioner. The burden of proof shall be
18 upon the people, and no charge may be established except by clear
19 and convincing evidence. The commissioner may prescribe, by rule
20 or regulation, the procedures for the conduct of such hearings.

21 2. After due consideration of the evidence and arguments, the
22 hearing officer shall determine whether the charges have been estab-
23 lished. Where the charges have not been established, an order
24 dismissing the charges shall be entered. Where a determination is
25 made that a charge has been established or if an answer admitting
26 the charge has been received, an appropriate order shall be entered
27 in the department's records.

1 3. An order entered after the receipt of an answer admitting the
2 charge or where a determination is made that the charge has been
3 established shall be civil in nature, but shall be treated as a con-
4 viction for the purposes of this chapter. The commissioner or his
5 designee may include in such order an imposition of any penalty
6 authorized by any provision of this chapter for a conviction of such
7 violation, except that no penalty therefor shall include imprison-
8 ment, nor, if monetary, exceed the amount of the fine which could
9 have been imposed had the charge been heard by a court.

10 4. All penalties collected pursuant to the provisions of subdivision
11 three of this section shall be paid to the department of audit and
12 control to the credit of the justice court fund and shall be subject
13 to the applicable provisions of section eighteen hundred three of this
14 chapter. After such audit as shall be required by the comptroller,
15 such penalties shall be paid to the city in which the violation
16 occurred, except that the sum of three dollars for each violation
17 occurring in such city for which an answer has been made pursuant
18 to the provisions of subdivision two of section two hundred twenty-
19 six of this chapter shall be retained by the state.

20 5. Unless a hearing officer shall determine that a substantial traffic
21 safety hazard would result therefrom, he shall, pursuant to the
22 regulations of the commissioner, delay for a period of thirty days the
23 effective date of any suspension or revocation of a drivers license or
24 vehicle registration imposed pursuant to this article. Provided,
25 however, the commissioner's regulations may provide for the imme-
26 diate surrender of any item to be suspended or revoked and the

Appendix 1

1 *issuance of appropriate temporary documentation to be used during*
2 *such thirty day period.*

3 § 228. *Administrative review. 1. Appeals board. The commis-*
4 *sioner shall appoint three or more appeals officers, to serve at his*
5 *pleasure, and shall select a chairman for each appeals board from*
6 *the members so appointed. Appeals officers who are not full time*
7 *employees of the department shall be selected from names sub-*
8 *mitted by the state bar association, and by the general county or*
9 *city bar associations of the city in which the appeal board shall sit.*
10 *The commisioner shall assign at least three appeals officers to serve*
11 *on each appeals board established to hear appeals pursuant to this*
12 *section. Any appeal officer who is not a full time employee of the*
13 *department shall receive a per diem at a rate to be fixed by the*
14 *commissioner, with the approval of the director of the budget, for*
15 *each day he serves on an appeals board, in addition to all necessary*
16 *expenses. The commissioner shall also designate such other members*
17 *of the department as may be necessary to assist an appeals board in*
18 *carrying out its assigned functions.*

19 2. *Right of appeal. Any person who is aggrieved by a determina-*
20 *tion of a hearing officer may appeal such determination pursuant to*
21 *the provisions of this article.*

22 3. *Appeals boards. Each appeal filed pursuant to this section*
23 *shall be reviewed by an appeals board, which shall make a determina-*
24 *tion of such appeal, and shall cause an appropriate order to be*
25 *entered in the records of the department.*

1 4. *Time limitations. No appeal shall be reviewed if it is filed more*
2 *than thirty days after notice was given of the determination*
3 *appealed from.*

4 5. *Appeal procedures. Any person desiring to file an appeal from*
5 *an adverse determination pursuant to this section, shall do so in a*
6 *form and manner provided by the commissioner. The transcript of*
7 *any hearing which formed the basis for such determination will be*
8 *reviewed only if it is submitted by the appellant. An appeal shall*
9 *not be deemed to be finally submitted until the appellant has sub-*
10 *mitted all forms or documents required to be submitted by the com-*
11 *missioner or this section.*

12 6. *Transcript of hearings. Transcripts of the record of any hear-*
13 *ing may be obtained at the cost to the department, if prepared by*
14 *the department, or at the rate specified in the contract between the*
15 *department and the contractor, if prepared by a private contractor.*

16 7. *Fees. The fee for filing an appeal shall be ten dollars. No appeal*
17 *shall be accepted unless the required fee has been paid.*

