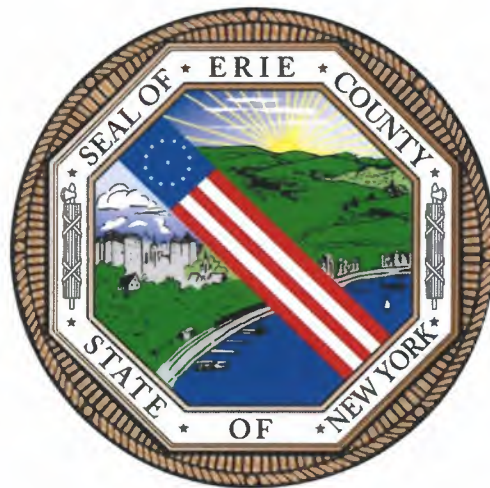


June 2023

**Erie County Comptroller's Office
Audit of the County Clerk's Office, Registrar Division
Operating Budget Revenues
January 1, 2022 through December 31, 2022**



**KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER**

**HON. KEVIN R. HARDWICK
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DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
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June 30, 2023
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Honorable Members:

The Erie County Comptroller's Office has completed an audit of the Erie County Clerk's Office, Registrar Division for the period January 1, 2022 through December 31, 2022.

Our objectives were to test and evaluate the revenue transactions recorded in the operating budget for Pistol Permits Fees, Mortgage Tax Fees, Court Fees and to evaluate the Division's internal controls. In addition, backlog procedures and the corresponding controls for these revenue transactions were to be reviewed and evaluated.

The scope of our audit included testing of revenue accounting transactions, recorded in NewVision System, the Electronic Data Processing System (EDP) that is utilized by the Clerk's office and in SAP (the County's fiscal management system) in Fund 110, Business Area 113, Cost Center 11310, General Ledger accounts 415110 Court Fees, 415160 Mortgage Tax fees, 421000 Pistol Permit fees.

The management of the Clerk's Office is responsible for establishing and maintaining a system of internal controls. The objectives of such a system are to provide management with reasonable, albeit not absolute, assurance that transactions are executed in accordance with management's authorization and are recorded properly. Due to inherent limitations in the system of internal controls, errors or irregularities may nevertheless occur and not be detected.

The responsibility of the Erie County Comptroller's Office, Division of Audit, is to express an opinion based on the objective findings of the audit. We conducted the audit in accordance with Generally Accepted Government Auditing Standards. Those standards require the Audit Division to plan and perform the audit in a manner designed to obtain sufficient, appropriate evidence in line with our audit objectives, and develop findings and conclusions which can be reasonably supported by the evidence obtained. We believe that the evidence obtained provides a rational basis for our findings, conclusions and recommendations based on our audit objectives.

Management is responsible for establishing and maintaining an effective system of internal control. Our consideration of internal control was for the limited purpose described in the preceding paragraph and would not necessarily identify all deficiencies which could be deemed control deficiencies or material weaknesses. A control deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their duties to prevent or detect errors. A material weakness is a control deficiency or combination of control deficiencies that results in more than a

remote likelihood that material errors or intentional malfeasance will not be prevented or detected by the system of internal control.

We must note that the Auditors did not receive the completed Internal and System Controls questionnaires (ISCQ) from the Auditee. The ISCQ is used to aid the Auditors in assessing both internal and system controls and for audit testing purposes. As such, the ISCQ is the first fact-gathering step that the Audit Division takes and is typically filled out and returned by the Auditee. In this audit, the Auditee ignored the ISCQ entirely. Because the ISCQ forms the baseline of the audit, the Auditors took an unusual, but necessary step and filled out the ISCQ based on walkthroughs and fieldwork. The Auditors then returned the ISCQ to the Auditee for review and signature, but the ISCQ was never returned. The Auditors made multiple requests to the Auditee and then the Principal Technical Support Services Specialist to complete and return the ISCQ but the Auditor never received a response.

Opinion

It's the Auditor's opinion that there are material weaknesses in the internal and system controls over the above referenced revenue transactions in the operating budget. What controls do exist are inadequate and/or do not operate efficiently or effectively. The Erie County Office of Comptroller, Division of Audit strongly recommends that immediate consideration be given to requesting the Office of the New York State Comptroller to perform a multi-year forensic audit of the Clerk's Office, Registrar Division to protect County assets from shrinkage. In the alternative, the Division of Audit recommends that the County hire an outside auditing firm for the same.

