



New York State Justice Task Force

**Recommendations Regarding the Issuances of
Criminal Summonses**

October 2021

I. Introduction

The New York State Justice Task Force (the “Task Force”) was formed in May 2009 by Chief Judge Jonathan Lippman to identify practices that may contribute to wrongful convictions in the state and consider what measures should be taken to reduce – and, ideally, to eliminate – the incidence of such convictions. Nearly 12 years later, the Task Force’s work continues under Chief Judge Janet DiFiore, who has since expanded the Task Force’s mission to promote fairness, effectiveness, and efficiency in the criminal justice system; to eradicate harms caused by wrongful convictions; to further public safety; and to recommend judicial and legislative reforms to advance these causes throughout the State.

The Task Force is chaired by Hon. Carmen Beauchamp Ciparick (Ret.), former Senior Associate Judge of the New York Court of Appeals, and Hon. Deborah A. Kaplan, Deputy Chief Administrative Judge for New York City. During the course of the work that resulted in this report, the Task Force was chaired by Hon. Paul Feinman, Associate Judge of the New York Court of Appeals. The Task Force’s members represent a broad cross-section of the criminal justice community in New York State, consisting of judges, prosecutors, defense attorneys, law enforcement officials, victim advocates, and others who are committed to investigating and building consensus around some of the most important and difficult issues in our criminal justice system.

Since its inception, the Task Force has studied and provided recommendations on a number of issues, including: expanding the State’s DNA databank; granting post-conviction access to DNA testing; utilizing electronic recordings of custodial interrogations; implementing best practices in identification procedures; granting greater access to forensic case file materials; reforming criminal discovery; using root-cause analysis to prevent wrongful convictions; addressing attorney misconduct; and providing meaningful bail reform..

II. Executive Summary

a. Overview of the Current Mission

Chief Judge DiFiore most recently directed the Task Force to examine racial disparities in the criminal justice system at all key stages of the process—from arrest through sentencing—with a goal of proposing broader reforms to effectively address these disparities, and ensure a more just system for all New Yorkers. In recognition of the complexity and breadth of the issues, as well as the need to make timely progress, the Task Force’s recommendations will be issued on a rolling basis.

The recommendations in this report grew out of the deliberations of a Task Force working group (the “Summons Working Group”), chaired by Hon. Barry Kamins (Ret.), to investigate the issues of racial disparity surrounding the Criminal Justice Reform Act (“CJRA”). In particular, the Summons Working Group was tasked with investigating racially disparate outcomes in the issuance of summonses across New York City with the goal of recommending reforms that reduce, and ultimately eliminate, that disparity.

b. Background on the Criminal Justice Reform Act

On June 13, 2017, the New York City Council passed, and the mayor signed, the CJRA with the goal of “prevent[ing] negative outcomes that individuals may experience as a result of a criminal summons for [specified] lower-level offenses,”¹ including collateral consequences, such as criminal adjudication of offenses, housing, employment, and immigration issues.² To address concerns surrounding the use of criminal enforcement for these types of low-level offenses, the CJRA created a presumption in favor of issuing civil, rather than criminal, summonses for certain low-level offenses previously prosecuted in criminal court.³ In aiming to promote public safety and reduce arrest, this legislation sought to divert 100,000 cases to civil court instead of criminal court, saving almost 10,000 people per year from having a permanent criminal record and avoiding over 50,000 warrants per year.⁴

The five most prevalent offenses affected by the passage of the CJRA were: Open Container of Alcohol, Littering, Public Urination, Unreasonable Noise, and Department of Parks & Recreation (“DPR”) offenses. For these offenses, the CJRA provides that police officers have the discretion to write summonses for civil adjudication rather than criminal prosecution, and urges a presumption in that favor. However, the CJRA also vested in the New York Police Department (the “NYPD”) the responsibility to issue guidance on when that presumption should and should not apply.⁵

The NYPD fulfilled this responsibility by issuing Patrol Guide 209-03 “[t]o inform uniformed members of the service of the procedures to be followed when personally serving a Civil Summons Returnable to the Office of Administrative Trials and Hearings

¹ Tomascak, et. al., *Evaluating the Impact of New York City’s Criminal Justice Reform Act: Summons Issuance and Outcomes in the 18 Months after Implementation*, John Jay College of Criminal Justice (Feb. 2020), at 1.

