

NEW YORK STATE MAGISTRATES ASSOCIATION

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June 10, 2010

The Honorable Sheldon Silver
New York State Assembly
LOB 932
Albany, NY 12248

Re: Bill No. A10899 and Bill No. S7018

Dear Assembly Speaker Silver:

I am writing on behalf of the New York State Magistrates Association to ask for your support of the above-referenced legislation introduced by Assembly Member Robin Schimminger in the Assembly and Senator Michael H. Ranzenhofer in the Senate. The bills help to address a growing problem in the justice courts - an inability to bring closure to cases where defendants are charged with § 221.05 of the NYS Penal Law or § 65-c of the NYS Alcohol Beverage Control Law.

The NYS Criminal Procedure Law does not contemplate judicial enforcement of charges for which there is not a possible jail sentence. Penal Law § 221.05 addressing unlawful possession of marihuana, and Alcohol Beverage Control Law § 65-c addressing unlawful possession of an alcoholic beverage by a minor, currently lack meaningful enforcement mechanisms the courts can use since neither offense permits a sentence of jail upon conviction. Therefore, judges are being cautioned that a warrant should not be issued if a defendant fails to appear to answer the charge, or fails to comply with the sentence which must include a surcharge and Crime Victim Assistance Fee, and may include a fine, completion of an education/treatment program, or community service. Courts are further being advised that bail should not be set as an inability to meet it would result in the defendant being remanded to a holding facility on these charges.

The lack of sufficient enforce tools that would allow judges to adjudicate or bring to closure the cases of defendants charged with violating these two New York State Laws has given rise to an alarming number of pending cases, particularly involving younger people, who will simply disregard appearing on the charge, or fail to comply with the sentence of the court. Local courts statewide are reporting an ever growing backlog. This situation encourages irresponsibility and lack of respect for the courts and the law. It deprives defendants of the rehabilitation benefits that the education/treatment components of the sentence are designed to deliver, including discouraging the use of marihuana and underage drinking. Additionally, it results in a substantial number of unpaid fines and surcharges not being collected. The amount of money remaining uncollected is significant and growing. This money would normally help offset State and local costs and provide crime victims assistance.

The bills introduced by Assembly Member Schimminger and Senator Ranzenhofer seek to provide local judges with additional tools to bring closure to a large volume of pending and future cases as noted above. Please join with your colleagues in supporting this significantly important piece of legislation.

Very truly yours,

A handwritten signature in cursive script that reads "E. G. Van Der Water".

Hon. Edward G. Van Der Water
President, New York State Magistrates Association