18 8. *Stays pending appeal. Whenever a determination has not been*
19 *made within thirty days after an appeal has been finally submitted,*
20 *a stay of execution will be deemed granted by operation of law, and*
21 *the license, certificate, permit or privilege affected will be auto-*
22 *matically restored pending final determination.*

23 9. *Judicial review. No determination of a hearing officer which*
24 *is appealable under the provisions of this section shall be reviewed*
25 *in any court unless an appeal has been filed and determined in*
26 *accordance with this section.*

Appendix 1

1 § 3. Subdivision one of section eighteen hundred three of such
2 law, as added by chapter ten hundred sixty-four of the laws of nine-
3 teen hundred sixty-five, is hereby amended as follows:

4 1. All fines and penalties collected under a sentence or judgment
5 of conviction of a violation of this chapter or of any act relating
6 to the use of highways by motor vehicles or trailers now in force or
7 hereafter enacted shall be distributed in the following manner:

8 a. to a city, town or suburban town:

9 (1) *except as provided in subdivision four of section two hundred*
10 *twenty-seven of this chapter*, violations which occur in such city,
11 town or suburban town of any provisions of title seven of this
12 chapter including violations of section eleven hundred eighty which
13 relate to speed limits established pursuant to sections sixteen hun-
14 dred forty-two, sixteen hundred forty-three, sixteen hundred forty-
15 four, sixteen hundred sixty-two-a, sixteen hundred sixty-three and
16 sixteen hundred seventy, but excepting violations of sections eleven
17 hundred eighty-two, eleven hundred ninety and eleven hundred
18 ninety-two thereof.

19 b. to a village:

20 (1) violations which occur in any village, in which the office of
21 police justice is established, of any provisions of title seven of this
22 chapter including violations of section eleven hundred eighty which
23 relate to speed limits established pursuant to sections sixteen hun-
24 dred forty-three, sixteen hundred forty-four and sixteen hundred
25 seventy, but excepting violations of sections eleven hundred eighty-
26 two, eleven hundred ninety and eleven hundred ninety-two thereof.

27 c. to a city, town, suburban town or village:

1 (1) violations of any provisions of any ordinance, order, rule or
2 regulation adopted pursuant to the provisions of section sixteen
3 hundred thirty by the East Hudson Parkway Authority or the
4 Westchester county park commission and committed within the
5 boundary of such city, town, suburban town or village.

6 d. to a county:

7 (1) violations of section ten hundred fifty-three-a of the penal
8 law.

9 e. to the State

10 (1) **[Violations]** *except as provided in subdivision four of sec-*
11 *tion two hundred twenty-seven of this chapter, violations of section*
12 *eleven hundred eighty which relate to speed limits other than those*
13 *set forth in subparagraph one of paragraph a and subparagraph*
14 *one of paragraph b of this section and violations of sections eleven*
15 *hundred eighty-two, eleven hundred ninety and eleven hundred*
16 *ninety-two together with all other fines, penalties and forfeitures*
17 *for violations of this chapter or of any act relating to the use of*
18 *highways by motor vehicles or trailers now in force or hereafter*
19 *enacted for which no other distribution is prescribed.*

20 § 4. This act shall take effect on the first day of July in the year
21 next succeeding the year in which it shall have become a law, and
22 shall apply to all violations occurring on and after such date.

STATE OF NEW YORK
EXECUTIVE CHAMBER
NELSON A. ROCKEFELLER, GOVERNOR

May 26, 1969

MEMORANDUM filed with the following bills:

Senate Bill Number 5365 entitled:

#75
(Chapter 1074) "AN ACT to amend the vehicle and traffic law, in relation to providing for the administrative adjudication of traffic violations in cities having a population of one million or more."

Senate Bill Number 5095-A, entitled:

#76
(Chapter 1075) "AN ACT to amend the vehicle and traffic law, the charter of the city of New York, and the administrative code of the City of New York, in relation to the establishment of an administrative tribunal to hear and determine allegations of traffic infractions relating to parking violations, and repealing section 435-18.0 of the administrative code of the city of New York, relating to the liability of lessors of motor vehicles for parking violations committed by their customers."

APPROVED

These bills would lead to important reform in the traffic court system of New York City, and free an estimated 18 criminal court judges for more serious cases.

Senate Bill Number 5365, which is part of my 1969 program, will relieve the Criminal Court of the City of New York of the burden of hearing most moving traffic violations occurring within New York City, except the most serious, and enable them to be heard instead before qualified hearing officers of the Department of Motor Vehicles.