The Audit Division's conclusion was based on reports generated by the NewVision cashiering software system and provided to the Audit Division for testing. The reports concerned three general ledger accounts under the control of the Clerk's Office: court fees, mortgage tax revenues, pistol permits, as well as daily fee deposits. The reports for pistol permits, court fees and mortgage tax revenue were irreconcilable to revenues reported, and daily fee deposit reports were irreconcilable to the Clerk's Office bank account.

Furthermore, errors were detected in NewVision system reports that could not be explained by the Auditee or NewVision. The Clerk's Office requires a system that will provide definitive and consistent reports, free of any manual manipulation of financial data.

The Erie County Clerk's Office has been audited twice in the past two decades. Each of those prior audits was limited in scope and failed to address the critical areas of concern as identified by the Comptroller's Office Risk Assessment Map (Heat Map). During that period, the Clerk's Office was subject to no effective financial oversight. Throughout the course of this audit, the Clerk's Office hindered the Auditor's efforts to obtain relevant and accurate information. This included, but is not limited to, reluctance to comply with reasonable requests for documents, impeding the Auditors' site access and ability to conduct required on-site fieldwork, and interfering with efforts to discuss technical aspects of systems with Erie County's contractor, NewVision Systems. To the extent that the Clerk did provide the Auditor with requested reports, the Auditor received conflicting reports generated by the NewVision system that could not be reconciled to past reported revenues. A combination of errors in NewVision reporting and an egregious dearth of internal controls caused the Clerk's Office to report incorrect financial data.

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EXECUTIVE SUMMARY

I. Review Initiative

The Erie County Comptroller's Office Division of Audit & Control (Audit) initiated an audit of the Erie County Clerk's Office, Registrar Division, to evaluate and test the policies, procedures, and internal and system controls used to process revenue transactions in the Erie County Clerk's Office ("Clerk's Office") operating budget.

II. Scope, Objective and Methodology

This audit has been limited to the revenue accounts for court fees, mortgage tax fees and pistol permits in the Clerk's operating budget including, any processing of backlog in services managed by the Clerk and the implementation of the recommendations from prior audits.

The primary objectives of the audit are as follows:

- ▶ Evaluation and testing of internal controls related to the management of GL accounts 415110 for court fees, 415160 for mortgage tax, and 421000 for pistol permits.
- ▶ Evaluation and testing of accuracy, documentation, and recordkeeping practices supporting transactions for the three GL accounts.
- ▶ Evaluation and testing of bank deposits for accuracy, completeness and timeliness.
- ▶ Evaluation of any processing backlog in services rendered by the County Clerk's office.
- ▶ Document reason for backlog and identify any unintended consequences from the backlog.
- ▶ Evaluate and test the policies and procedures related to backlog.
- ▶ Evaluate and test internal and system controls that are in place to secure, track and process documents and payments.
- ▶ Examination and evaluation of previous audit recommendations for internal controls and segregation of duties surrounding cash receipts, revenue disbursements, accounting and reconciliation functions.

The evaluation and testing focused primarily on the period of January 1, 2022 through December 31, 2022.

The methodology employed to achieve these objectives included inquiries of the Clerk's Office personnel, observation of the Clerk's personnel recording and depositing fees collected, analysis and

testing of daily and monthly activity for mortgage tax expense, court fees and pistol permit fees and analysis and testing of the fee deposits to the Clerk's M&T Concentration bank account. A sample size with a 95% confidence level was used unless the Auditee did not provide requested documentation needed for testing.

The Clerk's Office utilizes NewVision Cashiering System to process their daily land record transactions, as well as court and pistol permit fees. NewVision does not interface with the County's accounting software system (SAP), and the company which administers NewVision, Catalis, LLC, has not created a translation tool which would facilitate the transfer of financial data from NewVision to SAP.

The audit methodology was designed to objectively evaluate and test written policies and procedures, financial information and various other forms of documentation and data. Our methodology was designed to observe the processes in place for performing the duties associated with the Registrar Division financial activities and workflow. A 95% confidence level was used when selecting test samples with a population greater than or equal to 30, except in cases where Auditee limited Auditors' access to data.

III. Background

The Clerk's Office is organized into three divisions: (1) the Registrar's Office, (2) Actions and Proceedings, and the (3) Auto Bureau Division. The scope of this audit was limited to the Registrar.

