

Intro. Res. No. 1087-2013

Laid on Table 2/5/2013

Introduced by Legislators Browning, Muratore, Cilmi, Schneiderman, Anker, Krupski, Horsley, Calarco, Montano, Lindsay, Hahn, Barraga, Kennedy, Nowick, Gregory, Stern, D'Amaro and Spencer

RESOLUTION NO. 183 -2013, ADOPTING LOCAL LAW NO.14 -2013, A LOCAL LAW TO DETER MOTORISTS FROM LEAVING THE SCENE OF AN ACCIDENT

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on February 5, 2013, a proposed local law entitled, "**A LOCAL LAW TO DETER MOTORISTS FROM LEAVING THE SCENE OF AN ACCIDENT**;" now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 14 -2013, SUFFOLK COUNTY, NEW YORK

A LOCAL LAW TO DETER MOTORISTS FROM LEAVING THE SCENE OF AN ACCIDENT

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that accidents resulting in serious injury or death occur regularly on roadways in the County of Suffolk.

This Legislature determines that there were 5,555 reported accidents where a driver left the scene of an accident in 2012. Of those, 11 were fatalities.

This Legislature also finds and determines that increasingly, motorists involved in accidents are leaving the scene without reporting the incident. Frequently, these motorists are operating vehicles under the influence of drugs or alcohol.

This Legislature also determines that hit-and-run drivers pose a significant danger to public safety, as they leave victims in jeopardy of further injury, without prompt medical treatment, and debris resulting from an accident is also left in the roadway.

This Legislature finds and determines that a recent spate of hit-and-run accidents in Suffolk County have raised concerns about road safety, leading the District Attorney to call for stronger penalties against those leaving the scene of an accident.

This Legislature finds that hit-and-run drivers place the public in peril of injury, and stronger penalties are needed to deter individuals from unlawfully leaving the scene of an accident.

Therefore, the purpose of this law is to authorize the County's law enforcement agencies to seize and forfeit the vehicles of hit-and-run drivers.

Section 2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

“Claiming Authority” shall mean the County Attorney, or his or her designee.

“Instrumentality of an offense or Instrumentality” shall mean a vehicle, the use of which contributed directly and materially to the commission of an offense as defined in this law.

“Offense” shall mean leaving the scene of a motor vehicle accident or incident which resulted in personal injury without reporting in violation of New York Vehicle and Traffic Law (“VTL”) § 600(2) and involves serious physical injury, as defined in New York Penal Law § 10.00, or death. This term shall not include any violation of VTL § 600(2) resulting solely from the failure of an operator to exhibit his or her license and insurance identification for the vehicle or exchange the information required.

“Seizing agency” shall mean the law enforcement agency seizing the instrumentality of an offense.

Section 3. Warrantless Seizures.

A. Upon making an arrest or upon issuing a summons or an appearance ticket for an offense, as defined herein, an officer shall seize such instrumentality. Said instrumentality may be forfeited as hereinafter provided.

B. Notice of seizure.

(1) The seizing agency shall send notification of the seizure to all titled owners and registrants, if different, on file with the New York State Department of Motor Vehicles or another state's equivalent office if not titled in New York by certified mail, return receipt requested, within five business days of the seizure. Such notification shall inform the recipient that there will be a hearing promptly scheduled before a neutral magistrate to determine whether probable cause existed for the defendant having been issued a summons or having been arrested for committing an offense, or in the event a person has fled the scene of an offense, leaving the vehicle behind, whether probable cause existed that the vehicle was used in the commission of an offense, and whether the County is likely to succeed on the merits of the forfeiture action, whether retention is necessary to preserve the vehicle from destruction or sale during the pendency of the forfeiture proceeding, and whether any other measures would better protect the County's interest during the proceedings, including, but not limited to:

(a) Issuance of a restraining order prohibiting the sale, transfer, or loss of the vehicle with imposition of appropriate penalties for violation of said restraining order; and/or

(b) Taking of a bond.

(2) When a hearing is held, the neutral magistrate shall review the documents or other evidence supporting the probable cause for the determination that an offense was committed and the vehicle was used in the commission of the offense, or for the

issuance of a summons or arrest for an offense and any other relevant documents and take any testimony to determine whether the seizing agency has sustained its burden of proof as set forth in Subsection B(1) of this section. If the seizing agency has met its burden of proof, the neutral magistrate shall authorize the continued retention of the property by the seizing agency pending a judicial determination of any civil forfeiture action. Nothing herein shall be construed to preclude a party with a legal interest in the seized property from commencing an action or proceeding in a court of competent jurisdiction for its return.