Senate Bill Number 5095-A, proposed by the City of New York, provides for comparable administrative adjudication by a City agency of parking violations.

Both measures will become effective July 1, 1970 with respect to alleged violations occurring on and after that date.

Such serious traffic cases as drunken or reckless driving, or driving without a license or registration, will continue to be heard in the criminal courts, but the overwhelming majority of traffic cases, involving both moving and parking violations, will be removed from the courts.

Not only will more expeditious treatment of these minor cases result from the use of administrative channels, but the relief of court calendar congestion should contribute to prompter and more judicious handling of serious criminal matters. A reduction in the length of incarceration of criminal defendants before trial is only one example of the benefits that can flow from these measures.

Under these bills, the rights of motorists will be fully safeguarded by appropriate administrative procedures. An administrative appeal will be provided for both parking and moving violations. Beyond that, an appeal to the Supreme Court under Article 78 of the Civil Practice Law and Rules also will be authorized.

The State program will be self-supporting, with the State retaining three dollars, or such additional amounts as may be necessary to cover its costs, from each case. The balance of revenues from fines will be paid to the City.

Approval of these bills is recommended by the Mayor of the City of New York, the Department of Motor Vehicles, the Association of the Bar of the City of New York and the New York State Automobile Association, among many others.

The bills are approved.

(Signed) NELSON A. ROCKEFELLER

Appendix 2

14

ENABLING LEGISLATION FOR
ADMINISTRATIVE ADJUDICATION PROGRAM

ARTICLE 2-A
OF THE VEHICLE AND
TRAFFIC LAW

Amended by the 1970 Legislature

ARTICLE 2-A

ADJUDICATION OF TRAFFIC INFRACTIONS

- Section 225. Adjudication of violations; hearing officers.
226. Summons; answer.
227. Hearings.
228. Administrative review.

§ 225. **Jurisdiction; transfer of cases; hearing officers; *regulations.* 1. Notwithstanding any inconsistent provision of law, all violations of this chapter or of a local law, ordinance, order, rule or regulation relating to traffic, except parking, standing, stopping **or pedestrian offenses*, which occur within a city having a population of one million or more, and which are classified as traffic infractions, may be heard and determined pursuant to the regulations of the commissioner as provided in this article. **Whenever a crime and a traffic infraction arise out of the same transaction or occurrence, a charge alleging *both offenses may be made returnable before the court having jurisdiction over the *crime.* Nothing herein provided shall be construed to prevent a court, having jurisdiction over a criminal charge relating to traffic or a traffic **infraction*, from lawfully entering a judgment of conviction, whether or not based on a plea of guilty, for any **offense* classified as a traffic infraction.

**2. Whenever the commissioner or his deputy determines that a charge alleges an offense other than a traffic infraction, he shall, and where a charge cannot be disposed of because of the non-appearance of the motorist, he may notify the court of appropriate jurisdiction and request removal of the case to such court. Prior notice of such request need not be given the motorist involved. Upon receipt of such request, the court may grant an order transferring such case, provided that the date on which the charge or charges must be answered before the court shall not be earlier than the return date which appears on the complaint alleging the offense. Notice of such transfer shall be mailed to the motorist at the address appearing on such complaint not less than ten days before the date of appearance indicated on his summons and not less than fifteen days before his scheduled appearance in such court. Such mailing shall constitute due notice of such transfer. Thereafter, such case shall be treated in the same manner as if the complaint had initially been filed in such court.*

3. The Commissioner shall appoint such hearing officers as shall be necessary to hear and determine cases as provided by

this article and may promulgate such regulations as shall be necessary or desirable to effect the purposes of this article. Such regulations may provide for a schedule of monetary penalties to be used where an answer is made, **other than before a hearing officer*, admitting a charge, provided that no such penalty shall exceed the maximum fine established by law for the traffic infraction involved.

§ 226. *Summons; answer.* 1. *Summons.* The commissioner shall be authorized to prescribe by regulation the form for the summons and complaint to be used for all traffic violations specified in subdivision one of section two hundred twenty-five of this chapter, and to establish procedures for proper administrative controls over the disposition thereof. Such summons may be the same as the uniform summons provided for in section two hundred seven of this chapter. The chief executive officer of each local police force which is required to use the summons and complaint provided for herein shall prepare or cause to be prepared such records and reports as may be prescribed by the commissioner.

