



ACLU of New York

Legislative Affairs
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2021 – 2022 Legislative Memorandum

Subject: S.6402 (Gaughran) / A.6344 (Montesano) – Allowing the Town of Oyster Bay to Create an Administrative Tribunal to Circumvent Criminal Discovery Laws

WITH ADDENDUM ADDRESSING THE FOLLOWING:

S.1139 (Harckham) / A.1214 (Paulin) – Allowing the County of Westchester to Create an Administrative Tribunal to Circumvent Criminal Discovery Laws

S.1368 (Brooks) / A.1566 (Jean-Pierre) – Allowing the Town of Babylon to Create an Administrative Tribunal to Circumvent Criminal Discovery Laws

S.5556 (Palumbo) / A.6138 (Thiele, Jr.) – Allowing the Town of East Hampton to Create an Administrative Tribunal to Circumvent Criminal Discovery Laws

Position: OPPOSE

The NYCLU urges the Assembly not to pass S.6402 (Gaughran) / A.6344 (Montesano). The bill, which would allow the town of Oyster Bay to create its own quasi-criminal court system for adjudicating town code violations, is a transparent attempt to skirt the comprehensive criminal discovery reforms enacted two years ago. It raises due process questions and other serious policy concerns, and would shroud Oyster Bay’s code enforcement system in secrecy and allow residents to complain anonymously about their neighbors. It is a misguided local attempt to roll back recent reforms that ensure full due process, including discovery rights, for all New Yorkers, and should be stopped in its tracks. Due process should be a goal for all legislators, not an obstacle to be circumvented.

Using the Administrative Adjudication Bureau (AAB) Model to Skirt New York’s New Criminal Discovery Laws Cheats the Criminal Justice System and Creates Constitutional Problems

In 2019, New York passed a new criminal discovery law¹ that corrected serious injustices in how the state shared evidence with criminal defendants. Among other things, the law now requires the government to identify its witnesses at the beginning of the discovery process instead of at the eve of trial.

Soon after those reforms passed, the town of Huntington sought legislative permission² to establish an “Administrative Adjudication Bureau,”—essentially a quasi-criminal court that hears violations of the town code—on the theory that routing municipal offenses through an AAB instead of the local criminal court would allow it to both (1) skirt witness identification requirements, and (2) avoid having to turn over paper discovery pretrial. Indeed, town officials were quite candid about that strategy: Huntington Town Supervisor Chris Lupinacci noted that the new discovery law had “created a nightmare” for the town, and that the AAB would serve as an “antidote” by relieving the town of document production requirements and once again allowing residents to complain about each other anonymously.³

Similar AABs have been established in Yonkers and Buffalo, although the NYCLU does not know the extent to which those towns are using their bureaus to skirt criminal discovery requirements.

Using the AAB model to dodge discovery requirements not only denies an entire class of defendants the benefit of those hard-won criminal justice reforms, it raises serious constitutional questions. For starters, the Huntington AAB is expressly allowed to adjudicate Class A misdemeanors and assess fines of up to \$1,000⁴—a class of offenses and fines the New York Legislature has long deemed *criminal*.⁵ That the

¹ N.Y. C.P.L. §245

² Many town code violations qualify as misdemeanors, and so must be heard by the local criminal court. However, the New York Legislature sets the jurisdiction of New York’s courts, and without legislative say-so, municipalities cannot encroach on that jurisdiction. *See Greens at Half Hollow, LLC v. Town of Huntington*, 831 N.Y.S.2d 649, 654 (Sup. Ct. 2006).

³ L.S. Cohen, “Long Island Town Supes: NYS Discovery Law A Nightmare For Code Enforcement” [www.LongIsland.com](https://www.longisland.com/news/03-12-20/town-supervisors-nys-discovery-law-a-nightmare-for-code-enforcement.html), March 12, 2020. AVAILABLE AT: <https://www.longisland.com/news/03-12-20/town-supervisors-nys-discovery-law-a-nightmare-for-code-enforcement.html> (Last visited June 2, 2021).

⁴ *See*, as just one example, Huntington Town Code §115-4 and §115-18, setting the penalties for operating unlawful games of chance in Huntington: “Any violator of this Article or any section or provision thereof shall, upon conviction, be guilty of a Class A misdemeanor, and subject to a fine of not less than \$250 dollars and not more than \$1,000 or imprisonment for a period not exceeding one year for each offense, or by both such fine or imprisonment. **Any person or entity found by the Bureau of Administrative Adjudication to have violated any provision of this Article shall likewise be subject to a monetary penalty within the range of fines authorized herein.**” [emphasis added].

⁵ *See* N.Y. Pen. §55.10(2)(c), deeming such offenses “unclassified misdemeanor[s].”

Huntington Town Code calls such fines “civil in nature”⁶ means nothing; it simply defies this Legislature’s considered judgment to the contrary.

What’s more, although that AAB deals in criminal misdemeanors, it unfairly plays by civil rules: the Town need only prove a defendant’s criminal guilt by a preponderance of the evidence,⁷ rather than by the familiar, constitutionally-required “guilt beyond a reasonable doubt” standard.⁸ This flies in the face of criminal defendants’ right to due process.

Further, Huntington’s rules also allow parties to appeal a final AAB ruling by bringing an Article 78 action in the appropriate local court. But if the AAB forbids pretrial discovery and doesn’t abide by the rules of evidence, on what factual record can the appellate court—where additional discovery and new evidence are typically not allowed—base its review? A defendant may find himself litigating an appeal with one hand tied behind his back: the entire problem the Legislature sought to fix when it enacted discovery reform.

Oyster Bay should not repeat the constitutional sins of Huntington.

Lastly, beyond its constitutional problems, the AAB model reflects an obsession with secrecy and anonymity anathema to our transparent criminal justice system. Simply put, defendants have a right to face their accusers. And while, during pretrial proceedings, that right may temporarily yield to such concerns as serious risks of violence or intimidation against witnesses, it cannot yield to the mere *inconvenience* of having to identify oneself as having filed a zoning complaint. This is especially so where a defendant found guilty of such a violation may face both hefty, misdemeanor-level fines, and the stigma of a misdemeanor conviction itself.

Conclusion

Establishing an Administrative Adjudication Bureau in order to skirt New York’s criminal discovery laws and deny defendants due process should not become a trend. This is especially so where that trend serves no purpose other than allowing the town to avoid pesky paperwork and allowing residents to hurl anonymous complaints at one another—or at community “undesirables” whose properties don’t conform to neighborhood standards.

This Legislature should reject S.6402/A.6344, and deny the town of Oyster Bay the opportunity to continue this alarming trend.

⁶ See Huntington Town Code §93-3

⁷ *Id.* at §93-8(B) (“The Town Attorney has the burden of proving any charge of a violation by a preponderance of the evidence.”)

⁸ See, generally, *People v. Antommarchi*, 80 N.Y.2d 247, 252 (1992), citing *In re Winship*, 397 U.S. 358 (1970).

ADDENDUM: After issuing its opposition to S.6402/A.6344, pertaining to Oyster Bay, the NYCLU learned of the other bills captioned above, which would establish AABs in the county of Westchester, and the towns of Babylon and East Hampton. **If those towns intend to use the AAB model to skirt the criminal discovery reforms** in the same manner as Huntington the NYCLU opposes those bills for the reasons discussed above.

Except for this addendum and the added bills in the caption, no changes have been made to the text of this memo.