The Registrar is the official repository for public records relating to business, property ownership (land records), assumed names certificates and all legal documents submitted to the Supreme and County Courts of Erie County. The Registrar's office is further broken down into three subdivisions: (1) (1) Cashier Operations, (2) Scanning Operations, and (3) Verification & Indexing Operations. The Registrar Division is responsible for accepting pistol permit applications, recording, filing and maintaining records related to land transactions, real estate, and corporations.

Basis of the County Clerk's Office:

The statutory obligations of the County Clerk are particularly vague. Per New York County Law, "the county clerk shall perform the duties prescribed by law as register and be the clerk of the supreme court and clerk of the county court within his county. He shall perform such additional and related duties as may be prescribed by law and directed by the board of supervisors." This statute leaves an abundance of space for state and local legislatures to carve out the duties of the County Clerk elsewhere in the law¹.

One word that is nearly ubiquitous in legal language referencing the Office of Clerk is the modal verb "shall." Among the tasks that the Clerk "shall" perform include providing "books, files and other necessary equipment for filing, recording and depositing of documents, maps, papers in actions and special proceedings of both civil and criminal nature, judgment and lien dockets and books for the indexing of the same as directed or authorized by law."

Particularly as applied to municipal officials, duties are prescribed as "discretionary" or "ministerial." The former involves "the exercise of judgment and choice, not an implementation of a hard-and-fast rule exercisable at one's own will or judgment," while the latter refers to "an act that involves obedience to instructions or laws instead of discretion, judgment or skill." Courts deem an act or obligation ministerial by the presence of a "governing rule or standard with a compulsory result." For example, the Office of Comptroller is responsible for collecting occupancy tax from hotel visitors based on an

¹ For greater detail on the nature of the Clerk's Office, please reference Exhibit A.

Erie County Local Law. The law requires the Comptroller to collect all taxes and interest that the County is due, but does not require penalties to be assessed, even when merited. Therefore, the Comptroller has the ministerial duty of collecting hotel occupancy tax and interest, and a discretionary duty of assessing penalties when permitted by law.

The County Clerk is broadly considered a ministerial office, or an administrative office required to "perform duties or acts required by rules, statutes, or regulations. It is of critical importance that a County Clerk understand the difference between "discretionary" and "ministerial", since governmental immunity attaches to official action only when said action is discretionary; ministerial failure can automatically eviscerate the shroud of immunity that government officials enjoy.

Prominent examples where courts have imposed liability against municipalities on the basis of ministerial failure include violating local policy requiring informed placement of employees with criminal records; recertifying a day care after complaints of abuse have been substantiated; failure to enter judgment for a landlord when the tenant fails to respond to proper service; violating a city charter provision requiring the medical examiner to perform autopsies on all suspicious deaths; and failure to order abatement when a child tests positive for lead poisoning.

In Erie County, the Clerk has many duties and serves a critical governmental purpose. The vast majority of the Clerk's activities concern records. Not only is the Clerk responsible for maintaining records; the Clerk is also responsible for generating records. As the County Office doing the greatest number of transactions with members of the public, it is critical that the Clerk's Office operate pursuant to a single set of standards and laws which are applied equally to everyone. If the Clerk is acting in a discretionary capacity, there is an increased risk that the laws are applied arbitrarily. The functions of the Clerk's Office are simply too important to be left to the discretion of a single individual.

Software System change during 2011:

In January 2011, the County Clerk facilitated the continuation of a document processing system for the Registrar Division called New Vision Records NG System. This agreement was an extension of a purchase agreement initially executed in 2004. The NewVision Software System receives system updates once or twice yearly, as stated by the Principal Technical Support Service Specialist during our fieldwork. However, when Auditee was asked to provide the dates of any updates that may have occurred and the purpose of those updates. The Second Deputy Clerk stated that the NewVision system had not been updated in over a decade. It was noted in a previous audit, that the NewVision software system is not used by any other county clerk's office in New York State. We have no opinion on whether NewVision is an appropriate system. Our concern lies with the controls and financial data being generated by the system and whether that information can be manipulated by users which brings into the question whether the financial data reported is true and accurate.

IV. Significant Control Weaknesses

Internal and System Controls:

The Auditor reviewed the financial reports and bank statements for four of the Clerk's Office's M&T Bank accounts: Concentration, Court, Imprest and Mortgage. The Auditor evaluated and performed detailed testing of monthly transactions for court fees and pistol permits, per the Registrar Division's software system (NewVision). The Auditor reviewed month-end disbursements and the related remittances to County and State agencies.