2. *Answer.* (a) *General.* Any person who receives a summons for a violation described in subdivision one of section two hundred twenty-five of this chapter shall answer such summons by personally appearing on the return date at the time and place specified therein. Provided, however, that an answer may be made as provided in paragraphs (b) and (c) of this subdivision **and the regulations of the commissioner.*

(b) *Answer by mail—admitting charge.* If a person charged with the violation admits to the violation as charged in the summons, he may complete an appropriate form prescribed by the commissioner and forward such form and summons, together with the appropriate part of his license, if required by the commissioner's regulations, to the office of the department specified on such summons. If a schedule of penalties for violations has been established, and such schedule appears on the answer form, a check or money order in the amount of the penalty for violation charged if included in such schedule, must also be submitted with such answer. Unless permitted by the regulations of the commissioner, such plea may not be made by mail or **any offense for which suspension or revocation of a driver's license is required by law, or for any other offense if the conviction thereof would result in a hearing pursuant to a highway safety program established under the provisions of subdivision three of section five hundred ten of this chapter.*

(c) Answer by mail—denial of charges. If the person charged with the violation denies part or all of the violation as charged in the summons, he may complete an appropriate form prescribed by the commissioner for that purpose and forward such form and summons, together with security in the amount of fifteen dollars, to the office of the department specified on such summons. Upon receipt, such answer shall be entered and a hearing date established by the department. The department shall notify such person by return mail of the date of such hearing. The security **posted pursuant to this paragraph or subdivision three of this section shall be returned upon appearance at *the scheduled hearing or an adjourned hearing which results in a final disposition of the charge, and otherwise shall be forfeited and paid into the general fund. Provided, however, the commissioner may, by regulation, suspend in whole or in part the provisions of this section relating to the posting of security.*

3. Failure to answer or appear. If the person charged with the violation shall fail to answer the summons as provided herein, the commissioner may suspend his license or driving privilege until such person shall answer as provided in subdivision two of this section. If a person shall fail to appear at a hearing, when such is provided for pursuant to this section, the security posted to secure such appearance shall be forfeited and such person's license may be suspended pending appearance at a subsequent hearing, or the disposition of the charges involved. **Any suspension permitted by this subdivision, if already in effect, may be terminated or if not yet in effect, may be withdrawn or withheld, prior to the disposition of the charges involved if such person shall appear and post security in the amount of fifteen dollars to guarantee his appearance at any required hearing. If a suspension has been imposed pursuant to this subdivision and the case is subsequently transferred pursuant to subdivision two of section two hundred twenty-five of this chapter, such suspension shall remain in effect until the motorist answers the charges in the court to which the case was transferred.*

§ 227. Hearings; determinations. 1. Every hearing for the adjudication of a traffic infraction, as provided by this article, shall be held before a hearing officer appointed by the commissioner. The burden of proof shall be upon the people, and no charge may be established except by clear and convincing evidence. The commissioner may prescribe, by rule or regulation, the procedures for the conduct of such hearings.

2. After due consideration of the evidence and arguments **offered in a contested case*, the hearing officer shall determine whether the charges have been established. Where the charges have not been established, an order dismissing the charges shall be entered. Where a determination is made that a charge has been established **, either in a contested case or in an uncontested case where there is an appearance before a hearing officer, or if an answer admitting the charge *otherwise has been received an appropriate order shall be entered in the department's records.*

3. An order entered after the receipt of an answer admitting the charge or where a determination is made that the charge has been established shall be civil in nature, but shall be treated as a conviction for the purpose of this chapter. The commissioner or his designee may include in such order an imposition of any penalty authorized by any provision of this chapter for a conviction of such violation, except that no penalty therefor shall include imprisonment, nor, if monetary, exceed the amount of the fine which could have been imposed had the charge been heard by a court. **The driver's license or privileges may be suspended pending the payment of any penalty so imposed.*

4. All penalties collected pursuant to the provisions of subdivision three of this section shall be paid to the department of audit and control to the credit of the justice court fund and shall be subject to the applicable provisions of section eighteen hundred three of this chapter. After such audit as shall be required by the comptroller, such penalties shall be paid to the city in which the violation occurred, except that the sum of **four dollars for each violation occurring in such city for which *a complaint has been filed with the administrative tribunal established pursuant to this article shall be retained by the state. Provided, however, that if the full costs of administering this article shall exceed the amounts received and retained by the state for any period specified by the commissioner, then such additional sums as shall be required to offset such costs shall be retained by the state out of the penalties collected pursuant to this section.*

