

New Local Law Provides Alternative to Criminal Court

by Kelly Padden

New York City changed the rules on the enforcement of low-level crimes when, on June 13, 2017, the Council-passed Criminal Justice Reform Act became effective. The new local law adds a new *civil* summons in lieu of issuing a criminal summons returnable in *criminal* court.

The new law does not change the legality or illegality minor quality of life offenses. What is different is that the officer now has a civil option for specified minor offenses. Minor offenses covered by the new law include such prominent offenses as having an open container of alcohol, urinating in public, littering, spitting in public, excessive noise, and violating park rules.

A civil summons for these and other minor violations is returnable to the Office of Administrative Trials and Hearings where the summons is heard by a civil administrative hearing officer who can only

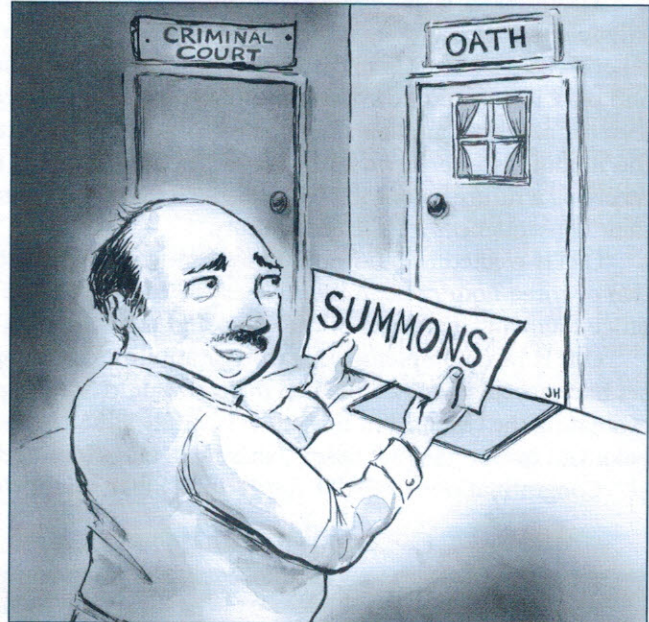


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impose a civil remedy. The new Act, in an important innovation, added community service as a potential penalty for a civil summons. See Commentary on page 2 on how OATH is administering the community service penalty.

When fully implemented, the Criminal Justice Reform Act could annually divert 100,000 offenders from the criminal justice system, cut the number of arrest warrants issued for minor offenses, and dramatically reduce the risk that a minor offense will result in a permanent criminal record. The option to issue civil summons should also lessen the strain on the City's jails, courts, and police department, and allow for an increased focus on more serious crime.

A criminal summons can cause additional collateral consequences. An individual may lose a bed in a homeless shelter, encounter difficulty with employment, lose student loan funding, or be deported. Missing a criminal court date can lead to the issuance of an arrest warrant, which can in turn lead to jail time. If an officer arrests someone with an open warrant that individual will likely be placed in jail—potentially for 24 hours prior to appearing before a judge.

Between 2010 and 2015 the NYPD issued almost

Criminal Justice Reform *(Cont'd from 1)*

two million “quality-of-life” criminal summonses. The most common criminal offenses cited were having an open container of alcohol, disobeying park rules (being in a park after hours, walking on grass, disobeying signage), littering, public urination, and unreasonable noise.

To implement the new law the NYPD issued guidelines in its patrol guide to provide officers with guidance on how to choose between a civil rather than a criminal summons. The new guidelines set out specific justifications for still issuing a criminal summons rather than a civil summons.

An officer may issue a criminal summons when the violator is a recidivist, defined as a person who has two or more felony arrests in the past two years, or has two or more unanswered civil summonses returnable to OATH in the past eight years, or is on parole or probation. An officer may choose to issue a criminal summons rather than a civil summons where the violator is the subject of an arrest warrant or the subject in a probable cause investigation, where the violator has committed another act requiring a criminal summons, or where there is a legitimate law enforcement reason to issue a criminal summons rather than issuing a civil summons returnable to OATH. When adopting the legitimate law enforcement reason, the officer must notify a supervisor who must respond and verify the reason.

