A REPORT BY THE

TOMPKINS COUNTY MUNICIPAL

COURTS TASK FORCE

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EXECUTIVE SUMMARY

The Municipal Courts Task Force (Task Force) was created by resolution of the Tompkins County Council of Governments (TCCOG) in 2015. It is a community task force broadly representing local stakeholders and their often differing views.

Rather than simply generating another study that gathers dust in the archives of the county, the Task Force has worked hard to try to reach consensus on recommendations that are both practical and feasible. Some of the recommendations can be implemented in the near term. Others will require further time, study and political will before they can become part of the local justice system in Tompkins County.

Moreover, the Task Force has construed its charge liberally. It is recommending certain systemic changes that reach beyond the court system in some respects. However, the Task Force believes that long-term such changes will reduce the aggregate case-load of the local courts and also will result in greater fairness to those who are called to justice.

Accordingly, in Section One the Task Force has set forth an informative summary of the justice court system and history in New York, courtesy of the Unified Court System of New York State and its Office of Court Administration. Additionally, Section One includes the more recent history of the town and village court system in Tompkins County.

Section Two outlines the charge given to the Task Force by TCCOG. It also

set forth the methodology and resources used by the Task Force in going about its work.

In Section Three, the Task Force identifies specific, practical changes that ought to be made in the local justice court system. Those changes reflect the clear consensus of Task Force members who often brought to the discussion markedly opposing views, but nevertheless reached common ground with respect to those recommended changes. These recommended changes range from the somewhat dramatic creation of a county-wide DWI Part of court to the more mundane scheduling coordination among the courts. Some of these changes can be implemented by the County Legislature alone, with the cooperation of the Office of Court Administration. Others require the full cooperation of the local town and village justices.

These recommended changes, including identification of what group should take the initiative in implementing each one, are listed as follows:

A. (1) Establish countywide DWI Court (County coordination with New York State Office of Court Administration [sometimes referred to as Unified Court System]);

(2) Establish Law Enforcement Assisted Diversion (LEAD) program (County, TCCOG, District Attorney and police agencies);

(3) Establish countywide Youth Court (County and school districts);

(4) Further investigate Mental Health Court, including interim training (County and local Bar Association);

B. (1) Improve electronic access and use more technology (local courts with assistance and support of County);

(2) Coordinate court schedules (local courts with assistance of TCCOG);

(3) Release defendants "ROR" or on realistic bail (local courts);

(4) Provide "rap sheets" at arraignment and write decisions (local courts);

(5) Use confessions of judgments and allow for partial payments with respect to fines, surcharges and restitution (local courts);

(6) Establish an easily accessible website that sets forth clear policies and standards for plea-bargaining vehicle and traffic violation level offenses (District Attorney).

C. (1) Establish a countywide after-hours centralized arraignment program (County, local courts and Sheriff, with enabling legislation by New York State);

(2) Establish clear bail limits for misdemeanor and lower level offenses (New York State);

(3) Provide for automatic transfer of cases to lawyer-trained justices upon request of defendant (New York State).

Finally, in Section Four, the Task Force describes the fundamental disagreement among its membership. It provides an aspirational model of a single county-wide criminal court. It also identifies the more modest alternatives of regional consolidation that currently are available to municipalities that are so inclined.

Acknowledgements and Task Force Membership

The work of this Task Force would not have been accomplished without the singular support and vision of Joe Mareane, Tompkins County Administrator. Joe conceived the idea, conducted preliminary investigation and interviews, and identified and recruited the Task Force members. Equally important, Joe supported the Task Force in every administrative and data-related aspect of its work. Joe was ably supported and complemented by his staff, including Marcia Lynch, to whom the Task Force is deeply grateful.

The Task Force also acknowledges the active involvement of numerous judges, attorneys, law enforcement personnel, and other individuals and organizations in the Tompkins County community and beyond. These dedicated professionals, organizations and citizens appeared at meetings, gave testimony, provided data and opinions, and identified relevant issues and concerns. The minutes set forth in Appendix 3 identify many of these helpful people. However, the Honorable William Chernish, Newfield Town Justice, stands out for his welcome constancy, insight and candor.

The membership of the Task Force reflects significant elements in the Tompkins County community, including Town and Village Justices, Town Supervisors, and attorneys, both prosecuting and defense.

Hon. Glenn Galbreath, Justice, Village of Cayuga Heights

Since 1991, Judge Galbreath has been elected seven times as the Justice in the Village of Cayuga Heights and is one of three attorneys who serve as Town Justices in Tompkins County. When not holding court Judge Galbreath teaches trial advocacy, several public interest law clinics, and the externship courses at Cornell law School. He joined the Cornell Law School clinical faculty in 1986. In addition to teaching and supervising clinic student litigation, he regularly presents lectures and workshops to judges and other professionals on a wide variety of legal topics.

He is a graduate of Case Western Reserve University Law School. Professor Galbreath developed extensive litigation experience in his two years as a staff attorney for the Ohio Migrant Legal Action Program and Toledo Legal Aid Society and ten years as Deputy Director for Litigation for Advocates for Basic Legal Equality, Inc., an Ohio legal services organization dedicated to representing low income plaintiffs in federal class action suits involving major impact litigation. He also has worked with law students at Cornell Legal Aid since 1986.

Hon. Jason Leifer, Supervisor, Town of Dryden,

Jason Leifer is the defense bar member of the Municipal Courts Task Force. He has been practicing law for over 15-years and is licensed in New York, Maryland, and Washington D.C. Jason is a member of the Tompkins County Bar Association, the Assigned Counsel Panel, the County's Advisory Board on Indigent Representation (ABIR) and the County's Criminal Justice/Alternatives to Incarceration Board (CJATI). Jason has served on the Dryden Town Board since

January 2008 and has been the Town Supervisor for the Town of Dryden since January 2016.

Hon. Scott Miller, Ithaca City Court Judge

Ithaca Mayor Svante Myrick appointed Scott Miller to serve as Ithaca City Court Judge in 2013. Prior to his appointment Judge Miller was a partner with Holmberg, Galbraith & Miller. He has served as adjunct faculty at Cornell Law School from 2004 – 2009 and 2011-2012. From 2001 to 2004 Judge Miller was the Town Attorney for the Town of Enfield. Judge Miller is a graduate of Cornell Law School and is admitted to the NY State Bar, the Massachusetts State Bar, and to the bar of the United States District Court, Northern District of New York. Judge Miller has also served as President, Tompkins County Bar Association, from 2012 – 2013; Vice President, Tompkins County Bar Association, 2011 – 2012; Board of Directors, Downtown Ithaca Alliance, 2010 – 2012; Board of Directors, Ithaca Youth Bureau/Big Brothers Big Sisters Program, 2000 – 2003; and Board of Directors, Ithaca Neighborhood Housing Services, 2007 – 2012.

Hon. Betty Poole, Chair Tompkins County Magistrates Association

The Hon. Betty Poole has served as Enfield Town Justice since 1994 and until recently served as the Court Clerk in the Town of Ithaca Justice Court for 25 years. During her tenure with the Town of Ithaca she also served as Interim Town Clerk, Deputy Town Clerk, and Receiver of Taxes. Judge Poole has served as the President of the Tompkins County Magistrate's Association for approximately 14+ years.

Judge Poole is a member in good standing of the NYS Magistrates Association, the NYS Magistrate Court Clerks Association, and the Tompkins County Magistrates Association. She has also been a member of the CJATI Committee and currently a member of the Tompkins County Town and Village Task Force.

Mark Solomon

Mark Solomon has been an attorney in Ithaca since 1985. His practice focuses on matters of professional responsibility and domestic relations. He has served on the New York State Bar Association's Committee on Professional Ethics since 1992. Mr. Solomon regularly lectures on issues of legal ethics and professionalism. He has been a lecturer in Cornell's Trial Advocacy Program since 1984 and an Adjunct Professor at Syracuse University Law School.

Mark graduated from Colgate University with a BA, magna cum laude, in 1967. He followed with an MA at the University of Chicago in 1971, and completed his formal education in 1984 with a JD degree, magna cum laude, at Cornell Law School.