5. Unless a hearing officer shall determine that a substantial traffic safety hazard would result therefrom, he shall, pursuant to the regulations of the commissioner, delay for a period of thirty days the effective date of any suspension or revocation of a

drivers license or vehicle registration imposed **after a hearing pursuant to this article, *unless such suspension was imposed because of the failure to pay a monetary penalty. Provided, however, the commissioner's regulations may provide for the immediate surrender of any item to be suspended or revoked and the issuance of appropriate temporary documentation to be used during such thirty day period.*

§ 228. Administrative review. 1. Appeals board. The commissioner shall appoint three or more appeals officers, to serve at his pleasure, and shall select a chairman for each appeals board from the members so appointed. Appeals officers who are not full time employees of the department shall be selected from names submitted by the state bar association, and by the general county or city bar associations of the city in which the appeal board shall sit. The commissioner shall assign at least three appeals officers to serve on each appeals board established to hear appeals pursuant to this section. Any appeal officer who is not a full time employee of the department shall receive a per diem at a rate to be fixed by the commissioner, with the approval of the director of the budget, for each day he serves on an appeals board, in addition to all necessary expenses. The commissioner shall also designate such other members of the department as may be necessary to assist an appeals board in carrying out its assigned functions.

2. Right of appeal. **(a) Any person who is aggrieved by a determination of a hearing officer may appeal such determination pursuant to the provisions of this article.*

**(b) Except as otherwise provided in this subdivision, a transcript of the hearing resulting in the determination appealed from must be submitted on any such appeal.*

(c) If the only issue raised on appeal is the appropriateness of the penalty imposed, the appellant, in his discretion, may submit such appeal without a transcript of the hearings. In such event, the decision of the appeals board may be based solely on the appeal papers and the records of the department, and such decision shall not be subject to judicial review.

(d) Where a transcript of the hearing is submitted at the time an appeal is filed, the determination of the appeals board will be subject to judicial review as prescribed in subdivision nine of this section.

3. Appeals boards. Each appeal filed pursuant to this section shall be reviewed by an appeals board, which shall make a determination of such appeal, and shall cause an appropriate order to be entered in the records of the department.

4. Time limitations. No appeal shall be reviewed if it is filed more than thirty days after notice was given of the determination appealed from.

5. Appeal procedures. Any person desiring to file an appeal from an adverse determination pursuant to this section, shall do so in a form and manner provided by the commission. The transcript of any hearing which formed the basis for such determination will be reviewed only if it is submitted by the appellant. An appeal shall not be deemed to be finally submitted until the appellant has submitted all forms or documents required to be submitted by the commissioner or this section.

6. Transcript of hearings. Transcripts of the record of any hearing may be obtained at the cost to the department, if prepared by the department, or at the rate specified in the contract between the department and the contractor, if prepared by a private contractor.

7. Fees. The fee for filing an appeal shall be ten dollars. No appeal shall be accepted unless the required fee has been paid.

8. Stays pending appeal. Whenever a determination has not been made within thirty days after an appeal has been finally submitted, a stay of execution will be deemed granted by operation of law, and the license, certificate, permit or privilege affected will be automatically restored pending final determination.

9. Judicial review. **(a) No determination of a hearing officer which is appealable under the provisions of this section shall be reviewed in any court unless an appeal has been filed and determined in accordance with this section.*

**(b) A determination of the appeals board in any case where a transcript of the hearing has been submitted shall be subject to review pursuant to the provisions of article seventy-eight of the civil practice law and rules. Provided, however, a statement by the hearing officer at the conclusion of the hearing indicating that the charges have been sustained and announcing the penalty imposed, together with a summary of the reasons the appeal was denied by the appeals board, shall constitute sufficient findings for the purpose of such review.*

A PARKING VIOLATIONS BUREAU

B STATE ADM. ADJ. BUR.

C CRIMINAL COURT

Appendix 3

PRINT ALL ENTRIES • USE BALL POINT PEN • PRESS HARD 44353

COPY OF NOTICE OF VIOLATION

COMPLAINT

THE PEOPLE OF THE STATE OF NEW YORK—VS—

VOID

LAST NAME FIRST NAME INITIAL

STREET ADDRESS

CITY (as shown on license) STATE ZIP NO.

LICENSE OR IDENTIFICATION NUMBER

STATE	TYPE OF LICENSE	DATE EXPIRES	SEX	DATE OF BIRTH MO. DAY YR.	OPERATOR OWNS VEHICLE <input type="checkbox"/> YES <input type="checkbox"/> NO
-------	-----------------	--------------	-----	------------------------------	-----------------------------------------------------------------------------------

THE OPERATOR OR REGISTERED OWNER OF VEHICLE DESCRIBED BELOW

P L A T E	YEAR	AND	MAKE OF VEHICLE	COLOR	BODY TYPE
	PLATE TYPE	STATE	DATE EXPIRES MO. YR.		

