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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

OSC No. 9

MEMORANDUM

AN ACT to amend the criminal procedure law, in relation to expressly providing for the availability of certain sealed records to the Office of the State Comptroller (OSC) for audit purposes.

PURPOSE: This bill would expressly provide for certain sealed records to be made available to OSC's officers and employees for purposes of conducting a duly authorized examination into the financial affairs of town and village justice courts.

SUMMARY OF PROVISIONS: Section 1 of this bill amends Criminal Procedure Law ("CPL") § 160.50(1)(d) by adding a new subparagraph vii to expressly include OSC in the list of persons or entities authorized to access town and village court records, which were sealed upon the termination of a criminal action or proceeding in favor of the accused, in furtherance of its constitutional and statutory duty to inspect and examine the accounts and financial affairs of all officers of municipal corporations.

Section 2 of this bill provides for an immediate effective date.

JUSTIFICATION: Article V, section 1 of the State Constitution and the General Municipal Law ("GML") authorize and require OSC to examine the financial affairs of every municipal corporation, and the accounts of their officers, which includes examining the accounts of town and village justice courts; however, OSC is currently unable to obtain all records necessary and relevant to conducting such audits.

OSC has been unable to conduct audits of town and village justice courts because OSC no longer has access to all of the records relating to cases handled by those courts, the majority of which are parking and speeding tickets under the Vehicle and Traffic Law ("VTL"). In brief, any time that a town or village justice "terminates an action or proceeding in favor of the accused," which most commonly occurs with the dismissal of a traffic violation, the case is sealed. Historically, town and village justice courts produced their records directly to OSC during the course of a financial examination. In accordance with OSC's broad authority under GML §§ 33 and 34, those records typically included information from cases that were terminated in favor of the accused, which were therefore sealed. Recently, however, the function of producing town and village court records

digitally for OSC's inspection was assumed by the Office of Court Administration (OCA). Although it supports OSC's mission to continue to audit the financial affairs of local justice courts, OCA has determined that they lack the authority to produce records sealed under CPL § 160.50 to OSC. Therefore, OCA is not providing personal identifying information (PII) or charge-related information to OSC for any dismissed VTL cases. Without access to this critical information, OSC auditors are unable to conduct justice court audits that could uncover theft, fraud, or other financial improprieties.

Across New York, over 1,200 town and village justice courts comprised of nearly 2,200 local justices constitute the overwhelming majority of our State's courts and judges. Each year, more than \$210 million moves through these town and village justice courts; much of it in cash. However, the justice courts are the only level of New York's trial courts that are funded and administered by their respective municipalities, rather than the State. The justices, judges, and court staff are all municipal and not state employees. As a result, the justice courts operate without the comprehensive oversight of the New York State Judiciary and OCA, which supervise the operation and administration of the State-paid trial courts. Justice courts are also uniquely diverse administratively, ranging from large suburban communities whose courts employ a large professional staff and modern security measures, to the smallest and most rural communities who employ no full-time staff, rely on non-attorney judges, and use only a modicum of case-management and security technologies. In turn, the municipalities in which these justice courts are located bear the burden of the courts' financial administration.

Collaborating with State and local police, and district attorneys' offices throughout the State, OSC has uncovered instances where justice court personnel have used their offices to misappropriate public funds. OSC has found that one of the more common ways justice court officials attempt to conceal theft is by manipulating records of sealed cases. In order to uncover such manipulation, OSC's examiners rely on obtaining accurate PII and charge-related information for each case file examined, the most notable being the names of defendants and payees, the categories under which many files and source documentation are stored and filed by local courts.

OSC's examiners have determined that without access to PII of sealed records, OSC is currently unable to examine the financial affairs of justice courts to the extent required to meet Government Auditing Standards. This legislation is necessary to remedy this recent development and enable OSC to maintain its successful track record of protecting the State's taxpayers by uncovering waste, fraud and abuse in the State's justice courts.

PRIOR LEGISLATIVE HISTORY: New Bill.

FISCAL IMPLICATIONS FOR STATE: None.

EFFECTIVE DATE: This act takes effect immediately.