Hon. Elizabeth Thomas, Supervisor, Town of Ulysses

Born and raised in Ithaca and Ulysses, Liz Thomas has served on the Ulysses Town Board since 2008 and has served as Ulysses Town Supervisor Since April 2013. Since joining the Ulysses Town Board Liz has been a leader in municipal collaboration on many issues such as broadband, animal control, parks and trails, and hydrofracking. Her professional experience outside of municipal government is

in sustainable agriculture. She has co-authored and edited 12 organic production guides for fruits and vegetables.

Hon. Gwen Wilkinson, Tompkins County District Attorney

Gwen is currently serving her third term as Tompkins County District Attorney. A thirty-four year resident of Ithaca, her career in public service has been grounded in Tompkins County. Before being elected to her current position she served as an Assistant District Attorney, a DSS attorney and an assigned counsel criminal defense and family court attorney.

Gwen has taught as a member of the adjunct faculty at Cornell Law School, and at Ithaca College. She is a member of the Tompkins County Bar Association, the New York State Bar Association, and the District Attorney's Association of New York State.

In addition to her professional endeavors, Gwen has served on the boards of The Advocacy Center, the LGBTQ Board, and Aidswork. She is currently vice-president of the Tompkins Community Action Board, and serves on the Criminal Justice Advisory/Alternatives to Incarceration Board.

Ray Schlather

Ray is a member of Schlather, Stumbar, Parks & Salk, LLP of Ithaca. He has been trying cases in federal and state courts throughout Central New York for 39 years. Though Ray primarily represents plaintiffs in his civil practice, and only defendants in his criminal practice, he is periodically retained to represent defendants and other parties in commercial and civil rights cases.

Ray is past president of the Tompkins County Bar Association, former director and current member of the New York State Trial Lawyers Association, and a member of the American Trial Lawyers Association, the New York State Academy of Trial Lawyers, the New York State Bar Association, and the American Bar Association.

Ray is also active in the community. He has served on many not-for-profit and civic boards, including those of the Tompkins-Cortland Community College, Planned Parenthood of Tompkins County, Hangar Theatre, the Greater Ithaca Activities Center (GIAC), the Ithaca City Board of Public Works, the West Hill Civic Association (WHCA), the Ithaca City Common Council, the Ithaca City Planning Board, the Tompkins County Democratic Committee, and the Bosnian Student Project. Ray lectures periodically, both in the legal community and in the local schools, including the Cornell Law School.

Ray is the Chair of the Task Force.

Section One:

The Current System

New York State has one of the most complicated, inefficient and costly court systems of all states. It also has one of the most respected judiciaries in the nation.

In 1962 the New York State Constitution was amended with the adoption of a new Article VI that provided some structural overhaul to the state court system. However, those changes have left the courts at the lowest level in the system (town and village courts) largely untouched. As a result, the delivery of justice in the day-to-day affairs of the citizenry in towns and villages of Tompkins County for the most part has remained unchanged for centuries. Such grass roots justice -- although founded on a long and rich history -- sometimes yields results that fly in the face of fundamental fairness and due process. This is especially evident in some types of misdemeanor cases that are increasingly relevant in contemporary times.

Nevertheless, the current system of town and village courts cannot be understood without an understanding of its roots. The following history derives verbatim from an excerpt of the "Action Plan for the Justice Court, September 2008" published by the NYS Office of Court Administration and is included herein with permission.

A. The History:

Justice Courts are successor institutions to tribunals that have existed in New York nearly continuously since permanent European settlement began in the early 17th century.[1] Justices of the peace, magistrate's courts, police courts and other town and village tribunals, all of which now bear the title of Justice Courts:

> *came down to us from remote times. [They] existed in England before the discovery of America, and [they have] existed here practically during our entire history, both colonial and state, at first with criminal jurisdiction only, but for more than two centuries past with civil jurisdiction also. * * * [A local court system] * * * is regarded as of great importance to the people at large, as it opens the doors of justice near their own homes, and not only affords a cheap and speedy remedy for minor grievances as to rights of property, but also renders substantial aid in the prevention and punishment of crime.*[28]

Indeed, since New York's colonial inception of the office of local justice, by whatever title denominated, criminal jurisdiction consistently has inhered in that office. In like fashion as today's Justice Courts, local magistrates in New York's colonial and early independence eras enjoyed inherent jurisdiction to "apprehend and commit" (i.e. arraign) defendants on all criminal charges and try non-felony offenses.[29] These early local tribunals also enjoyed civil jurisdiction over money-recovery actions, though the extent of such civil

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[1] See 5 Col Laws NY 209 (1771); 4 Col Laws NY 296 (1758); 3 Col Laws NY 1011 (1754); 2 Col Laws NY 964 (1737), 1Col Laws NY 226 (1691); see generally People ex rel. Burby v Howland (155 NY [9 EH Smith] 270, 275-276 [1898]). The first recorded selection of a local judge in New York was in 1646, under Dutch rule, by election in the communities of "Bruekelen" and later Manhattan (see Rosenblatt,"The Foundations of the New York State Supreme Court: A Study in Sources," 63 NY St B J 10, 13 [1991], citing Booth, History of the City of New York [1867], at 135-136). British accession to dominion in New York preserved and proliferated the structure of these local tribunals, leading ultimately to their formal codification in 1691 (see id.).

28 Howland (155 NY [9 EH Smith] at 275-276).

jurisdiction was a creature of statute, rather than constitutional or inherent authority, and generally was limited in relation to the monetary jurisdiction of the superior trial courts.[30]

New York's 1777 and 1821 Constitutions each provided for nascent State court structures and tacitly left local courts effectively unchanged from the colonial era. Only in 1846 did New York establish a separate article of its State Constitution to govern the Judiciary, and with this first Judiciary Article came express constitutional provisions that authorized the Legislature to continue town justices[31] and village judicial officers.[32] The Judiciary Article of 1869 continued these provisions effectively unchanged,[33] as did the 1894 Constitution[34] and the 1925 Judiciary Article.[35] Over this time, the Legislature provided that each locality could establish its own local court and select justices, and continued each court's historical jurisdiction to arraign all crimes, try non-felony offenses and preside over limited classes of civil trials. During this period, local justices typically doubled as local legislators, serving on town councils or village boards of trustees and sometimes also as local coroners or other officeholders. While the 1936 Legislature abolished town Justice Courts in Nassau County and replaced them with New York's first District Court system,[36] the only other change in the local court system over these decades entailed sequential increases of the cap on local courts' civil monetary jurisdiction.

By 1962, the year in which voters approved the current Judiciary Article, the alternate titles of "justice of the peace" and "magistrate" had

become disfavored and were abolished[37] in favor of today's town and village Justice Court system that the 1962 Judiciary Article invited the Legislature to "continue[]" and "regulate."[38] The Legislature promptly complied, almost in identical fashion as throughout the prior three centuries, but with two structural differences to reflect modern sensibilities about the separation of powers and rising dockets of some suburban Justice Courts. First, the 1962 Judiciary Article invited the Legislature to abolish the nonjudicial functions (and particularly the legislative functions) of local justices,[39] an invitation the Legislature later accepted.[40] Thus, today no town or village justice may perform the duties of any nonjudicial

29 See Slutzky (283 NY at 340); Howland (155 NY [9 EH Smith] at 276-277).

30 See id.

31 See NY Const 1846, art VI, § 17 ("The electors of the several towns shall, at their annual town meeting, and in such manner as the [L]egislature may direct, elect justices of the peace, whose term of office shall be four years * * *").

32 See NY Const 1846, art VI, § 18 ("All judicial officers of cities and villages, and all such judicial officers as may be created therein by law, shall be elected at such times and in such manner as the [L]egislature may direct").