To encourage transparency and accountability the Act further requires the NYPD to make civil and criminal summons data publicly available. The data must include the race, gender, and age of the person against whom a summons is issued, as well as the borough, precinct and housing area or transit district in which the summons was issued.

The Difference Between a Criminal and Civil Summons

Criminal Summons to Criminal Court	Civil Summons to OATH
Permanent criminal record possible	No permanent criminal record
Requires a person to appear in criminal court	Fines can be paid online; appearances can be made via phone or in person
Warrant will be issued if person fails to appear in criminal court	No warrant issued if person fails to appear
Both imprisonment and fine possible	Only a fine or community service may be imposed

Source: New York City Council Website: <https://council.nyc.gov/legislation/criminal-justice-reform/>

Community Service and Civil Fines

The new law provides a new civil penalty community service for low-level offenses in lieu of paying fines. OATH hearing officers may impose community service as a penalty, but only on an individual who has appeared in person at OATH either prior to or on the hearing date. In most cases, an individual will have two weeks to complete the community service. An individual cannot receive the community service penalty option if the individual opted for a remote hearing (online or via phone). Individuals who admit to the violation online can only pay a monetary fine.

Administrative law judges are also now permitted to dismiss civil summonses in the interest of justice. Each year OATH must compile and report data on the judgments and penalties imposed for low-level offenses.

The following are examples of changes with respect to some of the most often cited minor offenses.

Open Containers. For open container violations, the maximum jail sentence was reduced from five days to one day, while the maximum \$25 fine remains the same. In addition, an alternative one-hour community service penalty may be imposed.

Littering and Urinating in Public. First-time offenders found littering and urinating in public will now face a maximum \$75 fine. Subsequent offenses within twelve months will carry fines between \$250 and \$350 for a second offense and between \$350 and \$450 for a third offense. The community service alternative penalty is one hour for the first offense, three hours for the second offense, and six hours for the third offense. Possible imprisonment for littering and public urination was reduced from ten days to one day.

Unreasonable Noise. Unreasonable non-commercial noise violations will incur lower monetary penalties ranging from \$75 to \$150 for the first offense, \$150 to \$300 for the second offense within two years and \$350 to \$500 for the third offense within two years. These penalties are significantly lower than the previous \$350 to \$3,000 potential fines. In addition, the community service alternative is one hour for the first offense, two hours for the second offense and six hours for the third offense.

Parks and Recreation. Penalties for violations of the rules of the Department of Parks and Recreation are now mostly punishable as violations instead of misdemeanors. The maximum fine for a park rule violation is now \$300, reduced from the previous \$10,000

maximum. Various offenses now carry the alternative community service penalty, which ranges from one hour to twelve hours.

In October, 2017, Mayor de Blasio and Speaker Mark-Viverito announced that in the first 16 weeks of the Criminal Justice Reform Act, only 4,370 criminal court summonses were issued citywide. For the same period in 2016, the NYPD issued 55,224 criminal court summonses.

According to NYPD Commissioner James P. O'Neill, the reduction in the issuance of criminal court summonses showed that NYPD officers were exercising their discretion and issuing civil summonses instead of criminal summonses. The number of civil tickets issued, however, did not increase proportionally for the same 16-week period. For the Criminal Justice Reform Act offenses, 26,154 civil summonses were issued. According to the Office of the Mayor, a decrease in enforcement is normal during a period of transition.

OATH Cases

As the number of civil summonses increases, the number of hearings held by the Office of Administrative Trials and Hearings will also increase. According to the New York City Council Finance Division, during fiscal 2018, OATH's annual caseload is anticipated to increase by over 48,000 hearings. Historically, OATH has handled about 300,000 hearings per year. The 2018 budget increased OATH's funding by \$2.9 million in order to implement the Criminal Justice Reform Act. About half of the increased funding will be to support 22 new positions

Other Reforms

The Criminal Justice Reform Act may be the most prominent element of New York City's efforts to reform the criminal justice system, but several other efforts are also underway. In January 2017, the City settled a federal class-action lawsuit, *Stinson v. City of N.Y.*, for \$75 million. *Stinson* alleged that between May 2007 and December 2015 the NYPD issued hundreds of thousands of bogus criminal summonses that were later dismissed for either facial insufficiency or lack of probable cause. Under the settlement the City agreed to pay eligible claimants up to \$150 per summons, provide NYPD officers with better guidance regarding the illegal use of quotas and how to report issues, and insure that those receiving summonses will find it easier to identify officers and voice complaints.

