

Reference Paper
Committee on Judiciary
November 1973
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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.

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

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

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.

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*

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

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.*

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.

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

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 with 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

PRINT ALL ENTRIES • USE BALL POINT PEN • PRESS HARD **Appendix 3** 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
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THE OPERATOR OR REGISTERED OWNER OF VEHICLE DESCRIBED BELOW

PLATE	YEAR AND MAKE OF VEHICLE	COLOR	PLATE TYPE	STATE	DATE EXPIRES MO. YR.	BODY TYPE
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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
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 INDICATE PART SUMMONS PART

LOCATED AT COUNTY

DATE OF APPEARANCE (21 OR MORE DAYS AFTER DATE ISSUED) AM

DAY OF 19 AT PM

FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS MISDEMEANOR PURSUANT TO SECTION 170.41 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

C

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

A PARKING VIOLATIONS BUREAU