33 See NY Const 1869, art VI, §§ 18 (town justices), 19 (village judicial officers).

34 See NY Const, 1894, art VI, §§ 17, 18.

35 See NY Const 1925, art VI, §§ 17, 18.

36 See L 1936, ch 879.

37 See generally NY Const 1962, art VI, § 17; UJCA § 2300(b)(1).

38 See NY Const 1962, art VI, § 17(a)-(b).

39 See id., § 17(c).

40 See L 1976, ch 739 (enacting Town Law § 60-a).

public office,[2] and all local justices are subject to the Code of Judicial Conduct in like fashion as State-paid judges[3] — including the ethical mandate to avoid even the appearance of conflicts of interest with his or her judicial role.[4]

Second, the 1962 Judiciary Article authorized the Legislature to replace Justice Courts with District Court systems throughout the State rather than only in Nassau County,[5] [6] [7] a power the Legislature has invoked only for towns in western Suffolk County. Other than these two adjustments, the 1962 Judiciary Article and thus today's State Constitution carefully preserved the historical prerogative of each locality to maintain its own Justice Court and prohibited the Legislature from abolishing any town tribunal, whether or not in favor of a District Court, except with express consent of town voters. As late as 1977, when voters and the Legislature centralized judicial administration and correspondingly diminished local control of court operations, the Legislature tacitly excluded the Justice Courts from statutes effectuating State control of court financing and personnel, thus preserving and reinforcing the Justice Courts' local character and autonomy.[8]

This historical examination demonstrates that, with only infrequent and minor refinements, New York's Justice Courts have continued largely unchanged for over 300 years, reflecting steadfast voter and legislative commitment both to the continued existence of local courts and to the unique

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[2] See id.; UJCA § 105(d).

[3] See generally 22 NYCRR [Rules of the Chief Administrator] Part 100.

[4] See 22 NYCRR [Rules of the Chief Administrator] § 100.4.

[5] See NY Const, art VI, § 16.

[6] See L 1962, ch 811.

[7] See NY Const, art VI, §§ 16(a)-(c) (District Courts); 17(b) (town Justice Courts).

[8] See L 1976, ch 966; Judiciary Law § 39(1), Town Law § 116; Village Law § 4-410(2).

role they play in New York's justice system. To be sure, the Justice Courts, like the State-paid court system and most creatures of government, have not been without critics and reformers during these centuries. During the last 50 years in particular, observers have expressed dissatisfaction with the lay judge system, asserting that non-attorney judges inherently lack the requisite training to ensure due process and enforce other critical constitutional and statutory protections. Other observers have expressed concerns with the part-time operation of many Justice Courts, claiming that part-time courts raise the prospect of conflicts of interests for presiding lawyer-judges, inherently are less efficient than full- time courts and rarely can mobilize the full panoply of administrative tools to manage and account for collected funds effectively. Still other observers have lamented the lack of standardization and systemwide oversight, and with it local discretion to fund (or underfund) Justice Court programs in ways that can undermine the administration of justice and frustrate the achievement of important State and local public policy goals.

Even in the face of these objections, however, New Yorkers consistently have rejected broad structural changes to their Justice Courts. In the 1950s, a Temporary Commission on the Courts (popularly known as the Tweed Commission) initially proposed replacing Justice Courts with county-level District Courts of civil and criminal jurisdiction and Magistrates Courts with traffic and other limited criminal jurisdiction — courts in which all judges would be lawyers and over which localities would exercise no control.[9] The Commission's final report, however, rejected this proposal, instead preserving

[9] See generally Subcommittee,Temporary State Commission on the Courts (Tweed Commission),"Simplified State-wide Court System" (1955).

the Justice Courts with training and certification requirements for non-lawyer judges.[10] Explaining its rejection of the abolition proposal, the Commission narrated its concern that deep public support for the Justice Courts could defeat the Commission's entire court-reform effort:

> *These recommendations of the Commission [to replace the Justice Courts with regional Magistrates Courts] were vigorously opposed, in whole or in part, by present judges of Town, Village and City Courts, by residents and officials of the area served, by members of the Legislature and by others. Indeed, the Commission found reason to believe that, even if its proposals in this respect were accepted by the Legislature and formed a part of an over-all court reorganization plan, the voters of the State on the required referendum for a Constitutional Amendment might well defeat the entire plan because of this aspect alone.*[11]

The following months would prove the Commission's political admonition prescient. Responding to Governor Averill Harriman's call to reorganize *all* of New York State's courts, the Judicial Conference rejected the Tweed Commission's recommendation and proposed to abolish the Justice Courts in favor of county-based District Courts.[12] As the Tweed Commission predicted, however, the Legislature firmly rejected this approach and, while approving broad reorganization of other courts, left Justice Courts unchanged except for

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[10] See Temporary State Commission on the Courts (Tweed Commission), Final Report to the Legislature (1958), at 17.

[11] Temporary State Commission on the Courts (Tweed Commission), Final Report to the Legislature (1958), at 17-18.

[12] See generally Judicial Conference of the State of New York, Report to the Legislature (1958).

the Tweed Commission's training and certification requirements for non-attorney justices.[13]

Likewise during the 1960s, the State rejected numerous opportunities to alter the Justice Courts even slightly. In 1965, voters rejected a minor constitutional amendment that would have authorized the Legislature to extend the elective terms of town justices. Two years later in 1967, voters rejected the report of a constitutional convention that, among other proposals, urged the abolition of Justice Courts subject to legislative approval of their continuation as courts with limited jurisdiction over traffic matters and local ordinance violations.

The next 30 years also brought calls for Justice Court reform, but none cleared the Legislature, much less reached the voters. In 1973, yet another study commission, the Dominick Commission, proposed abolishing village courts and stripping town courts of trial jurisdiction over misdemeanors.[14] That report went nowhere, as did a 1979 analysis by the New York State Bar Association that merely suggested future consideration of merging local courts into regional tribunals.[15] Such periodic calls echoed throughout the 1980s and 1990s, and as late as 2006, the State Comptroller's Office called on the Legislature to combine the operations of low-caseload Justice Courts for the sake of efficiency and more effective financial auditing.[16] Not a single piece of legislation effectuating any of these proposals received favorable

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[13] See NY Const, art VI, § 20(c).

[14] See Temporary State Commission on the State Court System (Dominick Commission),"... And Justice for All" (1973), at ¶¶ 83-85.

[15] See New York State Bar Association,"Report of Action, Unit Report No. 4: Court Reorganization" (1979), at 73.

[16] See generally OSC Justice Courts Report (2006).

consideration, and most of the proposals were not even introduced in the Legislature.

B. Town and Village Courts in Tompkins County Today:

Since 1962, the most dramatic change in the local town and village court system has been the gradual elimination of village courts. In 1962, there were five village courts (Cayuga Heights, Dryden, Freeville, Groton, and Trumansburg). Today, only the villages of Cayuga Heights and Freeville have their own courts.

In 1986, the Village of Trumansburg dissolved its court; all cases that previously had been heard in the Trumansburg Village Court are now heard in the Ulysses Town Court. Similarly, in 1996 the Village of Dryden dissolved its court, and its cases now are handled in the Dryden Town Court. And, more recently, in 2003 the Village of Groton did the same thing.

Further, the overall number of town and village justices has shrunk as well. In 1977 there were at least 20 part-time town and village justices. Today there are only 18. The current line-up is:

Caroline Town Court - 2 part-time justices
Cayuga Heights Village Court - 1 part-time justice
Danby Town Court - 2 part-time justices
Dryden Town Court - 2 part-time justices
Enfield Town Court - 1 part-time justice
Freeville Village Court - 1 part-time justice

Groton Town Court - 2 part-time justices

Ithaca Town Court - 2 part-time justices

Lansing Town Court - 2 part-time justices

Newfield Town Court - 1 part-time justice

Ulysses Town Court - 2 part-time justices

TOTAL: 18 part-time justices

Although the number of town and village justices is at least 10% less than the number of such justices more than 40 years ago, the total caseload for all towns and villages in Tompkins County has increased noticeably according to anecdotal evidence and the only available data (that is concededly incomplete).

Finally, the important role of the Ithaca City Court -- Tompkins County's only city court -- must be identified and acknowledged in any analysis of the delivery of grass roots justice in the County. In contrast to the town and village courts, the Ithaca City Court is part of the State Court System. As such, it is subject to many of the structural and administrative changes that were authorized by the 1962 constitutional and state legislative initiatives. On the other hand, because the City Court handles the same kinds of cases as are handled by the town and village courts, there is an opportunity for the County to look to the resources of the Ithaca City Court in fashioning a system of more efficient and even-handed justice throughout the County at the grass roots level.

Section Two:

The Charge to the Task Force and its Methodology

A. THE CHARGE

The Task Force was created by resolution of the Tompkins County Council of Governments (TCCOG) and its Shared Services Committee in 2015. The stated purpose was to review on behalf of TCCOG:

> "the current structure and operations of the municipal court system for the purpose of identifying potential ways and means to sustain and improve efficiency of operations and quality of justice provided by town and village courts .....(and to) report its recommendations to the TCCOG Board for its approval." (Resolution, App 1).