- (3) The Suffolk County Executive shall designate neutral magistrates to conduct hearings in accordance with Subsection B(2).
- C. Any action for forfeiture under Section 4 of this law shall be commenced, in the manner prescribed by New York Civil Practice Law and Rules § 304, within 180 days after the disposition of the summons or arrest for the offense, and in the instance where no summons or arrest was made, within the period consistent with the statute of limitations for the underlying offense, but in no event more than five years after seizure. Failure to commence such an action within the aforesaid time period shall result in the immediate return of the property to its lawful owner. The vehicle will be made available for release to the titled owner at the place of storage, subject to payment of reasonable and customary towing, maintenance and storage fees to the date of release. In the event of a failure to take possession of the vehicle within 60 days after actual notification or by certified mail, return receipt requested, sent to the address of the titled owner on file with the New York State Department of Motor Vehicles or another state's equivalent office, if not titled in New York, whichever date is earlier, the vehicle will be forfeited.

Section 4. Civil Authority.

- A. A civil action may be commenced by the claiming authority, or its designee, against a defendant to forfeit seized property which constitutes the instrumentality of an offense or to recover a money judgment in an amount equivalent in value to the property which constitutes an instrumentality of an offense, except that:
- (1) No property used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this article unless it shall appear that the owner or agent of the owner was a consenting party or privy to the commission of the offense; and
 - (2) No property shall be forfeited under the provisions of this article by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than the owner while the subject property was unlawfully in the possession of a person other than the owner.
- B. A civil action may be commenced by the claiming authority, or its designee, against a defendant to seize and to forfeit property which constitutes the instrumentality of an offense, or to recover a money judgment in an amount equivalent in value to the property which constitutes the instrumentality of an offense, except that:
- (1) No property used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this article

unless it shall appear that the owner or agent of the owner was a consenting party or privy to the commission of the offense; and

- (2) No property shall be forfeited under the provisions of this article by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than the owner while the subject property is unlawfully in the possession of a person other than the owner.
- C. A civil action may also be commenced against a noncriminal defendant to recover the property which constitutes the instrumentality of an offense, subject to the same exceptions contained in Subsections A and B of this section. A noncriminal defendant who is physically present in an instrumentality at the time of the commission of an offense shall be presumed to know that the instrumentality of an offense was or would be used in a manner that would directly and materially contribute to the commission of an offense. A noncriminal defendant whose vehicle was an instrumentality used and operated by a person shall be presumed to know that the instrumentality of an offense was used in a manner that directly and materially contributed to the commission of an offense or that obtaining his or her interest in the instrumentality could assist the criminal defendant in avoiding the forfeiture.
 - D. All actions commenced under this article shall be governed by the procedures enumerated in Article 13-A of the New York Civil Practice Law and Rules, where not specifically outlined herein.
 - E. No property shall be forfeited under this article unless the claiming authority produces clear and convincing evidence that the noncriminal defendant engaged in affirmative acts which aided, abetted or facilitated the conduct of the criminal defendant. The noncriminal defendant must take all prudent steps to prevent the illegal use of his or her property, and willful disregard by the owner or lienholder of the acts giving rise to forfeiture shall not constitute a defense to such forfeiture.
 - F. Unless barred by the five-year limitation contained in Subsection C of Section 3 of this law, any action to forfeit seized property under Subsection A of this section may be commenced within 180 days after the disposition of the summons or arrest for the offense or, in the instance where no summons or arrest was made, within the statute of limitations for the underlying offense when the property has first been seized under Subsection A of Section 3 of this law, and within 180 days after the disposition of the summons or arrest for the offense, or within the statute of limitations for the underlying offense where no summons or arrest has been made when the property has not been first seized under Subsection A of Section 3 of this law, and said action shall be civil, remedial, and in rem in nature and shall not be deemed to be a penalty or criminal forfeiture for any purpose. An action under this article shall not be deemed a criminal proceeding of any type. The action shall be commenced in the manner prescribed by New York Civil Practice Law and Rules § 304. Potential claimants to the property shall be served with a summons and notice or summons and verified complaint. No property shall be forfeited without service of notice upon potential claimants to the property and the opportunity for a hearing given prior to such forfeiture.
 - G. Once a civil action for forfeiture has been commenced pursuant to this section, the claiming authority shall notify victims who have been physically injured as a result of the

offensive actions of an individual which have precipitated such seizure and forfeiture proceeding as to the time and place of said court forfeiture hearing.