² By way of background, in New York City, the issuance of a criminal summons requires appearance at the criminal summons court and, if the individual is found guilty, he or she is subject to a fine, jail time, or both. Further, failure to appear can result in a bench warrant that can lead to arrest. The issuance of a civil summons, on the other hand, requires either the payment of a fine online or appearance at the Office of Administrative Trials and Hearings (OATH). If the individual is found to have committed the civil offense, he or she has a choice to pay a fine or complete community service with no possibility of jail. Further, failure to appear in the civil summons context cannot result in a bench warrant.

³ See NYC Admin. Code § 14-155 (a) (“The Council has analyzed the application of criminal and civil enforcement in numerous low-level offenses. Based upon this analysis, the Council has identified concerns with the use of criminal enforcement for many of these offenses and has concluded that criminal enforcement of these offenses should be used only in limited circumstances and that, in the absence of such circumstances, civil enforcement should be utilized.”).

⁴ “The Criminal Justice Reform Act.” New York City Council. <https://council.nyc.gov/the-criminal-justice-reformact-one-year-later/>.

⁵ See NYC Admin. Code § 14-155 (b) (“The department shall provide guidance to its uniformed officers with respect to determining whether to utilize civil enforcement or criminal enforcement, or both, for any individual who commits a specified unlawful act. Such guidance shall be made publicly available.”)

(“OATH”) for a Criminal Justice Reform Act (“CJRA”) of 2016 violation.”⁶ Under the Patrol Guide’s guidelines, an individual is not eligible for the CJRA presumption in favor of a civil summons if: (1) the individual has an open warrant, (2) the individual has three or more unanswered civil summonses in the last eight years, (3) the individual has two or more felony arrests in the past two years, (4) the individual is on parole or probation, (5) the issuing officer articulates a legitimate law enforcement reason to issue a criminal summons (which is approved by a supervisor) (the “catch-all” exception), or (6) the CJRA summons is being co-issued with a summons for another charge that requires an appearance in criminal court.

While the passage of the CJRA has led to substantial declines in the overall issuance of criminal summonses for the relevant CJRA offenses,⁷ statistics show that substantial racial disparities have persisted. Indeed, in the year after passage “the largest proportion of criminal summonses were issued to individuals who were Black and the largest proportion of civil summonses were issued to individuals who were Hispanic.”⁸

c. The Summons Working Group’s Investigation

Beginning in August 2020, the Summons Working Group met on a bi-weekly basis and heard from various presenters on topics related to the CJRA in order to gain a rounded perspective on the current environment in which the NYPD analyzes issuance of summonses and the results of such discretion. In particular, the Summons Working Group heard presentations from the NYPD, the Legal Aid Society, and the Office of Court Administration (“OCA”) on the current protocols surrounding the issuance of summonses and policy proposals regarding the CJRA exemptions. The Summons Working Group also reviewed additional materials on the subject, including a report by the John Jay College of Criminal Justice focusing on the issuance of criminal summons.⁹

The Summons Working Group was particularly interested in understanding how the NYPD carries out the requirements of the CJRA in the field and, to that end, heard two presentations by the NYPD on the subject. The first presentation occurred on August 25, 2020, in which the NYPD explained the legislative history behind the CJRA and the protocols utilized by officers in the field in issuing summonses. The NYPD also explained that in crafting its policy, it developed code boxes that would be selected on the scene when an officer issues a criminal summons rather than a civil summons. As the

⁶ See NYPD Patrol Guide 209-03.

⁷ Tomascak, et al., *Evaluating the Impact of New York City’s Criminal Justice Reform Act: Summons Issuance and Outcomes in the 18 Months after Implementation*, John Jay College of Criminal Justice (Feb. 2020), at 4 (finding that, in the first year after passage of the CJRA, criminal summonses issued for CJRA offenses dropped 94% to 7,403 from 116,517 in the year prior to the Act’s passage).

⁸ *Id.* at 10; see also <https://www.gothamgazette.com/city/8768-nypd-fewer-criminal-penalties-for-low-level-offenses-racial-differences-remain>.