In that light, the Task Force was given two charges, to wit: (1) one that looked at economy; and (2) another that looked at quality. The specific charges read:

Charge 1 - Economy:	Assess the potential to improve efficiency and reduce costs through structural realignments of the justice courts within Tompkins County, provided that such realignments do not diminish the quality of justice.
Charge 2 - Quality:	Based on an assessment of the qualitative benefits and detriments of the current municipal court structure, determine whether specific and cost-effective structural changes would be likely to improve the overall quality of justice within Tompkins County.

This analysis arises from the need to explore ways to economize in the provision and maintenance of basic services provided by local governments, while ensuring quality. Following the imposition of the statewide property tax cap, local governments have been challenged to consider structural realignments that could result in greater efficiencies and higher levels of effectiveness through consolidations, mergers and shared services.

The TCCOG formed a Shared Services Committee to explore the approaches the County might take in this regard with respect to the local justice courts.

Unlike City and County Courts, the cost of operating a town or village court is borne by the host municipality. Costs that cannot be offset by court-related fees are supported by town and village property taxes. For example, in every town of this county, the court-generated revenues do not cover the direct operating costs of the local courts. In 2014, these operating deficits ranged from $23,500 (Caroline) to $65,657 (Lansing), with the except of two outliers in the extremes -- Town of Ithaca ($311,702) and Cayuga Heights ($4,924) (Appendix 6).* In addition to the direct costs of operating a court, taxpayers also bear the indirect costs of the current decentralized town and village court system, including inmate transport and distant and repeated appearances by assigned defense counsel and district attorney staff -- most of which is underwritten by Tompkins County taxpayers.

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* These deficits derive in large measure to the state-mandated distribution of fines and surcharges among the state, the county and the local municipalities. In 2014, the town and village courts countywide generated $1,487,282.04 in total revenue, of which $991,151.46 was turned over to New York State and $110,650.60 was paid to the County (to fund the STOP DWI program), leaving only $385,479.98 for all of the local towns and villages.

Further, while there is general consensus that the existing town and village courts may currently function reasonably well, the underlying structure creates the conditions for justice to be unevenly applied from one municipality to another.

Based on some preliminary research conducted by the County Administrator, the Task Force evaluated and thereafter accepted two underlying premises as realistic givens. First, there do not appear to be significant cost savings to be realized in any reconfiguration of the existing structure in Tompkins County. This is primarily because the existing system operates on thin budgets supported by local property tax dollars that rely on the good will of modestly-paid part-time justices and court clerks. Accordingly, the County Administrator recommended that the Task Force look beyond ways to save significant amounts of money and focus on identifying cost-neutral (i.e. "cost-effective") ways to ensure quality and consistency of justice. The Task Force agreed and for the most part has used that approach in its work and recommendations.

Second, the existing local justice court system of eleven courts and eighteen part-time justices from a variety of backgrounds (both in law and in many other life-callings) provides a systemic opportunity for inconsistent results in the administration of justice at the grass roots level in Tompkins County that raises fundamental fairness and due process concerns.

B. METHODOLOGY

Accordingly, the Task Force engaged in a comprehensive aggregation and analysis of data, anecdotal testimony and prior, similarly motivated studies.

In this regard, the Task Force:

* Has met in open session 25 times between June 2015 and June 2016; the minutes of these meetings are included in Appendix 3.

* Has taken the (unsworn) testimony of 33 individuals including: judges (Town, Village, City and County -- law trained and non-law-trained); defense and other attorneys; prosecutors; assigned counsel personnel; Nassau District Court personnel; NYS Defender's Association representatives; NYS Magistrates' Association representatives; Opportunity Alternatives Resources (OAR) Director; Ithaca City School District Superintendent; law enforcement and jail personnel; Legal Assistance of Western New York (LAWNY) personnel; and members of the general public.

* Has solicited the views of many other constituencies, including landlord and tenant groups, the Tompkins County Probation Department, town and village officials, the Tompkins County Department of Mental Health, the New York State Office of Court Administration, the media, and the Tompkins County Bar Association.

* Has received and reviewed dozens of letters, emails and written submissions from members of the public.

* Has received public comment at many of its meetings.

* Has collected and reviewed:

  Action Plan for the Justice Courts (NYS Unified Court System, Office of Court Administration, 2006);

Action Plan for the Justice Courts: Two-Year Update (NYS Unified Court System, Office of Court Administration, 2008);

The Future of Town & Village Courts in New York State ([Kaye] Special Commission on the Future of the NYS Courts, 2008);

Town and Village Justice Courts Task Force Report (Fund for Modern Courts, 2008);

Recommendations Relating to Structure and Organization, Task Force on Town and Village Courts (NYC Bar Assn., 2007);

Perspectives on Criminal Jurisdiction in Town and Village Justice Courts: Is There Justice in Justice Courts? (Fund for Modern Courts and NYSBA, 2007);

Justice Court Manual (NYS Unified Court System, 2015);

Geddes Service Consolidation: Case Studies and Recommendations (Maxwell School, 2014); and

Numerous local reports of several municipalities in upstate counties including St. Lawrence, Seneca, Lewis, Broome, Delaware, Ulster, and Yates.

* Has collected and reviewed other data and compilations of data obtained and/or compiled by County staff.

* Has reviewed pending relevant state legislation and relevant constitutional, statutory and case law;

* And, has considered, has debated, and for the most part, has reached consensus on the recommendations set forth in this report.

The Task Force recognizes that there are existing constitutional and statutory constraints on many of its recommendations. Accordingly, it has categorized its recommendations in Section Three of this report as follows:

(a) Recommendations that may be implemented either by the County Legislature alone, or in cooperation with the New York State Office of Court Administration; and

(b) Recommendations that may be implemented by the local town and village courts on a voluntary basis; and

(c) Recommendations that will require New York State legislation.

Additionally, the Task Force has included in Section Four of this report a summary of the differing views of its membership with respect to recommendations for any fundamental change of the system that would require special state legislation and likely amendment of the New York State Constitution.

Section Three:

Recommendations (Now)

There are very few changes that can be made to the existing system without the cooperation of the local villages and towns. Indeed, many of our recommended operational changes cannot be implemented under existing law, except on a voluntary basis with the support of each local court's justice(s).

With that caveat, the Task Force recommends the following immediate countywide changes in the existing system that are both operational and structural.

These changes are designed: (a) to reduce the caseload in the local courts; (b) to improve the delivery of even-handed justice throughout the county; and (c) to provide a more direct route to supportive services for individuals in need, without involving the criminal justice system in that process, or at least minimizing that role. One intended product of such reduction in demand on local courts is the voluntary elimination of then unnecessary judicial and clerk positions by the respective towns and villages and the voluntary consolidation of local courts by adjoining municipalities -- all in accordance with existing statutory and constitutional provisions.

A. FOR THE COUNTY AND/OR OCA

RECOMMENDATIONS THAT MAY BE IMPLEMENTED EITHER BY THE COUNTY LEGISLATURE ALONE, OR IN COOPERATION WITH THE NEW YORK STATE OFFICE OF COURT ADMINISTRATION (OCA).

1. **The most significant recommendation is the consolidation of all misdemeanor and violation level Driving While Intoxicated cases and Driving While Impaired by Drugs cases ("DWI cases")* into a single, countywide part (court) of the Supreme Court,Tompkins County**. This so-called "DWI Court" is supported unanimously by the Task Force and by several of the existing town and village justices. It has its roots in an initiative that was promulgated by the New York State Office of Court Administration for all felony DWI cases and some misdemeanor DWI cases in New York State.

In 2014, New York Court of Appeals Chief Judge Jonathan Lippman implemented the creation of specialized DWI courts throughout the state. Judge Lippman instituted these specialized DWI parts in order to create a statewide uniform process to address the causes of DWI. Judge Lippman explained:

> ***DWI recidivism remains a persistent and serious problem. The National Highway and Transportation Safety Administration estimates that 30 percent of all drivers adjudicated for a DWI offense are repeat offenders. DWI recidivists carry a higher risk not only of future DWI arrests but also involvement in alcohol related crashes. Although the court system has experimented with different approaches to DWI cases, we have never had a uniform, statewide plan. Today, I am announcing a comprehensive plan to address this problem.