In another effort four of the City's district attorneys have established procedures to vacate old arrest warrants for minor offenses that had been issued when the offender failed to appear in criminal court. The Brooklyn, Bronx, Manhattan, and Queens district attorneys hosted events throughout the boroughs to

give offenders the opportunity to go before a judge to vacate warrants that were over ten years old. During the summer of 2017, the district attorneys dismissed 143,500 warrants in Brooklyn; 160,000 in the Bronx; 240,500 in Manhattan; and 100,000 in Queens. Staten Island District Attorney Michael McMahon decided not to participate, stating that blanket amnesty would be unfair for citizens who obeyed their summonses and appeared in court. McMahon noted that the programs could send the wrong message about respecting the community and the law.

On January 24, 2018, Brooklyn District Attorney Eric Gonzalez announced a Justice 2020 Initiative. The initiative will create committees comprised of criminal justice reform experts, law enforcement personnel, clergy, formerly incarcerated individuals, community leaders, defense groups, and service providers. The committees will help implement reform-minded programs such as bail reform, immigration policy reform, a Conviction Review Unit, and an initiative to vacate outstanding summonses for minor offenses.

In 2014, the City partnered with ideas42, a not-for-profit behavioral design lab, to redesign the City's summons form in a way that would make individuals more likely to appear in court. The revised form includes a space for the individual's phone number as well as information regarding the consequences of failing to appear in court. According to a University of Chicago study, use of the new summons form reduced the failure-to-appear rate by 13 percent.

In another effort, between March 2016 and June 2017, the City randomly selected individuals who had provided their phone number to receive trial text messages regarding their summonses. The texts reduced the failure-to-appear rate by 26 percent. The text messages which were the most effective in motivating persons to appear contained information about the consequences of failing to appear, what to expect in court, and plan-making suggestions. As a result the Office of Court Administration has been sending text messages to summons recipients who provided their phone numbers.

The combination of the revised form and the text message reminders has reduced failure-to-appear in-court rates by 38 percent. Increasing court appearances will cut the number of warrants, which will in turn reduce the burden on the City's criminal justice system. □

Kelly Padden is a 2017 graduate of New York Law School. She is now working for the Legal Aid Society of Suffolk County.

