

TO: Tompkins County Municipal Courts Study Group

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RE: GG's updated status of issues under consideration by the Committee

DATE: May 12, 2016

This is yet another update of my summaries on the status of the issues being discussed by the committee after our meeting of 4/27/16 and 5/12/16. A few issues and +’s/-’s have been added.

Again, the issues listed below are based on my perception of what the committee intends to discuss further. The assignment of advantages (+) and disadvantages (-) seen below is my own assessment, and the issues are not placed in any order of priority. No final committee decisions have been made on any issue. Feel free to post and share this with the Committee members, public and Magistrates’ Association.

ISSUES STILL UNDER CONSIDERATION:

1 Partial Payments All courts should agree to take partial payments of fines, surcharge and restitution.

- | | |
|---|---|
| <ul style="list-style-type: none">++ Much easier for defendants to pay+ Fewer defendants will fail to pay+ Ultimately less work for Court b/c defendant more likely to succeed and thus no court enforcement+ More money will be paid ultimately | <ul style="list-style-type: none">- It is more paperwork for court clerks- This may be just “best practices” because unclear how this can be effected without interfering with judicial discretion |
|---|---|

2 Time to Pay All courts should provide liberal periods of time for low income defendants to pay fines, surcharges and restitution.

- | | |
|--|---|
| <ul style="list-style-type: none">++ Much easier for defendants to pay+ Fewer defendants will fail to pay+ Ultimately less work for Court b/c defendant more likely to succeed | <ul style="list-style-type: none">- Some defendants may give low priority to paying- This may be just “best practices” because unclear how this can be effected without interfering with judicial discretion |
|--|---|

3 Confession of Judgment or Default Judgment If after giving low income defendants ample opportunities to pay fines, surcharges and restitution, they remain unable to pay, then all courts should use confessions of judgment or default judgments to close out the case. In no instance, should a defendant be resented to jail when the defendant is unable (as opposed to being unwilling, but able) to pay.

++ Avoid cost and disruption due to jailing indigents

+ Some chance of ultimate recovery of \$

+++ This already is the law

- May never get paid

- Defendant may con the court

-- Defendant may not change behavior

- This may be just “best practices” because unclear how this can be effected without interfering with judicial discretion

4 Presumption of ROR For pretrial defendants, courts should not require bail or remand defendants to jail without bail, unless the statutes require no-bail or it is very clear that the defendant is unlikely to reappear and it is put on the record why ROR is not appropriate.

+++ This already is the law

++ Save costs of jail/transport

++ Save defendant’s/family job

++ Avoid major disruption of defendant/family

+ Even if not reappear, eventually will get caught

- Some defendants might not reappear

- This may be just “best practices” because unclear how this can be effected without interfering with judicial discretion

5 OAR Level Bail No court should require bail above the amount OAR can pay (after it reviews the defendant’s situation in more depth), unless it is very clear that the defendant is unlikely to reappear even if an OAR level of bail is paid.

++ Save some of cost of jail

++ Save defendant’s/family job

++ Avoid major disruption of defendant/family

+ Even if not reappear, eventually will get caught

- Some defendants might not reappear

- This may be just “best practices,” because unclear how this can be effected without interfering with judicial discretion

ng defendant

6 **Transfer to Lawyer Justice** If the prosecution or defense requests transfer (see §170.15, CPL and §170.25 CPL) of a misdemeanor case by the County Court from a non-lawyer judge to a lawyer judge, the town/village court generally should agree to the transfer. The identity of the lawyer judge will not be known by the moving party in advance in order to limit “judge shopping.”

++ Appearance and effect of a fair justice system

+ Less likely to make legal mistake

+ Tough to judge shop

- Defendant judge shopping (?)

- This may be just “best practices,” because unclear how this can be effected without interfering with judicial discretion

7 **Written Decisions** All courts will do written decisions on motions/hearings that have any significant likelihood of appeal.

+ Appellate court is better able to rule

++ Writing forces clearer thinking

- More work for judge

- Delays decision

- This may be just “best practices” because unclear how this can be effected without interfering with judicial discretion

8 **“Policies”** No court will have static “policies” that require sentence features that are imposed regardless of a defendant’s circumstances (e.g. always imposing a maximum fine in seat belt violation cases), unless those features are mandated by law (e.g. statutorily defined minimum fines, surcharges, etc.)