*For purposes of this report, all references to "DWI cases" refer to all misdemeanor and violation level alcohol and drug-related offenses arising under Article 31, including Section 1192, of the NYS Vehicle and Traffic Law.

We will establish dedicated DWI parts in the superior court in every county, so that a single judge will preside over all felony DWI cases. The judges will receive special training and provide more consistency in the handling of these difficult cases. As experts have recognized, a key component of achieving deterrence in DWI cases is certain,consistent and coordinated sentencing. Consolidating these cases into one court part, with a dedicated judge, will lead to consistency in sentencing. It will also enable the judge to develop expertise in this complicated and technical area of law, as well as an understanding of the effectiveness of the statutory tools at his or her disposal, such as license suspensions, alcohol monitoring systems, and ignition interlock devices.

As for misdemeanor DWI cases, in most parts of the state the cases are mixed in with the overall case inventory. They are calendared with a host of other cases and handled by different judges. As with felonies, isolating DWI cases in a single court part before a single judge (or in counties with the most DWI cases, before two judges) will allow the judge to develop an expertise in this area and will send the message that these cases are different. The goal of the misdemeanor parts will be to prevent future tragedies by attackingthe root causes of DWI.

Judges presiding in these parts will have training and access to all of the necessary tools and resources so that sentences are individually tailored to the specific needs of the offender. The judges will ensure that all defendants are screened to identify alcohol or substance abuse dependency. Treatment will be mandatory for offenders who have such a dependency and who therefore present a high risk of recidivism. The new parts will be in place by June 1. Drunk driving kills! We must ensure that these cases are treated in a more orderly, consistent, and timely fashion in the courts of the state of New York. Action is required now to save lives and assure public safety.

New York Court of Appeals Chief Judge Jonathan Lippman State of Judiciary 2014.

In 2015, Tompkins County Court created a felony DWI part where all felony DWIs are presided over by a single County Court judge. Additionally, Ithaca City Court created a DWI part for all misdemeanor and preliminary felony DWIs, overseen by one of the City Court judges. While the County Court DWI part has

jurisdiction over all felony DWIs that occur anywhere within the geographic area of Tompkins County, the Ithaca City Court DWI part has full jurisdiction only over misdemeanor DWIs that occur within the City of Ithaca's geographic limits.

According to Tompkins County Stop-DWI, DWI arrests by jurisdiction can be broken down as follows:

DWI ARRESTS IN TOMPKINS COUNTY *

Jurisdiction	2013	2014	2015
Caroline	4	4	4
Danby	4	7	6
Dryden (including Freeville)	54	57	43
Enfield	4	8	6
Groton	15	9	3
City of Ithaca	96	144	118
Town of Ithaca (including Cayuga Heights)	71	83	80
Lansing	42	44	43
Newfield	15	10	13
Ulysses	17	20	20
Total	**322**	**386**	**336**

Ithaca City Court DWI cases amount to approximately 1/3 of the entire DWI cases throughout the county. Approximately two-thirds of DWI cases are not heard in a unified DWI part, but are presided over by eighteen (18) town and village

* These data derive from the annual reports of each of the town and village courts that are filed in the New York State Office of Court Administration and include all alcohol and drug related DWI and DWAI cases.

justices. In short, the vast majority of DWI defendants in Tompkins County do not have their cases heard in a uniform DWI part. This can and often does lead to noticeably uneven results across the county, depending solely on where the underlying arrest occurred.

Further, the extensive paperwork and related rules and regulations associated with processing a DWI case are complicated and time-consuming. Just to create and to disseminate the paperwork for a single defendant at the time of disposition (typically, entry of a guilty plea) takes about forty-five minutes in the town and village courts. Some of this time relates to the use of paper records and some of this time arises from the need of the local justice to familiarize himself/herself with the ever-changing and complex rules that are unique to those cases.

Additionally, there is some evidence that there is a therapeutic impact for group-processing of DWI cases. DWI cases uniquely cut across the sociological spectrum, often involving defendants who otherwise are generally law-abiding members of the community. For DWI defendants to have their cases heard in the presence of similarly-situated individuals highlights the gravity of the problem in the community, reinforces that everyone is being treated equally and fairly regardless of personal circumstances and becomes a powerful deterrent to re-offending.

So, the question is whether and how it would be possible to create a unified DWI part where a single judge could preside over all DWI cases that occur in the towns and villages throughout the county.

Procedural Mechanism for Creating a County-Wide DWI Part for DWI Cases

Presently there are jurisdictional impediments which prevent town and village DWI cases from being heard before a single judge in a designated DWI part. County Courts, in the absence of an indictment by a grand jury or superior court information, do not possess trial jurisdiction over DWI cases. Criminal Procedure Law §210.05 provides:

> The only methods of prosecuting an offense in a superior court are by an indictment filed therewith by a grand jury or by a superior court information filed therewith by a district attorney.

Grand jury proceedings are time-consuming for both the police witnesses and the prosecutor, and therefore generally impractical for misdemeanor and violation DWI cases. Moreover, the filing of a superior court information generally requires the consent of the defendant. Hence, misdemeanor and violation level DWI cases will remain within the local town or village courts, as currently, unless an alternative procedure for consolidating those cases in front of a single judge countywide is implemented.

There does exist precedent for transferring misdemeanor and violation level cases from local courts within a county to a single Supreme Court judge. In January 2004, after consultation with the Administrative Board of the Unified Court System and with the consent of the Court of Appeals, the Chief Judge of the State of New York promulgated part 41 of the Rules of the Chief Judge providing for the establishment of Integrated Domestic Violence (IDV) Parts in Supreme Court. The rule directed that the specialized part

> "be devoted to the hearing and determination, in a single forum, of cases that are simultaneously pending in the courts if one of them is a domestic violence case in a criminal court and the other is a case in Supreme or Family Court that involves a party or witness in the domestic violence case; or if one is a case in criminal court, Family Court or Supreme Court and the other is a case in any other of these courts having a common party or in which a disposition may affect the interests of a party in the first case" (22 NYCRR 41.1[a][1]).

Accordingly, the Tompkins County Integrated Domestic Violence Court (IDV) was created in Supreme Court, Tompkins County and has jurisdiction over all local domestic violence misdemeanor criminal cases which have a Supreme Court matrimonial or Family Court overlapping matter. The local criminal misdemeanor and violation cases do not require grand jury action; but rather, a simple transfer order signed by the IDV judge is all that is required to transfer the case from local court to the IDV court.

The legality of the creation of IDV courts by administrative action as opposed to express statutory enactment has been definitively tested. In People v. Correa (15 NY3d 213 [2010]), the New York Court of Appeals held that Judiciary Law §211(1)(a) explicitly authorizes the Chief Judge, in consultation with the Administrative Board and with the consent of the Court of Appeals, to "establish standards and administrative policies for general application to the unified court system throughout the state, including but not limited to standards and administrative policies relating to ... transfer of judges and causes among the courts." Thus, the Legislature included the transfer of cases as one of the administrative actions that could be taken by the Chief Judge and Chief Administrative Judge (Id, a 224).

The Criminal Procedure Law generally contemplates that violations and misdemeanors will be tried in local criminal courts and that felonies, which may be initiated by the filing of an information or complaint but must ultimately be prosecuted by indictment or superior court information, will be tried in a superior court—County Court or Supreme Court. The issue presented in Correa was whether misdemeanor cases that typically remain in local courts may be transferred for adjudication to a Supreme Court by mere administrative order, rather than indictment. The Court of Appeals cited the N.Y. State Constitution which expressly states, "supreme court shall have general original jurisdiction in law and equity and the appellate jurisdiction herein provided" (N.Y. Const., Art. VI, § 7[a]). Under this provision, Supreme Court "is competent to entertain all causes of action[ ] unless its jurisdiction has been specifically proscribed." Correa at 228.