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

PLACE OF OCCURRENCE PRECINCT OF OCCURRENCE

COUNTY	DATE	TIME <input type="checkbox"/> AM <input type="checkbox"/> PM	IN VIOLATION OF SECTION	SUBD.	OF
TRAFFIC REGULATIONS	VEHICLE AND TRAFFIC LAW	ADMINISTRATIVE CODE	OTHER LAW		

A PARKING

CODE	PARKING METER NO.	FEET FROM HYDRANT
------	-------------------	-------------------

B TRAFFIC INFRACTION

SPEEDING	MPH	IN MPH ZONE	DISOBEY TRAFFIC CONTROL DEVICE	SIGNAL	SIGN	PAVEMENT MARK
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DESCRIPTION OF TRAFFIC INFRACTION IF NOT SHOWN ABOVE

C OTHER OFFENSE (INCLUDING TRAFFIC MISDEMEANOR)

SCHEDULED FINE \$10 \$15 \$25 \$35 OTHER \$

THE PERSON DESCRIBED ABOVE IS SUMMONED TO APPEAR AT. IF CRIMINAL COURT, SUMMONS PART INDICATE PART

LOCATED AT COUNTY

DATE OF APPEARANCE (13 OR MORE DAYS AFTER DATE ISSUED) AM

DAY OF 19 AT PM
FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW. I PERSONALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED ABOVE. AFFIRMED UNDER PENALTY OF PERJURY ON DATE OF OFFENSE.

RANK/SIGNATURE OF COMPLAINANT SQUAD COMMAND

COMPLAINANT'S NAME (PRINTED) TAX REGISTRY NO. AGENCY

CRIMINAL COURT

N.Y.S. DEPT. OF MOTOR VEHICLES **B** ADMINISTRATIVE ADJUDICATION BUR.

A PARKING VIOLATIONS BUREAU

EXHIBIT B

State of New York
ADMINISTRATIVE ADJUDICATION
BUREAU STATISTICS

Exhibit B

	JULY 1, 1970 To JUNE 30, 1971	JANUARY 1, 1971 To DECEMBER 31, 1971	APRIL 1, 1971 To MARCH 31, 1972	JULY 1, 1971 To JUNE 30, 1972	JAN. 1, 1972 To DEC. 31, 1972	APRIL 1, 1972 To MARCH 31, 1973
Total Complaints Received-----	562,158	601,060	629,214	635,485	632,215	594,355
Mail pleas of Guilty received (Albany)-----	83,651	104,668	118,401	120,088	113,643	108,266
Pleas of Guilty received (New York)-----	51,274	56,713	56,998	54,961	53,583	53,455
Uncontested hearings (Guilty with explanation & required appearances)-----	158,162	205,371	231,990	244,588	259,838	262,568
Contested hearings-----	24,572	31,474	33,918	35,967	35,632	35,238
Guilty after contested hearing-----	13,431	16,654	17,605	18,536	18,251	18,303
Not Guilty after contested hearing-----	8,468	11,113	12,265	12,742	12,181	11,672
Dismissal of contested charge for police non-appearance-----	2,673	3,707	4,048	4,689	5,200	5,263
Total appeals filed-----	262	317	327	345	390	412
Dismissals at uncontested hearings (Technical defects, lights repaired, license or registration produced)-----	16,935	27,997	35,017	38,219	42,959	43,701
Total suspended sentences-----	4,878	4,881	4,640	4,513	3,308	2,629
Discretionary suspensions after hearing-----	739	671	803	869	1,007	1,067
Discretionary revocations after hearing-----	95	115	143	131	136	128
Mandatory suspensions after hearing-----	991	1,182	1,271	1,300	1,263	1,206
Mandatory revocations after hearing-----	273	366	455	516	569	539
Scottlaw suspensions issued-----	243,973	279,732	305,956	305,668	309,349	309,349
Scottlaw suspensions terminated-----	141,149	136,488	140,845	121,601	98,600	98,600
Total fines collected (Albany)-----	\$1,341,521	\$1,651,672	\$1,824,792	\$1,998,266	\$1,829,010	\$1,771,975
Total fines collected (New York)-----	\$2,352,748	\$2,876,254	\$3,161,646	\$3,368,979	\$3,660,373	\$3,768,504

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