++ Law already requires this

+ Forces judge to consider each defendant as an individual

- A little more work

- Result less predictable

- This may be just “best practices” because unclear how this can be effected without interfering with judicial discretion

9 DWI Court All alcohol/drug related V+TL cases in the County should be sent to a specialized “DWI Court” in the County Court with a judge sitting as a local criminal court. This may already be possible if the District Attorney simply instructs all police agencies to file all DWI cases there regardless of where in the county the offense occurred (see §100.55 7. CPL)

- ++ Complex, serious
 - ++ More like a treatment court
 - ++ Could probably done with no change in law
 - + Common cases need judges familiar with this type of case and the unique services and procedures
 - ++ T/V courts would avoid a lot of time
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 ming
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 ork
 that
 often
 interfer
 es with
 the rest
 of the
 docket
 - ++ More uniformity of result
 - + Easier to connect to drug courts and services
 - + T/V courts get less work
 - + Not require anyone but DA to agree
 - + Can more easily systemize follow up
 - ++ Defendants all have similar medical/psychological/criminal characteristics (unique as compared to other crimes) and seeing other such defendants is instructive
 - ++ Tompkins County deserves an extra county court judge based on population
 - +++ the State would pay for the county court judge if we got another
- DWI Court would get a lot of work
 - Very expensive: a judge/staff to do it
 - Town/villages lose control
 - Some judges may object to losing jurisdiction in these cases
 - Probably more travel time for defendants and attorneys

10 Misdemeanor Court All misdemeanor cases in the County should be sent to a specialized “Misdemeanor Court” in the County Court with a judge sitting as a local criminal court. This may already be possible if the District Attorney simply instructs all police agencies to file all misdemeanor cases there regardless of where in the county the offense occurred (see §100.55 7. CPL)

- ++ More serious cases
- ++ T/V courts would have less work
- + More uniformity of result
- + Not require anyone but DA to agree
- + Can more easily systemize follow up
- ++ Could probably done with no change in law
- ++ Tompkins County deserves an extra county court judge based on population
- +++ the State would pay for the county court judge if we got another
- Misdemeanor Court would get an enormous amount of work
- Very expensive: a judge/staff to do it
- Town/villages lose control and local knowledge that could be helpful in resolving cases
- Most judges will object to losing jurisdiction in these cases
- Probably more travel time for defendants and attorneys
- Unlike DWI Court, each case very different and no more complicated than other cases
- Just a stalking horse for getting rid of lay judges (see 16)-- Not sure another county court judge could handle all the misdemeanors and DWI cases

11 Centralized Arraignment Create a centralized arraignment location for all after-hours arraignments. It could be in the City of Ithaca or maybe even better next to the County Jail. Each judge and assigned counsel would be scheduled in advance to cover her/his share of this coverage.

- ++ Spread out the attorney/judge work load more evenly
- + No judge shopping
- + Less travel cost for most?
- + Less time police are off the street?
- + Quicker processing
- ++ May be a bill in legislature now S07209 that would at least allow any T/V justice to arraign anywhere in county
- Need to arrange facility
- Cases from outlying areas, more travel
- Might need a statutory change
- Might provide an incentive to create a centralized “lock up,” and might result in many more defendants held over night (see below)
- Might be too complicated to result in efficiencies because arraignments at the ends of the county will force either judges or officers to do a lot of traveling that would not occur under the present system

12 Intermunicipal Consolidations Encourage local town and village courts to consider options available under § 106, § 106-a and § 106-b, Uniform Justice Court Act that would allow adjoining towns/villages to share court facilities or use fewer single judges.

+ More uniformity since there would be fewer judges

- Need to go through a complex petition, resolution, publication, public meeting process, board vote and public vote process
- Not really save court facilities since they already exist
- With fewer judges, there is a little less flexibility in scheduling court
- Probably no cost savings because the same of amount of work would be required and it is assumed that the remaining judge would be appropriately compensated
- Some loss of local control

13 Youth Court Create a Youth Court that would allow certain types of cases (type?) cases involving young (ages ?) defendants to be transferred from criminal courts to “youth courts” which would largely utilize the services of peer young people to process, adjudicate and resolve cases without further involvement of the criminal justice system. Might avoid having these cases even being docketed in court first?

+++The goal of diverting young people away from the criminal justice system is very important
++ Would introduce young people to the justice system in very positive ways

- This will require a lot of study and could justify the formation of a separate committee
- There might be other less complicated ways of diverting young people from the criminal justice system
- There is a question of whether the number of cases and their impact would justify the significant amount of work involved in setting it up and maintaining it (the youth participants would be constantly changing)

14 Mental Health Court Create a mental health court that would allow certain types of cases involving defendants with mental health issues to be transferred from the regular criminal court system to a specialized court that focuses on providing services and monitoring similar to that found in our Drug Courts. Might avoid having these cases even being docketed in court first?

++ Maybe it could be merged in with the existing Drug Courts and thereby simplify the process of creating a new court

++ If effective, the additional costs invested in setting up and maintaining the court should cause long term cost savings in deflecting the defendants/clients away from the criminal justice system

++ It is clear that the present criminal justice system is not well equipped to accommodate these cases/defendants presently

--- This might require a lot of study and could justify the formation of a separate committee

- Not clear on the criteria for identifying cases more appropriate to the mental health court versus the regular criminal courts

- There would be additional costs

15 Reduce to One Justice Remove one of the two justices in each town and have the remaining justice do all the work. (This was moved from GG's "should be dropped list" by the committee.)