The creation of IDV courts by mere promulgation of an administrative rule of the Chief Judge has been upheld. The Correa decision requires a Supreme Court Judge (or Acting Supreme Court Judge) to preside over the integrated part. Notably, this broad jurisdictional reach is limited to Supreme Court, not County Court, because of the language of the 1962 constitutional amendments regarding Supreme Court jurisdiction. However, a County Court judge may be designated as an Acting Supreme Court Justice by administrative order of the Office of Court Administration. Accordingly, the Tompkins County IDV court is presided over by a County Court judge who has been designated Acting Supreme Court Justice for that purpose.

The Task Force recommends that a similar structure be implemented for all DWI cases in Tompkins County, both felony and non-felony.

Chief Judge Lippman's 2014 directive for the creation of County Court and City Court comprehensive DWI parts and the testimony presented to this Task Force indicate that the creation of a comprehensive DWI part in Tompkins County is a high priority. The statutory framework is already in place and has been upheld. The same administrative procedure which created IDV Courts may be the most efficient procedural vehicle through which to achieve the goal of a comprehensive DWI part where all local DWI cases can be heard in one court.

There are practical issues that must be noted. There is not a surplus of Supreme Court or Acting Supreme Court judges in Tompkins County. Presently, there is one Tompkins County Court judge who has been designated as an Acting Supreme Court Justice; that judge already has a heavy caseload and presides over 50% of the caseload of the Tompkins County IDV Court. Another Acting Supreme Court Justice, from Chemung County, presides over the remaining 50% caseload of the IDV Court. While creation of a comprehensive DWI Part may be administratively possible, it clearly will require another County Court Judge -- who would be designated Acting Supreme Court Justice -- and support staff, as well as a location for chambers. It is imperative that the County and the Office of Court Administration examine and embrace the costs for both personnel and location before implementing such a DWI part.

Preliminary estimates include the following:

County Court Judge	$183,000
Law Clerk	$ 76,000
Secretary	$ 50,000
Court Clerk/Assistant	$ 47,000
Additional Court Securities Officers (2)	$122,000
Salaries	$478,000
Fringe Benefits	$239,000
Total Personnel	$717,000
Supplies, Equip, Travel, etc.	$ 71,700
Total Operating Costs	$788,700
Rent (local cost)	$ 20,000
Total Estimated Cost	$808,700

Potential Additional Costs Court Reporter (if recording device not used)	$ 72,000

Offsetting these costs are the following savings:

(a) Avoided City Court costs for current DWI caseload. $172,000

Presently, Ithaca City Court processes 115 to 120 DWI cases per year, consuming approximately 25% of the time of one full-time judge, law clerk, court security officers (and potential court reporter), and 50% of the time of one full-time court clerk. This number reflects the value of that time. Moreover, as noted below, because such personnel already are part of the unified court system, clerks, security officers and the court reporter readily

can be incorporated into the DWI part, and the judge can be assigned other County Court duties, thereby freeing up the County Court judge who is appointed Acting Supreme Court Justice.

(b) Avoided assigned counsel travel and court waiting time. $ 54,000

It is expected that this DWI Part will be centralized in the City of Ithaca where virtually all of the attorneys who do assigned counsel cases have their offices and where the courtroom and chambers of the presiding justice will be located. Further, the removal of DWI cases from the local courts also will serve to expedite the processing of other assigned counsel criminal cases in the local courts, producing further savings to the program because of such additional avoided court wait time. This number is a best estimate as provided by the Office of Assigned Counsel.

(c) Avoided law enforcement (primarily Sheriff's Department) travel and waiting time. $ (insignificant)

There will be no meaningful transport and waiting time savings.

(d) Avoided local court costs (judges and clerks). $ 35,000

By transferring an average of 240 DWI cases out of the town and village courts into this DWI Part, the combined savings in the aggregate time of the town and village justices and clerks calculate approximately to the equivalent of one town justice and one clerk, given their part-time status and the estimate of time spent per week on all cases, including DWI cases. However, any such savings only can be realized if the local municipalities reduce the number of town and village justices either by consolidation of courts or by reduction in budgeted positions.

(e) Use of existing City Court space for chambers and clerks' offices. $ 20,000

Total Offset: $281,000

However, as noted, even the most optimistic calculation of savings will only offset about a third of the cost of a centralized DWI Part. So, how will the balance of this position be funded? The short answer is, the state.

To understand why, one must look to the historical record of the allocation of County Court level judges (County Court, Family Court and Surrogate's Court) in Tompkins County in comparison to neighboring counties, especially Chemung County. Fifty years ago, there were three County Court level judges in Chemung County, which then had a population of approximately 100,000. At that same time, there were two County Court level judges in Tompkins County, with a population of approximately 66,000. Today, Chemung County still has three such judges, although its population has dropped to approximately 88,000. And, Tompkins County still has two such judges, notwithstanding that its population has increased to approximately 105,000 -- now well exceeding that of Chemung County.*
Simply put, it is time that the state acknowledged this growing disparity and funded a third County Court level judge in Tompkins County.

Moreover, the argument to the state is supported by the economics of vehicle and traffic fine-splitting as well. In 2014 Tompkins County town and village courts alone (not including the Ithaca City Court) generated $1,487,282.04 in

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* Per U.S. Census data, the respective populations of Chemung and Tompkins Counties have been/are: 1960 - 98,706/66,164; 1970 - 101,537/77,064; 2010 - 88,830/101,564; 2014 - 87,770/104,691.

vehicle and traffic fines and surcharges, of which $991,151.46 was paid over to the state (Appendix 6). A greater portion of that money should be returned to Tompkins County in the form of funding a third County Court judge position.

However, the Task Force is mindful that regardless of the logic, such cost-shifting may not be politically expedient. It may be that the recent legislation that requires the state eventually to underwrite all costs of the Office of Assigned Counsel - if signed by the Governor - may be the alternative route to freeing up enough local tax dollars to fund this program.

Finally, creating this centralized DWI Part for all DWI cases in the county establishes a model of de facto consolidation of a significant caseload of the local courts that can be replicated throughout the state. Long term, this will reduce the pressure on the local courts and thereby increase the probability of voluntary local consolidation and retrenchment.

2. The Task Force recommends the implementation of a county-wide Law Enforcement Assisted Diversion (LEAD) program.

LEAD is a relatively new police-administered pre-booking program created to minimize recidivism of addiction-driven crime by connecting offenders with services. First implemented in Seattle in 2011, LEAD permits police officers to refer an offender to a LEAD case manager or other service provider in lieu of filing of low-level addiction- related and other designated charges. Following an assessment, an individualized service program with supportive monitoring is developed for each participant. Among the services provided in LEAD programs -- all garnered from existing community resources -- are substance abuse treatment, housing, job

training, medical treatment, mental health treatment and other human services.

As of 2014, after five years of operation, the Seattle program has reduced recidivism among participants by 58%. (http://www.defensenet.org/news/pre-arrest-diversion-the-seattle-lead-project). A successful program also is in operation in Santa Fe, New Mexico. And, most recently, the Albany, New York community has adopted its version of the same.

LEAD arises from the fact that historically a relatively small number of individuals with high needs demand a great deal of police time and resources. They cycle in and out of jail or prisons without treatment of their underlying issues, such as mental illness and substance abuse problems, homelessness, unemployment, and inadequate medical care. This population also tends to be high utilizers of the hospital emergency room, which is costly and is not designed to provide preventative or regular health care. LEAD focuses on addressing some of those underlying problems and stopping the cycle of costly and ineffective arrests and incarceration (http://www.katalcenter.org/news/2016/3/31/albanyleadlaunch-press release).

By diverting eligible individuals to services, LEAD improves public safety and public order and reduces the criminal behavior of people who participate in the program.

It relies to some extent on the discretion of law enforcement in the field who are informed both by training and established standards of eligibility, as well as the local array of available health and human services. In Seattle, the "LEAD Program Evaluation: Criminal Justice and Legal System Utilization and Associated Costs (June 2015)" report compared LEAD to a "system as usual" control with respect to

publicly funded legal and criminal justice service utilization and associated costs. It found "statistically significant reductions" "across nearly all outcomes", including a 58% reduction in recidivism.*

3. **The Task Force also recommends that the County Legislature re-introduce a countywide Youth Court.** Youth Court prevents low level criminal cases from even getting into the criminal justice system and reduces the local town and village court loads. Such a Youth Court would be administered by the County Youth Bureau in coordination with its local town and village affiliates and would rely largely on peer volunteers drawn from the ranks of local youth. The expectation is that once implemented, Youth Court will cut recidivism in half or better for the affected individuals and will reduce the local court caseload, in accord with existing such systems elsewhere in upstate New York (NYSBA Journal, January 2011, [Appendix 7]).