- H. In order to establish its case in any action commenced under this article, the claiming authority shall demonstrate, by clear and convincing evidence, that the instrumentality in question is subject to forfeiture at the time of commission of the offense, as defined in this article, which precipitated the seizure or the commencement of an action for the seizure of the property without regard to the final determination of any criminal actions, if any, brought against the individual for such offense. The noncriminal defendant shall then have the burden of proving a lack of knowledge or lack of consent on behalf of said noncriminal defendant sufficient to constitute a defense to such forfeiture.
- I. If, after a seizure of property has been made under Subsection A of Section 3 of this law, it is determined that the noncriminal defendant has met the burden set forth hereinabove, then the vehicle which constitutes the instrumentality of an offense so seized shall immediately be returned to its lawful owner. The vehicle will be made available for release to the lawful owner at the place of storage, subject to payment of reasonable and customary towing, maintenance and storage fees to the date of release. In the event of a failure to take possession of the vehicle within 60 days after actual notification or by certified mail, return receipt requested, sent to the address on file to the titled owner with the New York State Department of Motor Vehicles or another state's equivalent office, if not titled in New York, whichever date is earlier, then upon such failure the vehicle will be forfeited.
- J. All property seized pursuant to this article is subject to reasonable and customary towing, maintenance and daily storage fees as may be established by the Suffolk County Police Commissioner. Such fees shall be payable to the seizing agency, or in the event the instrumentality of the offense has been transferred to the custody of the Suffolk County Police Department by the seizing agency, such fees shall be payable to the Suffolk County Police Department, prior to release of said property. The seizing agency, if other than the Suffolk County Police Department, shall be reimbursed up to \$300 for towing and storage expense actually incurred, upon disposal of said instrumentality of the offense by the claiming authority, but said reimbursement shall not exceed money actually received by the Suffolk County Police Department for its disposition. All towing, storage and maintenance fees collected shall be retained by the Suffolk County Police Department and shall be transferred into a police asset forfeiture fund in a separate nonlapsing appropriation for law enforcement purposes.
- K. The claiming authority may at any time authorize the return of the seized vehicle to the lawful owner, with or without conditions attached. When a vehicle is made available for release to the lawful owner, it shall be at the place of storage and subject to payment of reasonable and customary towing, maintenance and storage fees to the date of release. In the event of a failure to take possession of the vehicle within 60 days after actual notification or by certified mail, return receipt requested, sent to the address on file to the titled owner with the New York State Department of Motor Vehicles or another state's equivalent office, if not titled in New York, whichever date is earlier, then upon such failure the vehicle will be forfeited.

Section 5. Disposition of forfeited assets and proceeds.

- A. Whenever property is forfeited under this article, the claiming authority, or his or her respective designee, may:
- (1) Retain the property or asset for official use.
 - (2) Sell any forfeited property or asset which is not required to be destroyed by law and which is not harmful to the public.
 - (3) Transfer the property or asset to any County agency, department or other political subdivision demonstrating need for the specific property or asset so that the property or asset may be put into official use by that agency, department or other political subdivision.
 - (4) Transfer the property or asset to any County-funded agency or organization demonstrating need for the specific property or asset so that the property or asset may be put into use by the funded agency or organization in the regular course of business of that funded agency or organization. Any such transfer of forfeited property or assets under this subsection may result in an in-kind deduction from those funds paid by the County to the specific agency or organization.
- B. Any funds generated by the sale of forfeited property or assets described in this article, after deducting therefrom any fees imposed pursuant to Subsection J of Section 4 of this law, shall be distributed in the following order of priority:
- (1) Amounts to satisfy any valid lien or claim against the property forfeited;
 - (2) Amounts ordered to be paid by the defendant in any other action or proceeding as restitution, reparations or damages to a victim of the offense which constitutes the basis upon which forfeiture of the seized asset was effected under this article, to the extent such amounts remain unpaid, whichever is less; provided, however, the claiming authority receives written notice from the victim or his or her duly appointed representative within 30 days of the commencement of the civil forfeiture action in order for the victim to receive such funds;
 - (3) All monies remaining after distributions made pursuant to Subsection B(1) and (2) shall be distributed as follows:
 - (a) Twenty percent to the claiming authority in satisfaction of actual costs and expenses incurred in the investigation, preparation and litigation of the forfeiture action, including that proportion of the salaries of the attorneys, clerical and investigative personnel devoted thereto, plus all costs and disbursements made in the administration of this article, which shall be deposited into a separate nonlapsing appropriation of the claiming authority for law enforcement purposes;
 - (b) Ten percent to the Sheriff's Department in satisfaction of actual costs and expenses incurred in the service of process of the civil forfeiture actions, including that proportion of the salaries of the personnel devoted thereto,

which shall be deposited into a separate nonlapsing appropriation of the Sheriff's Department for law enforcement purposes; and

- (c) Seventy percent to the Suffolk County STOP-DWI Office for the purposes of supporting or providing drunk driving education, prevention and enforcement programs administered by governmental and/or nongovernmental agencies within Suffolk County.
- (d) The expenditure of funds pursuant to Subsection B(3) shall be in accordance with an annual plan approved by resolution of the County Legislature.

Section 6. Discretionary action.

- A. Nothing contained in this law shall require the claiming authority, or his or her respective designee, to commence a forfeiture action when, in his or her discretion, it is in the interests of justice not to commence such an action.
- B. Nothing contained in this law shall require a court to order a forfeiture when it determines, in its discretion, that it is in the interests of justice not to do so.

Section 7. Rules and Regulations.

The County Attorney shall issue and promulgate such rules and regulations as may be necessary to implement the provisions of this law.

Section 8. Applicability.

This law shall apply to actions occurring on or after the effective date of this law.

Section 9. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 10. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 11. Effective Date.

This law shall take effect immediately upon filing in the Office of the Secretary of State.

DATED: March 19, 2013

APPROVED BY:

/s/ Steven Bellone
County Executive of Suffolk County

Date: April 3, 2013

After a public hearing duly held on April 2, 2013
Filed with the Secretary of State on April 15, 2013