⁹ Tomascak, et al., *Evaluating the Impact of New York City’s Criminal Justice Reform Act: Summons Issuance and Outcomes in the 18 Months after Implementation*, John Jay College of Criminal Justice (Feb. 2020).

Patrol Guide explains, “Code 1” relates to the violator being an OATH recidivist; “Code 2” relates to the violator having an active arrest warrant; “Code 3” relates to the officer articulating “a legitimate law enforcement reason” to issue a criminal summons; and “Code 4” relates to the violator being stopped for multiple offenses with at least one being a non-CJRA violation answerable to Criminal Court.¹⁰

Overall, the data showed that criminal summonses are issued to Black and Hispanic offenders at a much higher rate than White offenders when the officer has the discretion between issuing a criminal or civil summons. This led to a concern by the Summons Working Group that sufficient controls did not exist to prevent an abuse of officer discretion under Code 3, which is an articulation of a law enforcement reason. Alternative reasons for the disparities were raised as well, such as the racial make-up of particular precincts or utilization of the parole/probation exception (since parole and probation already disproportionately affect minorities, as explained in greater detail below).

To study the issue, the Summons Working Group analyzed the NYPD’s practice when officers exercise discretion whether to direct a summons to criminal court for an unspecified “law enforcement reason” under Code 3. The goal was to evaluate backup documentation justifying these criminal court summonses, including conducting an audit of a Patrol Guide requirement that these instances be documented by a supervisor. To assist the Summons Working Group, the NYPD produced a random sampling of summonses issued by the highest volume commands in each borough (the 40th, 75th, 109th, 120th, and Manhattan South precincts).

During the second presentation on September 22, 2020, a representative from the NYPD provided the data analyzed in these selected precincts. The NYPD conducted a pre-review of the tickets and found that a significant number had been misclassified by issuing officers as being for “law enforcement reason[s]” when they should have been directed to Criminal Court for another reason because (a) the defendant committed a non-CJRA, or (b) the defendant committed a CJRA offense in conjunction with a non-CJRA offense. As a result, the NYPD discovered that the form itself (as excerpted below as **Exhibit 1**) lends itself to errors at the field level because it merely lists four codes without any information describing each code. This seemed to diminish the possibility that officers are systematically abusing the Code 3 exception when issuing a criminal summons to an offender, but raised additional concerns over field training and the ability to effectively collect and analyze data.

¹⁰ See NYPD Patrol Guide 209-03.

**Excerpt of current summons
design with blank code boxes**

NYPD CODE
 1 2 3 4 ICAD #
nt stated in my presence (in substance):

Exhibit 1

Additionally, the Summons Working Group discussed other aspects of Patrol Guide 209-03, including the listed exceptions to the presumption in favor of the issuance of a civil summons. The Summons Working Group focused principally on two exceptions: (1) that the individual has had two or more felony arrests in the past two years, and (2) that the individual is on parole or probation. After hearing from representatives of the Legal Aid Society, the Summons Working Group determined that the current policies fail to account for systematic disadvantages, such as higher rates of poverty and lower rates of education, that skew facially race-neutral policies. As studies reviewed by the Summons Working Group show, “[f]or relatively disadvantaged probationers, supervision may more often serve as a ‘piling on’ of sanctions that ultimately ends with imprisonment,”¹¹ meaning that the inability to benefit from the CJRA presumption can carry with it extraordinarily dire consequences for individuals, their families, and their communities.

More specifically, the Summons Working Group’s analysis found that people of color are disproportionately likely to fall into these categories. Black and Latinx individuals in New York, for example, are “supervised at 6.8 and 2.5 times the rate of white people, respectively – significantly larger inequities than are observed in national parole supervision rates.”¹² Indeed, “the burdens of parole supervision and revocation practices fall much more heavily on minority communities in New York” and this should not include an additional burden of ineligibility for a civil summons.¹³

The statistics for felony arrests are no different. Based on statistics compiled by both the NYPD and DCJS, felony arrests across all major felonies analyzed are majority Black and Latinx.¹⁴ It is also worth noting that the Summons Working Group found the

¹¹ See Ulmer and Bradley, *Handbook on Punishment Decisions: Locations of Disparity*, at 49 (2018).