Youth Court, and other pre-charge diversion programs (e.g. LEAD programs -- see item 2 above), require funding in two critical areas, to wit: 1) law enforcement personnel must be trained to identify appropriate cases and to divert the same accordingly without filing any charges; and 2) the Youth Bureau will require a trained mentor to set up and to oversee the respective Youth Courts in strategic locations in the county.

Full Report is included in Appendix 7.

Although it is envisioned that each Youth Court will have county-wide jurisdiction, it is recommended that the youth and adult volunteers upon which the system relies be drawn from the ranks of the respective school districts in the county for the cases specific to those geographical areas. Care must be taken to ensure that such a program is available to all youth in all school districts of the county. Staffing - both professional and volunteer - and adjudication must reflect the socioeconomic population and culture of the defendant pool of the entire county.

The benefits of Youth Court are multiple. As the several articles and studies set forth in the 2011 NYSBA Journal establish, peer-to-peer justice works. There is no stigma of involvement with the criminal justice system -- not even a record of "charges" -- for the individual youth (that often becomes a burden for future school and job opportunities). The processing time for law enforcement, and related costs, are reduced significantly. The local courts never see the case, meaning lower caseloads (Appendix 7).

4. **Mental Health Court.**

The Task Force recommends that the idea of mental health court be further investigated and considered.

Mental health courts currently operate in a handful of communities in New York (Auburn and Rochester are nearby examples). They are similar to drug court, being heavily dependent on knowledgeable and committed judges and qualified treatment teams. However, it does not follow that defendants who are eligible for mental health court respond to the same kinds of intervention that are employed in

drug court. Therefore, the answer is not as simple as folding mental health court functions into drug court.

It may turn out that an effective and comprehensive LEAD program will so diminish the need for a mental health court that further consideration will be unnecessary.

In the meantime, the county and the local Bar Association should provide training to attorneys, prosecutors, and town and village justices concerning the most optimal ways to work with defendants suffering from mental illness.

B. FOR THE LOCAL COURTS

RECOMMENDATIONS THAT MAY BE IMPLEMENTED BY THE LOCAL TOWN AND VILLAGE COURTS ON A VOLUNTARY BASIS AND/OR WITH THE ENCOURAGEMENT AND ASSISTANCE OF THE COUNTY.

1. Improve Electronic Access.

All local courts should be accessible electronically 24 hours per day/7 days per week. Everyone using the courts -- including individuals, their attorneys, the media and the general public -- should be able to access public records, to file papers, to schedule appearances (and even to "appear" in various pre-trial proceedings), to receive decisions, to pay fines and surcharges and to communicate with the court electronically.

The use of Skype-type technology -- or more simply teleconferencing technology -- should be used for video and/or telephone conferencing by the court,

the prosecutor and the defense attorney (and the defendant) for routine pre-trial status conferences and similar appearances. Currently, most courts require monthly physical appearances in court by defendants and defense counsel for such matters, often resulting in unnecessary and costly travel and waiting time for both.

Software and training are available to accomplish some of these functions, primarily in the area of filing, organizing and maintaining electronic records. The potential for streamlining court processing time, reducing court waiting time, minimizing scheduling conflicts (especially for attorneys and jail personnel and other law enforcement) and ensuring accuracy and accountability is even greater with the implementation of even more comprehensive systems of electronic access.

The role of the county is to encourage such implementation by identifying funding, by providing training and tech support, and by leveraging facilities (e.g. secure electronic storage facilities), among other things.

2. Coordinate Court Schedules.

The various courts should work together to spread out and to coordinate their respective court days and times in order to avoid simultaneous court sessions. This is especially problematic in geographically disparate parts of the county. Such coordination will avoid/minimize conflicts for attorneys and law enforcement, will reduce the county's cost for transporting jailed defendants, and will increase public access to the justice system.

TCCOG should take the lead in creating a matrix of all available times and facilities for all local courts and recommending and negotiating a mutually

acceptable comprehensive schedule. Engaging with the various Town Boards and Village Trustees will be critical in this process.

3. Release Defendants "ROR" or on Realistic Bail.

New York State already prescribes a set of standards for setting bail (CPL §510.30). In the local courts, releasing an individual on his own recognizance (i.e. without having to post any bail) -- often referred to as ROR -- for all non-felony charges should be the norm where the individual has no history of failure to appear. The purpose of bail is solely to ensure that a defendant returns to court as scheduled. There are very few misdemeanor cases and circumstances that warrant the posting of any bail to ensure such compliance. This is especially true in our culture of increasing technological oversight. In those few cases where bail is warranted, local courts should be certain to articulate on the record the reasons for setting such bail.

Further, in cases where bail is required by the local court, it should be set at a level that the defendant realistically can afford. Again, this is the constitutional standard already enshrined by the law. To that end, Opportunity Alternatives Resources (OAR) of Tompkins County has a program of underwriting bail for indigent defendants. OAR currently caps that assistance at $2,000 per individual case. Generally, prosecutors should not recommend and local courts should not set bail in excess of that limit (Appendix 3, Meeting Minutes 11/4/15). In any event, in those rare cases where bail is warranted, the maximum amount set by the Court should be no greater than the maximum amount of any potential fine for the offense or such lower amount as the defendant can afford.

4. Provide Rap Sheets at Arraignment and Write Decisions.

The court's provision of "rap sheets" (an official record of the defendant's prior involvement with the criminal justice system) to defendants at arraignment with defense counsel is mandatory and should occur as a matter of course (CPL§160.40[2]). This will allow an early informed decision by all parties with respect to bail and possible case disposition, reducing jail holds and the number of future appearances required of the defendants and their counsel. There is a corresponding reduction in court processing and congestion. And, there is savings to the taxpayers both in jail costs and assigned counsel fees.

Similarly, local justices should render their decisions in legal matters in written decisions with sufficient clarity to allow for intelligent appellate review if necessary. Such legal matters include motion decisions and bench trial verdicts. Although appeals to County Court are rare, one major concern is the lack of a sufficient record for the appellate court to review, thereby leading to reversal and remand to the local court for further proceedings (Appendix 3, Meeting Minutes 9/16/15).

5. Use Confessions of Judgment and Allow for Partial Payments with Respect to Fines, Surcharges and Restitution.

There is no place for debtor's prison in the 21st century. All courts should give every convicted defendant ample time and opportunity to pay fines, surcharges and restitution. If an individual still does not pay what is owed, then the court simply should direct entry of judgment for the outstanding amount and let the civil enforcement process run its course. In no instance should a defendant be resentenced to jail for non-payment.

In the exceedingly rare situation where a court believes that non-payment is the product of flagrantly egregious contempt of court, the court may direct the filing of new charges if actually warranted.

In terms of judicial efficiency, by so proceeding it will not be necessary to issue warrants for non-payment, to involve law enforcement in executing and processing such warrants, and to burden the courts, the jail and counsel with the further court appearances, hearings, decisions and confinement, as required by Article 420 of the Criminal Procedure Law.

6. The District Attorney Should Publish on an Easily Accessible Website Clear Policies and Standards for Plea Bargaining Vehicle and Traffic and Violation Level Offenses.

Recognizing that no judge can be bound by such constraints, unless (s)he chooses to accept the same in a given case, as a matter of course there should be no mystery to resolution of run-of-the-mill cases. Whether the charge is speeding, a stop sign violation, disorderly conduct, or simple trespass, such offenses are routinely the subject of plea-bargained dispositions -- but with different results in different courts. As a general matter, such variation should not happen. Published standards and expectations will allow individuals to make informed decisions as a matter of course without the need for time-consuming appearances, retention of counsel, and related demands on the court's resources.

C. FOR THE STATE

RECOMMENDATIONS THAT REQUIRE NEW YORK STATE LEGISLATION.

1. After-Hours Centralized Arraignment:

The Task Force unanimously recommends the creation of a centralized part of the local courts for all after-hours arraignments. Delay in the arraignment of an individual in custody is contrary to the most fundamental tenets of our jurisprudence. A centralized program for after-hours arraignments not only will speed up that process, but also will save money.