OATH CIVIL OPTION

CITATION IN SUMMONS	DESCRIPTION IN SUMMONS	CITATION MONETARY PENALTY	COMMUNITY SERVICE HOUR REQUIREMENTS
Admin. Code § 10-125	Public Consumption of Alcohol	Up to \$25	1
56 RCNY § 1-05(f)(1)	Unauthorized consumption/possession of alcoholic beverage	25	1
56 RCNY § 1-05(f)(2)	Appearing in park under the influence of alcohol, endangering self or others	50	1
Admin. Code §16-118 (1)(a), (b)	Littering, Sweep-out, throw-out, spitting	1st - \$75 2nd - \$250 3rd - \$350	1st - 1 2nd - 3 3rd - 6
56 RCNY §1-04(c)(1)	Littering or unlawful use of park waste receptacle	\$50	1
Admin. Code § 16-118(6)	Public Urination	1st - \$75 2nd - \$250 3rd - \$350	1st - 1 2nd - 3 3rd - 6
56 RCNY § 1-03(a)(3)	Unauthorized presence in park when closed to public	50	1
56 RCNY § 1-03(a)(3)	Unauthorized presence in park when closed to public	50	1
56 RCNY § 1-03(b)(6)	Failure to have/display/comply with required permit	\$50	1
56 RCNY § 1-03(c)(1)	Failure to comply with directives of police, park supervisor, lifeguard, peace officer	\$250	3
56 RCNY § 1-03(c)(2)	Failure to comply with directives of other Department employee	\$150	2
56 RCNY § 1-03(c)(3)	Failure to comply with directions/prohibitions on signs	\$50	1
56 RCNY § 1-04(a)(1)	Destruction or abuse of Department property that causes significant damage or expense	\$1000	12
56 RCNY § 1-04(a)(2)	Injury, defacement, abuse, etc. of Department property	\$100	2
56 RCNY § 1-04(b)(1)(ii)	Defacement or writing upon a tree	\$200	3
56 RCNY § 1-04(b)(1)(iii)	Defacement, killing, etc. of vegetation.	\$200	3
56 RCNY § 1-04(b)(2)	Walking on/permitting animal or child to walk on newly seeded grass	\$50	1
56 RCNY § 1-04(b)(3)	Walking/permitting animal or child to walk in fenced area	\$50	1
56 RCNY § 1-04(b)(4)	Unauthorized possession of gardening tool/plant	\$50	1
56 RCNY § 1-04(b)(5)	Unauthorized use of metal detector	\$50	1
56 RCNY § 1-04(c)(4)	Storing/leaving unattended personal belongings	\$50	1
56 RCNY § 1-04(d)	Possession of glass container	\$50	1
56 RCNY § 1-04(e)(1)	Aviation - bringing/landing aerial device in park, endangering person or property	\$500	6
56 RCNY § 1-04(f)(1)	Possession of a firearm/propellant/explosive etc.	\$500	6
56 RCNY § 1-04(g)(1)	Harming animals, nests, or eggs; Possessing or distributing animals or eggs	\$1000	12
56 RCNY § 1-04(g)(2)	Unauthorized feeding of animals	\$50	1
56 RCNY § 1-04(1)	Unleashed/uncontrolled animals in park - second or subsequent violation within one year	\$250	3

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OATH CIVIL OPTION (Con't.)

CITATION IN SUMMONS	DESCRIPTION IN SUMMONS	CITATION MONETARY PENALTY	COMMUNITY SERVICE HOUR REQUIREMENTS
56 RCNY § 1-04(j)(1), § 3-18(b)	Failure to remove canine waste	\$100	2
56 RCNY § 1-04(j)(2)	Horse carriage without horse hamper/control for horse waste	\$100	2
56 RCNY § 1-04(k)	Unlawful urination/defecation in park	\$50	1
56 RCNY § 1-04(l)(1)	Disorderly behavior – unauthorized access/trespass	\$50	1
56 RCNY § 1-04(l)(2)(i)	Disorderly behavior – climbing	\$50	1
56 RCNY § 1-04(l)(2)(ii)	Disorderly behavior – climbing statue or artwork in manner that could damage it	4200	3
56 RCNY § 1-04(l)(3)	Disorderly behavior – fee evasion	\$50	1
56 RCNY § 1-04(l)(4)	Disorderly behavior – gambling	\$50	1
56 RCNY § 1-04(l)(5)(i)	Disorderly behavior – render park road dangerous	\$100	2
56 RCNY § 1-04(l)(5)(ii)	Disorderly behavior – render park dangerous	\$50	1
56 RCNY § 1-04(l)(6)	Disorderly behavior – fighting/assault	\$150	2
56 RCNY § 1-04(l)(7)	Disorderly behavior – sexual activity	\$100	2
56 RCNY § 1-04(l)(8)	Disorderly behavior – endanger safety of others	\$250	3
56 RCNY § 1-04(l)(9)	Disorderly behavior – operation of bike, motor vehicle, etc. that endangers safety of other person or property	\$500	6
56 RCNY § 1-04(n)	Unlawful exposure	\$50	1
56 RCNY § 1-04(o)	Obstruction of benches, sitting areas	\$50	1
56 RCNY § 1-04(p)	Unlawful camping	\$250	3
56 RCNY § 1-04(q)	Spitting on park building/monument/structure	\$50	1
56 RCNY § 1-04(r)	Unauthorized use of fountain/pool/water for personal/animal hygiene	\$50	1
56 RCNY § 1-04(s)(1)	Unlawful commercial activity or speech	\$100	2
56 RCNY § 1-04(s)(2)	Soliciting money or property without permit	\$50	1
56 RCNY § 1-05(a)(1)	Unpermitted event that significantly interferes with ordinary park use	\$500	6
56 RCNY § 1-05(a)(2)	Unpermitted special event/demonstration	\$250	3
56 RCNY § 1-05(a)(3)	Structure/stand/booth etc. without permit	\$250	3
56 RCNY § 1-05(b)	Unlawful vending	\$250	3
56 RCNY § 1-05(b)(1)	Unlawful vending – second or subsequent violation within one year	\$500	6
56 RCNY § 1-05(b)(2)	Unlawful vending of expressive matter in violation of Department rules	\$500	6
56 RCNY § 1-05(c)	Unlawful display of signs	\$50	1
56 RCNY § 1-05(d)(1)	Unreasonable noise	\$50	1