The Clerk's Office had no written accounting policies or procedures for the processing and receipting of mortgage tax, court fees and pistol permits; therefore, the County of Erie Accounting Policies and Procedures were the sole comparative authority used for the purposes of this audit.

At the outset of the audit, the Auditee was given an ISCQ to complete and return to Auditor to help identify relevant testing parameters. Completed questionnaires were not returned to the Auditor.

Segregation of Duties:

Material Weakness #1: There are material weaknesses in the internal control structure and systems control of the Clerk's Office concerning a lack of segregation of duties of the Second Deputy.

The Auditor found that the Second Deputy is responsible for compiling daily bank deposits, recording bank transactions, initiating and processing disbursements and bank transfers, performing bank reconciliations, posting revenue transaction totals, and compiling monthly G/L posting to SAP.

An effective system of internal controls requires segregation of duties. It is especially important that the functions of recording cash and checks, depositing receipts, initiating banking transactions, reconciling bank records, and maintaining accounting records be divided among several employees to reduce the risk of error and fraudulent activity, per the County of Erie Internal Controls Policy. The Auditor recommends that no single individual control most or all phases of financial record keeping going forward. The Auditor further recommends that strong consideration be given to the institution of an internal control structure in conjunction with appropriate staffing levels which allow for proper segregation of duties.

Daily Fee Deposits Reconciliation Discrepancies:

Material Weakness #1 The NewVision Daily Fee Deposit reports used by Auditee for daily close-out procedures and to compile cash and check receipts are calculating inconsistent totals for individual user and daily totals.

During fieldwork, the Auditor requested to observe and test the Clerk's daily close-out process. Part of the process was to test the daily fee deposit report and cashier's close-out reports to the bank deposit receipts. At this time, the Auditor also requested the duplicate deposit tickets. Auditee stated that the Clerk's Office did not keep the above referenced items. The Auditor stressed to Auditee that the Clerk's Office should have maintained these records and needs to familiarize themselves with the document retention schedule. After several requests for information, Auditee agreed to provide us with two months of daily fee reports – Auditor was told to choose which two months of daily fee reports were most beneficial to review. However, the Auditor was not given the cashiers' close-out reports. Restricted and piecemeal access to this information brought our testing below the 95% confidence level required by GASB standards.

Due to these restrictions, the Auditor decided on January and December of 2022, as it would help determine the deposits relevant to 2022 for the Clerk's Office M&T Concentration bank account. After several further requests, the Auditee reproduced the NewVision Daily Fee Deposit reports for January and December 2022 on June 13, 2023. Using these reports, the Auditor tested the individual daily deposit totals to the deposits recorded in the M&T Concentration bank account. Using this methodology, the Auditor discovered marked inconsistencies in the individual report totals versus what was deposited at the bank. The Auditor also noted cash discrepancies reported in the Concentration Account Bank Statements by M&T Bank.

The Auditor noted that a majority of discrepancies found in the reports were in the individual cash totals.

When the Auditor brought these discrepancies to Auditee's attention, Auditee did not have an explanation for the differences in the reports. During fieldwork, Auditee was asked how close-out cash discrepancies were handled. Auditee responded that if there were any differences, the Supervisor pulled and reviewed the cashier's detailed close-out report to find and correct any differences.

NewVision Daily Fee Deposit for 12/1/22 Report run date of 12/1/22 04:51:13.

Highlighted is the Count of 12, Net Cash is \$0.00, Check is \$500.00 and Check + Cash is \$720.85. The bank deposit was \$500.00. The sum of the Check + Cash column does not reconcile to the Total Receipts for that column.

Daily Fee Deposit- Erie County, New York
 From 12/01/2022 To 12/01/2022 Report Date: 12/01/2022 04:51:13 PM
 Page: 1 of 1
 ALL LOCATIONS
 ALL USERS
 06/27/2016/12