¹² See Bradner and Schiraldi, *Racial Inequities in New York Parole Supervision*, Columbia University Justice Lab, at 6 (March 2020) (finding that, in New York,)

¹³ *Id.*

¹⁴ NYPD, “Crime and Enforcement Activity in New York City” (2018), https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/year-end-2018-enforcement-report.pdf; NYPD, “Crime and Enforcement Activity in New York City” (2019), https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/year-end-2019-enforcement-report.pdf.

exemption based on two felony *arrests* particularly problematic considering our criminal justice system’s presumption of innocence. The exemption does not account for how any previous arrest may have ultimately been resolved, thus making a facial determination without meaningful review. To be sure, there was some disagreement within both the Summons Working Group and the larger Task Force on this subject considering the seriousness of a felony arrest.

Finally, the Summons Working Group considered the possibility of pre-arraignment diversion, resulting in a declination to prosecute the matter, as an “off ramp” or “back stop” for individuals served with criminal summonses. As discussed over the course of several meetings, such a program would reduce negative outcomes and collateral consequences, which disproportionately affect minority defendants.

The Summons Working Group heard a presentation from representatives of both OCA and the Manhattan District Attorney’s office on a precedent program currently available to individuals served with desk appearance tickets (“DATs”). Operation Reset is a program offered by the City’s District Attorneys to qualified defendants charged by DAT in the Criminal Court’s non-summons parts. As explained to the Summons Working Group, the program provides eligible defendants with the option to participate in community or social services prior to arraignment. Upon completion of community or social services, the District Attorney will decline to prosecute the defendant’s case. The Summons Working Group discussed this program and whether a similar program could be developed in the Court’s summons parts.

As a result of the Summons Working Group’s investigations and survey of relevant data, it presented the Task Force with three possible recommendations aimed at reducing racially disparate outcomes in the issuance of CJRA summonses, which are explained in greater detail in Part III:

1. Remove the parole and probation and prior felony arrest exemptions to the issuance of a civil summons under the CJRA;
2. Reform the summons form that NYPD officers complete when issuing a summons and provide additional training to NYPD officers on how to exercise proper discretion in completing the form; and
3. Create diversion and virtual community service programs in the Criminal Court, Summons Part.

The full Task Force met on November 11, 2020 and December 17, 2020 to deliberate and debate the proposals. As a result of these meetings, all three of the recommendations received a majority vote from the Task Force membership.

The following section set forth the details of each recommendation and explains why the Summons Working Group identified how each recommendation is aimed at combating racial disparity.

III. Recommendations

a. Remove Certain Exemptions to the Issuance of a Civil Summons Under the CJRA

The Task Force recommends that the Police Commissioner of the NYPD revise the Department Guidance and amend Patrol Guide 209-03 to remove two exemptions to the presumption in favor of a civil summons: (1) being on parole or probation, and (2) having two prior felony arrests in the past two years.

In the Task Force's view, removing these two exemptions as avenues to avoid the presumption in favor of a civil summons will fulfill the City Council's goal of preventing negative outcomes for individuals accused of low-level crimes while still allowing the NYPD to fulfill its obligation to keep communities safe. Further, given that people of color are disproportionately likely to fall into these categories and be adversely affected by these exemptions, the Task Force believes this recommendation will reduce racial disparity in the overall issuance of summonses.

b. Amend the Summons Form to Ensure Accurate Data

The Task Force recommends that the summons form, which officers complete when issuing a summons, be redesigned in consultation with the NYPD, the New York State Office of Court Administration, and the Criminal Court of the City of New York. In particular, this redesign should include providing short descriptors of the reasons for directing CJRA offenses to criminal court consistent with the necessary planning concerns of the NYPD. The Task Force relatedly recommends that additional training be provided to NYPD officers with respect to the proper discretion in completing the form.