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OATH CIVIL OPTION (Con't.)

CITATION IN SUMMONS	DESCRIPTION IN SUMMONS	CITATION MONETARY PENALTY	COMMUNITY SERVICE HOUR REQUIREMENTS
56 RCNY § 1-05(d)(2)	Operating sound reproduction device without required permit	\$140	2
56 RCNY § 1-05(d)(3)	Playing instrument/radio, etc. during unauthorized hours	\$140	2
56 RCNY § 1-05(g)	Failure to comply with beach/boardwalk/pool restrictions	\$50	1
56 RCNY § 1-05(h)	Failure to comply with fishing restrictions	\$50	1
56 RCNY § 1-05(i)	Failure to comply with bicycle riding and/or pedicab restrictions	\$50	1
56 RCNY § 1-05(i)(1)	Failure of pedicab or bike operator to comply with sign	\$150	2
56 RCNY § 1-05(l)	Planting tree/flower/shrubbery/other vegetation without written approval	\$50	1
56 RCNY § 1-05(k)(1)	Failure to comply with ice skating restrictions	\$50	1
56 RCNY § 1-05(k)(2)	Going upon a frozen lake or pond without authorization	\$50	1
56 RCNY § 1-05(1)	Planting tree/flower/shrubbery/other vegetation without written approval		
56 RCNY § 1-05(m)(1)	Failure to comply with fire restrictions	\$50	1
56 RCNY § 1-05(m)(2)	Unlawful disposal of flammable materials	\$50	1
56 RCNY § 1-05(m)(2)	Unlawful disposal of flammable materials	50	1
56 RCNY § 1-05(n)	Unauthorized driving/parking/automotive work	\$50	1
56 RCNY § 1-05(q)	Failure to comply with horse riding restrictions	\$50	1
56 RCNY § 1-05(r)(1)	Area use restrictions - sports in unauthorized area	\$50	1
56 RCNY § 1-05(r)(2)	Area use restrictions - unauthorized toy or model aviation, boating, automobiling, etc.	\$50	1
56 RCNY § 1-05(r)(3)(i)	Area use restrictions - unauthorized skating/skiing/skateboarding/sledding/etc. endangering person or property	\$200	3
56 RCNY § 1-05(r)(3)(ii)	Area use restrictions - unauthorized skating/skiing/skateboarding/sled ding, etc.	\$50	1
56 RCNY § 1-05(s)(1)	Failure to comply with exclusive children playground restriction	\$50	1
56 RCNY § 1-05(s)(2)	Failure to comply with exclusive senior citizen area restrictions	\$50	1
56 RCNY § 1-05(s)(3)	Failure to comply with dog run restrictions	\$50	1
56 RCNY § 1-05(t)	Unauthorized distribution/demonstration of products	\$100	2
56 RCNY § 1-05(u)	Failure to comply with in-line skating restrictions	\$50	1
Admin. Code § 24- 218(a)	Causing or permitting unreasonable noise (7AM to 10PM)	1st - \$75 2nd - \$150 3rd - \$350"	1st - 1 2nd - 2 3rd - 6
Admin. Code § 24- 218(a)	Causing or permitting unreasonable noise (10PM to 7AM)	1st - \$75 2nd - \$150 3rd - \$350"	1st - 1 2nd - 2 3rd - 6

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