

**COMMITTEE ON LEGISLATION**  
**Meeting Jointly with**  
**COMMITTEE ON PUBLIC SAFETY AND SECURITY**  
**MINUTES APRIL 13, 2009**

<p><b>LEGISLATION</b>  <b>MEMBERS IN ATTENDANCE:</b></p>	<p><b>Chair:</b> Burton; <b>Legislators:</b> Nonna, Rogowsky, Abinanti, Bronz, Myers, Jenkins, Harckham and Maisano</p>
<p><b>PUBLIC SAFETY AND SECURITY</b>  <b>MEMBERS IN ATTENDANCE:</b></p>	<p><b>Chair:</b> Pinto; <b>Legislators:</b> Nonna, Rogowsky, Myers, Jenkins, Harckham, Burrows and Burton</p>
<p><b>ALSO IN ATTENDANCE:</b></p>	<p><b>County Executive:</b> A. Neuman, B. Randolph; <b>County Attorney:</b> E. Cipollo; S. Dolgin-Kmetz, M. Gleason; <b>Board of Legislators Staff:</b> M. Montalto, R. Pezzullo; J. Sold, K. Delgado, M. McGovern; <b>Department of Public Safety:</b> D. Long, C., J. Weiss, L. Codella, T. Belfiore</p>

The Committee on Legislation and the Committee on Public Safety and Security, meeting jointly and each with a quorum present, were called to order at 1:55 p.m.

**MINUTES**

Legislator Jenkins made a motion, seconded by Legislator Myers, to approve the minutes of April 6, 2009.

**DWI VEHICLE FORFEITURE LAW**

Chairman Burton invited Legislator Harckham to lead the discussion on the text of the proposed legislation. Legislator Harckham indicated that the intent was to have a working session to discuss the draft prepared by the County Attorney's office. After discussing the draft, it is intended that the committee would obtain further testimony and debate the merits of the legislation at a subsequent session. He then suggested that Ms. Dolgin-Kmetz summarize the legislation for the committee.

Ms. Dolgin-Kmetz then enumerated the pertinent provisions: (1) forfeiture would be applicable only after criminal conviction, (2) there will

be no impoundment of the vehicle upon arrest, (3) only vehicles driven by persons arrested by a Westchester County police officer are included, (4) the innocent ownership defense and hardship relief will be available against forfeiture, (5) the County Attorney would be given authority to settle these matters, and (6) no forfeiture would be available in connection with leased or rented vehicles.

Mr. Gleason then discussed various differences between the proposed legislation and the current Nassau County legislation, which served as a model at the committee's request. The proposed legislation corrects an ambiguity in the Nassau County legislation by setting a statute of limitation for forfeiture action within 30 days of conviction. Also, the provisions in the Nassau County for notice prior to sale have been revised to require notice within 30 days of conviction. Otherwise, the proposed legislation is very similar to that of Nassau County currently, except for the omission of pre-forfeiture seizure of vehicles at the time of a second offense, which was deliberately not included in the proposed legislation at the request of the committee.

The proposed legislation does not include an increased surcharge for impoundment because there is no surcharge for impoundment in the first place. The members discussed whether the County has the ability to add a surcharge on the impoundment of vehicles under current law. It was requested that the County Attorney's office look into whether a higher charge can be assessed in the case of an arrest for DWI.

There was discussion of the roads normally patrolled by county police officers. While County police are only responsible for county roads, the proposed legislation would permit County police officers to make arrests anywhere in the county.

There was then discussion of whether the legislation could be made more effective by having local municipalities "opt into" the law or enact similar laws. Currently no municipality has a forfeiture law. There is no present structure in the proposed legislation for municipalities to "opt in." The County Attorney's office was asked to investigate whether such a structure could be drafted.

In addition, the Members discussed the effect of multiple infractions. A second offense is a felony, which is then under the jurisdiction of the District Attorney under state law. The Members would like to understand the jurisdictional ramifications of an arrest by a county police officer for a second offense – how long would the County retain control of the car pending knowledge of the action to be taken by the District Attorney's office and whether it would present an adverse legal issue for the County.

In a similar vein, the Members wanted further information on the ramifications of an arrest of an out-of-state driver who may have committed offenses in another state.

Some consideration was also given to charging a user fees for various actions that resulted in costs for the County such as a fee for towing. It was noted that towing is always undertaken by private firms, not by the County.

Although Nassau County has provisions for pre-conviction forfeiture, the proposed legislation deliberately does not include such provisions because of the additional costs and storage issues presented in Westchester. In addition, Members thought that it would be better to start with a more limited program and examine the results before considering expanding it to include pre-conviction or other forfeitures.

Members raised a fairness issue about forfeiture, depending on whether a driver is arrested by a municipal versus a county officer.

Members requested additional information on the number of arrests, pleas, and violations for DWI that occur annually. The Commissioner Belfiore said that they are trying to obtain this information but that the matter is complicated by issues of privacy in the District Attorney's office. Members wondered whether the proposed legislation would affect the level of pleas versus convictions if drivers stood to lose their cars.

Members then discussed the various exceptions to forfeiture, such as hardship, leaseholders, and renters. Members considered whether persons charged would be more likely to proceed to trial instead of taking pleas if they stood to lose their cars. The County Attorney's office has made an estimate of the additional staff necessary to address DWI forfeiture as described in the proposed legislation (without pre-conviction seizures).

Members stated that they would like to make sure that the statistics presented in support of the legislation clearly delineate between impoundment and forfeiture. Members would like to see statistics on forfeitures by the District Attorney's office following felony convictions. Also, they would like to see statistics of felony convictions following arrests.

One member suggested that he believes that the existing laws are already overly punitive. He would like to have more information on the impact of treatment programs and the effectiveness of other alternatives, such as increasing the length of impoundment time. Other members disagreed,

stating that it is important to give law enforcement officers additional tools to combat DWI driving whether or not the statistics strongly support a general deterrent effect. Another member suggested investigating the effectiveness of ignition locks.

Legislator Harckham solicited specific comments on the proposed legislation. It was suggested that, *inter alia*, (1) the section on legislative intent and the references to Nassau County be revised, (2) the enactment date should be revised to better coordinate with the budget cycle, and (3) a protocol for exchange of information between the County Attorney and the District Attorney needs to be drafted on timely notification of convictions so that the County's proceedings can begin. It was decided that Legislator Harckham would forward suggested revisions to the County Attorney for processing while the members gather additional information.

Members decided that they would work on revised language and take additional testimony so the committee can have further debate on this proposal.

## **BOARDS AND COMMISSION**

Legislator Bronz gave a report from the Sub Committee on Appointments recommending the appointment of Gwenette Cort to the Women's Advisory Board, Ann Mathews to the Council for Seniors, and Maurio Sax to the Human Rights Commission as well as numerous re-appointments.

Legislator Nonna made a motion, seconded by Legislator Harckham, to approve the appointments and reappointments of the foregoing individuals. The motion was approved 5-0.

Legislator Harckham made a motion to adjourn, seconded by Legislator Myers. Motion approved 5-0. The Committee adjourned at 3:25 pm.

## **AUDIO RECORDING ON FILE FOR REVIEW UPON REQUEST**