+ Might save the town a little money

- Remaining justice gets double workload

- No money saved if remaining justice demands other justice's salary

- Lose ready access to a back up justice

- Could limit flexibility in court scheduling

16 **Only Attorney Justices Require all town/village justices to be attorneys.** (This was moved from GG's "should be dropped list" by the committee.)

++ All things being equal, attorney judge is preferred

+ Less training required

-- But things are never equal!

-- Lay people could not be judges

— No need because defendants already can get lawyer-judge in misdemeanors CPL 170.15 + .25

- Many lay-judges are better than attorney-judges

- Lose a large pool of qualified candidates

- Attorneys already have an advantage in being elected over a non-lawyer

- Some areas have no well qualified attorney judges

- Attorney judges have about the same proportion of ethical problems as lay judges

-- Probably cost more because most attorney would demand more \$

--- Politically this issue is very toxic

17 District Court Create District Court(s?) to cover all misdemeanors and above, and limit town and village courts to local infractions and small claims. (This was moved from GG's "should be dropped list" by the committee.)

- + All judges would be attorneys
 - ++ Simpler
 - + Fewer judges
 - + probably more uniform handling of cases
 - ++ State would pay operating costs
 - + Less work for town/village courts
 - + More attractive to finding attorney-judges
- Requires change of NY Constitution?
 - Requires referendum?
 - Just a stalking horse for getting rid of lay judges (see 16)
 - Attorney judges have about the same proportion of ethical problems as lay judges
 - Politically this issue is toxic
 - Lay people could not be judges (see above)
 - More complex b/c still need town and village courts
 - County would pay for facilities
 - Much more expensive than T/V courts
 - Probably cost a couple million \$ annually
 - Lose local control
 - Farther for defendants/attorneys to travel
 - More bureaucratic
 - State would control
 - May not work, e.g. who would do after hour arraignments?
 - Party politics will intervene because judge positions are seen as attractive political plums
 - Probably more travel time for some defendants and attorneys

18 Expand Court Hours Increase access to courts for the public and attorneys by expanding hours. (This was added by the committee to GG's list of issue under consideration.)

++ Would provide better access to attorneys and public

-- This will cost money, because someone needs to be there
- Might be better to expand electronic access, since the cost of keeping the court open probably not worth it.

19 Electronic Records + Access Use more electronic records to increase court efficiency and public/attorney access, e.g. website access to attorneys/defendants/public; posting of procedures/rights/hours/contact info.; allow payment of fines/etc; allow filing by parties; maybe allow access to case file doc'ts. (This was added by the committee to GG's list of issue under consideration.)

++ Has the potential for saving time and paperwork
+ Could create financial savings if it cuts clerk hours

-- Start up is always difficult
- Sometimes creating such a system over complicates everything
-- Bound to be expensive for hard/software

20 Spread out Court Schedules Coordinate scheduling of court days and times to avoid too many simultaneous court sessions that create conflicts for prisoner and attorney appearances. (This was added by the committee to GG's list of issue under consideration.)

+++ Could create financial savings
+++ Would lessen scheduling conflicts for prisoner transport and assigned counsel
+ Could increase access for the public

- Some courts/judges/clerks would have to shift from days/times using now

21 Third Party Policy Focus on third party policies that could improve court functions, e.g. publicize District Attorney plea bargaining procedures and standards; police divert appropriate case to other resources than the courts; increased training for judges, clerks, prosecutors, defense attorneys and police. (This was added by the committee to GG's list of issue under consideration. This topic is not very clear to GG so I did not have much information to include. This might be broken up into more specific issues so assignment of + and -'s would be clearer)

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22 **Keep Money Local** Push the State of New York to leave more of the court generated revenue with the local and County jurisdictions to help cover more of the costs of running the town and village courts. (This was added by the committee to GG's list of issue under consideration.)

+++ The State receives a great deal more from T/V courts than it pays out (State Police, some training of judges, anything else?)

--- What are the chances the State will be willing to take less money???

23 **Access to Criminal Records** Defendants should have equal access (early and an actual copy) of a defendant's criminal record.

++ Really necessary for defense
++ Limited/no access appears unfair and causes delays
++ Not cost anything

-- Requires statutory change
- Potential for privacy invasion?

ISSUES DROPPED:

23 Close Village Courts Close all Village Courts and let the respective towns absorb the load.

- + Villages would save some money
- Town would have to absorb the cost
- No net savings
- Village loses all control
- GG loses his job!

24 Centralized Lock-Up Create a centralized lock up where defendants arrested after-court-hours could be held at least over night (maybe longer?). It could be in the City of Ithaca or maybe even better next to the County Jail. This arrangement is used by some District Courts.

- ++ Judges would not have to do arraignments after-hours
- + Less travel cost
- Need to create facility
- Expensive (facility, personnel, defendant could lose job?)
- More officers would be required to cover the facility and take them off regular patrol
- Cause many defendants to have to stay overnight or longer in lock up
- Cause major disruption to defendant and family
- This is such a bad idea, I considered not even listing it