What is envisioned is a single part of court that will be centrally located, that will be staffed by on-call town justices on a rotating basis (one justice each night) and that will operate between the hours of 5:00 p.m. and 9:00 a.m. on weekdays, and 24/7 on weekends.

Ideally, this part will be situated in a publicly accessible and neutral facility that either is annexed to or is nearby the Tompkins County Public Safety building.

This change will result in substantial financial savings to law enforcement, jail personnel and assigned counsel. It also will reduce the demands on local justices. And, it will foster consistent application of release and bail-setting standards. Based on the anecdotal evidence, rough estimates of such annual savings include:

Law Enforcement (30 hours/month in transport time)	$17,000
Assigned Counsel (40% of current expenditures for travel, court waiting time, and mileage)	$56,000
Total	$73,000

Further, such a centralized arraignment part can work in tandem with a nearby centralized holding facility for detained defendants. However, the Task Force is strongly opposed to the use of such a holding facility without prompt after-hours arraignment of all defendants. As recommended above (Section Three [B][3]), prompt arraignment, coupled with the normative ROR for non-felony cases, should mean that most defendants will not be detained. The Task Force recognizes that it may be necessary to detain some felony defendants, and -- in a handful of rare cases -- some misdemeanor level defendants.

The good news is that state legislation that enables the county to implement such a program now is on the Governor's desk awaiting his approval.

2. Bail Limits:

The Task Force recommends state legislation that sets maximum limits for bail in all misdemeanor cases. Such legislation should make clear:

(a) that simple appearance tickets and/or ROR is the norm for all non-felony charges where the individual has no history of failure to appear;

(b) that in those rare cases where bail is warranted, the maximum amount is set by the court at no greater than the maximum amount of any potential fine for the offense, or such lower amount as the defendant can afford; and

(c) that in all cases where bail is required, the court must set forth its reasons on the record.

3. Transfer to courts with lawyer-trained justices:

CPL§170.15 should be amended to provide for automatic transfer of all misdemeanor cases to a local court of coordinate jurisdiction presided over by a lawyer-trained judge upon timely demand by the defendant.

Currently, CPL§170.15 authorizes the defendant to make application for such a transfer on limited grounds. However, the final decision is within the discretion of the superior court that hears the application. That discretion should be eliminated, and the grounds for transfer should clearly include defendant's choice to have the case heard by a law-trained judge.

There is a long history of litigation on this issue - local, state and federal - arising out of due process concerns. A simple amendment of this statute as recommended is the most expedient way to resolve the problem, short of revamping the entire constitutional system of lay justices in the town and village courts.

Section Four

Recommendations: The Future

A. Although the Task Force has been able to work diligently and cooperatively in identifying areas of concern, and in recommending the more manageable incremental improvements set forth in Section Three, there is fundamental disagreement among the members with respect to other long-term changes in the system.

Stated another way, all Task Force members agree: (a) that changes should be made in the existing system that will improve the delivery of quality justice in the local courts and that will reduce the burden on local taxpayers; and (b) that implementing some or all of the recommendations set forth in Section Three will improve the delivery of quality justice in town and village courts and potentially will reduce the burden on local taxpayers; and (c) that any other major change in the system will require at minimum state legislation and very likely state constitutional amendment.

That is where the agreement ends.

For some Task Force members, implementing the Section Three recommendations is all that should be done. The rationale is that the delivery of grassroots justice in our local town and village courts has worked for more than two hundred years, and there is no reason to dramatically change the model.

The other view is that we can do better. That view projects a county-wide misdemeanor and violation level court ("misdemeanor court") presided over by full-

time lawyer judges who - along with their staff - are state employees as part of the Unified Court System. Vehicle and traffic cases would be processed administratively - and for the most part via computer - under the supervision of the misdemeanor court.

The local justice court system would continue to resolve minor civil and local law disputes. However, under this scenario, because the work load of the existing town and village courts would be reduced significantly, there would be strong incentive for neighboring municipalities to consolidate their justice courts regionally.

Further, the misdemeanor court would be able to focus almost exclusively on the more problematic, albeit low level, criminal cases. In this regard, LEAD, Youth Court, Drug Court and possibly Mental Health Court all would reduce the flow of potential criminal cases that required formal judicial intervention; and, the administrative processing of vehicle and traffic tickets - mostly accomplished on-line without the necessity of personal appearances and hearings - would virtually eliminate that distraction as well.

Such a system gives technology an opportunity to augment fairness. A person should not be required to travel to court, to sit there for several hours waiting to have his/her case called, and should not be subject (occasionally) to returning a second or third time for vehicle and traffic and other offenses that are essentially administrative in nature and impact.

In short, some on the Task Force see a time not in the far too distant future when the combination of overwhelming case volume, available technology, and public expectation of expediency will produce a form of black box justice for all

vehicle and traffic and low-level criminal cases. That is to say, once summoned to court, an accused who will not be going to jail or who will not be placed on probation because of the nature of the offense or because of his/her prior record (or lack thereof) may choose not to contest the charge and to accept the standard published resolution offered by the District Attorney. Under such circumstances, the accused simply will be able to go on-line, click in the relevant data, and be advised electronically as to the final "plea-bargained" disposition, subject to the court's approval. Any court assessment of fine and surcharge then can be paid by electronic transfer of funds (credit or debit). Although such a system bears the imprint of a Brave New World, for an informed consumer citizenry that increasingly expects fast-paced, technologically enabled convenience, this is a logical, efficient, uniform and fair way of resolving some of life's nuisances that otherwise are of little consequence to society as a whole.

Once implemented, the community justice system effectively would sort out those cases that should not - or need not - require judicial intervention. For the remaining cases that do require judicial review, all participants would be assured that the proceedings and results comport with the fundamental guarantees of due process of law. Further, the community at large could be satisfied that the delivery of justice throughout the county was consistent, even-handed and fair.

In a sense, this essentially is the District Court model that already is authorized under the Judiciary Article of the New York State Constitution that was adopted in 1962 (NY Constitution, Art VI, §16).

However, it goes further than what currently exists as District Courts in New

York. Only Nassau and Suffolk Counties have District Courts, and those courts perpetuate some of the very inefficiencies and inequities that are driving the work of this Task Force. Specifically, these District Courts do not incorporate many of the changes and values recommended by the Task Force in Section Three. Nor do they include the technological streamlining and related efficiencies that are included in the aspirational proposal set forth in this Section Four.

B. Even without the creation of a county-wide misdemeanor court (or District Court), there still is opportunity for willing municipalities to consolidate and to create regional courts. Existing state legislation authorizes such consolidation and the Unified Court System has published an excellent "how to" primer (Justice Courts Manual, 2015 [Appendix 8]).

For example, under existing state law, it would be possible for the Tompkins County towns and villages to have any number of configurations, including any one or more of the following four regional justice courts:

1. Towns of Ulysses, Enfield and Newfield;

2. Towns of Danby and Caroline;

3. Town of Ithaca and Village of Cayuga Heights; and

4. Towns of Lansing, Dryden, Groton and Village of Freeville.

Although this opportunity does not extend to villages directly, if the village first dissolves its village court it may participate in the consolidation. In this regard, the voting residents of villages that do not have village courts are deemed part of the

town electorate for purposes of voting on any such consolidation.

The key geographical determinant is contiguity. That is to say, under existing state law, towns that are located next to one another -- or in a chain with another participating adjacent town -- may consolidate their respective judicial functions into a single court. Therefore, by even broader consolidation, these four regional courts conceivably could be pared to three or possibly even two larger regional courts that make sense geographically.

The process is complex and time-consuming. It involves preliminary planning, the positive votes of the respective governing bodies of each municipality, and – if village courts are included – dissolution of the village courts, or additional special state enabling legislation. It also requires the majority vote of the electorate of each municipality that chooses to participate in the proposed consolidation (Uniform Justice Court Act, Section 106-a; also, Justice Court Manual, 2015, pp 74 - 90 [Appendix 8]).

So, regardless of the work of this Task Force, neighboring municipalities that are so inclined are encouraged to join the ranks of several similarly motivated towns and villages throughout New York that already are exploring this option.

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Respectfully submitted,

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