As discussed above in Part II, after reviewing the NYPD's publicly available data and with the NYPD's dedicated assistance, the Summons Working Group found that coding errors resulted from ambiguity in the design of the summons form itself, which led officers to incorrectly complete it and thus skew any resulting data. Because accurate data is essential to properly analyze racial disparities in our justice system, the Task Force adopted this second recommendation to directly remedy the aforementioned coding issue by calling for a redesign of the summons form, plus additional officer training on using the form.

c. Create Diversion and Virtual Community Service Programs in New York City Criminal Court, Summons Part

The Task Force recommends the development of a virtual or online community service module to be offered to defendants who receive criminal summonses returnable to a summons part in the Criminal Court for the City of New York for the five offenses listed in the CJRA. This recommendation seeks to implement a form of pre-arraignment diversion for these individuals.

Specifically, the Task Force recommends that these defendants be notified at the time that the summons is issued that they are eligible to complete a community service program online prior to arraignment, which would result in the termination and sealing of the charges, thereby obviating the need for them to appear in court. For qualified defendants without online access, this option should be offered and completed at the courthouse on the defendants' scheduled arraignment dates prior to the court appearance. Once implemented, the virtual program should also be fashioned as a condition of a disposition after arraignment, such as an adjournment in contemplation of dismissal or conditional discharge.

To provide additional information on how the program should be implemented, the Task Force provides the following details of how the program should function:

- Defendants should log into the Court's website and register using a combination of name, date of birth, and/or summons number. Only defendants charged with an eligible offense are permitted to complete this registration process.
- The program itself should be similar to the program currently used by OATH as developed by the Center for Court Innovation ("CCI"). The Court should contract with CCI or a similar vendor to modify that program for the eligible offenses and create court-specific registration, security, and reporting requirements.
- After registration, the defendant shall complete the interactive course. This course is to consist of segments discussing the societal impact of the targeted offenses with an attempt to gauge the comprehension of the defendant after each segment using multiple choice or fill-in-the-blank questions. The course should be offered in multiple languages and should take no more than 60 minutes to complete.
- Upon successful completion, the defendant shall receive confirmation of completion, instructions not to appear in court on the scheduled return date, and notice that they will receive a letter advising them of the official disposition. The program will notify court clerical personnel of the defendant's successful completion of the program. Such personnel will then indicate in their management information system that the matter was dismissed and sealed pursuant to CPL 160.50(3)(i).
- Defendants eligible for pre-arraignment diversion who have not completed the program, but appear in court for their arraignment, shall be given the option to complete the online course on a computer located in the courthouse after checking in with court staff. Upon successful completion, the matter will similarly be dismissed and sealed as indicated above.

To accomplish this reform, the Task Force additionally recommends the following implementation procedure:

- District Attorneys in each county of the City who wish to participate in the pre-arraignment diversion program recommended by the Task Force shall execute a memorandum of understanding (“MOU”) with the Court and the NYPD.
- The MOU will indicate that the District Attorney is exercising its prosecutorial discretion over a specified category of summons matters to permit defendants charged with a criminal summons to participate in pre-arraignment diversion. While the District Attorney’s office shall specify the eligible charges in their MOU, the Task Force recommends extending eligibility to the five specified CJRA charges: public consumption of alcohol; public urination; littering; unreasonable noise; and NYC parks rules offenses.
- The MOU will indicate that police officers shall give notice of the pre-arraignment diversion program, along with instructions on participation, to defendants charged with one of the designated offenses. Similar to the notice currently given to defendants on the defendant’s copy of the current criminal summons, information regarding the program shall be printed on the back of the defendant’s appearance ticket, including eligible charges and instructions on how eligible defendants may access the web address for the online program at www.mysummons.nyc.
- The MOU will further indicate that should a defendant, after being provided with such notice, complete the diversion program prior to arraignment, the District Attorney will elect not to prosecute the matter and terminate and seal the case pursuant to CPL 160.50 (3)(i). Eligible defendants who do not complete the diversion program prior to the return date and arraignment will have their case adjudicated in the Court’s summons part.
- The Chief Administrative Judge should also promulgate an administrative order to be codified in the Uniform Rules – Trial Courts creating a pre-arraignment diversion program for those who receive criminal summonses returnable to a summons part in the Criminal Court for the City of New York, specifically for the five offenses, or classes of offenses, listed in the CJRA: public consumption of alcohol; public urination; littering; unreasonable noise; and NYC parks rules offenses.