User ID	Count	Net Cash	Check	Check + Cash
6	0.00	15,324.00	15,324.00	15,324.00 ✓
31	190.00	19,029.50	19,219.50	19,219.50 ✓
10	0.00	23,352.00	23,352.00	23,352.00 ✓
39	19.20	909.00	928.20	928.20 ✓
21	0.00	0.00	0.00	0.00 ✓
5	0.00	0.00	0.00	0.00 ✓
2	0.00	0.00	0.00	0.00 ✓
41	218.00	377.00	595.00	595.00 ✓
22	1,880.00	71,372.00	73,032.00	73,032.00 ✓
43	0.00	0.00	0.00	0.00 ✓
10	0.00	15,401.50	15,401.50	15,401.50 ✓
12	0.00	500.00	720.85	720.85 ✓
20	10.00	40,527.16	40,537.16	40,537.16 ✓
11	37.80	10.00	47.80	47.80 ✓
19	0.00	18,806.50	18,806.50	18,806.50 ✓
5	0.00	0.00	0.00	0.00 ✓
25	8.00	0.00	8.00	8.00 ✓
1	0.00	0.00	0.00	0.00 ✓
23	0.00	0.00	0.00	0.00 ✓
28	80.00	41,074.56	41,154.56	41,154.56 ✓
158	0.00	0.00	0.00	0.00 ✓
15	3.00	80.00	83.00	83.00 ✓
41	97.00	82.75	179.75	179.75 ✓
4	5.00	0.00	5.00	5.00 ✓
2	0.00	0.00	0.00	0.00 ✓
143	0.00	0.00	0.00	0.00 ✓
Total Receipts	733	2,327.80	244,625.97	246,869.62

NewVision Daily Fee Deposit report for 12/1/22 Report run date of 12/2/22 05:00:20 PM.

Highlighted is the Count of 12, Net Cash is \$220.85, Check is \$500.00, and Check + Cash is \$720.85. The bank deposit was \$500.00. The sum of the Check + Cash column is equal to the Total Receipts for that column but not to bank deposit.

Daily Fee Deposit- Erie County, New York
 From 12/01/2022 To 12/01/2022 Report Date: 12/02/2022 05:00:20 PM
 Page: 1
 ALL LOCATIONS
 ALL USERS
 06/27/2016/12

User ID	Count	Net Cash	Check	Check + Cash
6	0.00	15,324.00	15,324.00	15,324.00 ✓
31	190.00	19,029.50	19,219.50	19,219.50 ✓
10	0.00	23,352.00	23,352.00	23,352.00 ✓
39	19.20	909.00	928.20	928.20 ✓
21	0.00	0.00	0.00	0.00 ✓
5	0.00	0.00	0.00	0.00 ✓
2	0.00	0.00	0.00	0.00 ✓
41	218.00	377.00	595.00	595.00 ✓
22	1,880.00	71,372.00	73,032.00	73,032.00 ✓
43	0.00	0.00	0.00	0.00 ✓
10	0.00	15,401.50	15,401.50	15,401.50 ✓
12	220.85	500.00	720.85	720.85 ✓
20	10.00	40,527.16	40,537.16	40,537.16 ✓
11	37.80	10.00	47.80	47.80 ✓
19	0.00	18,806.50	18,806.50	18,806.50 ✓
5	0.00	0.00	0.00	0.00 ✓
25	8.00	0.00	8.00	8.00 ✓
1	0.00	0.00	0.00	0.00 ✓
23	0.00	0.00	0.00	0.00 ✓
28	80.00	41,074.56	41,154.56	41,154.56 ✓
158	0.00	0.00	0.00	0.00 ✓
15	3.00	80.00	83.00	83.00 ✓
41	97.00	82.75	179.75	179.75 ✓
4	5.00	0.00	5.00	5.00 ✓
2	0.00	0.00	0.00	0.00 ✓
143	0.00	0.00	0.00	0.00 ✓
Total Receipts	733	2,648.85	244,625.97	247,174.62

The Auditor noted that even though the headers on both above reports show a different date and run time, the body and the identifying marks are the same, down to the imprint of a staple in the upper-left hand corner. The only differences are the highlighted Net Cash and Total Receipts. This suggests that data are being manipulated within the NewVision system.

The discrepancies in net cash and checks were found throughout testing of the NewVision Daily Fee Deposit reports as well as the receipt totals not reconciling to the cash and check totals. The Auditor identified 28 cash differences totaling \$13,860.15 in the testing sample of January and December 2022. To further test the differences, the Auditor asked Auditee to provide the daily deposit detail for the 38 users tested. Again, the Auditor found that the daily cash transaction totals for each individual did not balance to the Daily Fee Deposit Report, indicating cash discrepancies. As per the County's Cash Management policy – Shortage/Overage on Transacted Fund, the cash discrepancies should have been referred to the Sheriff's Office. This was discussed with the Clerk and a joint referral letter was made by the Comptroller and the Clerk to the Sheriff's Office.

The Auditor strongly recommends that no single individual control most or all phases of financial record keeping going forward. An effective system of internal controls requires segregation of duties. It is especially important that the functions of recording cash and checks, depositing receipts, initiating banking transactions, reconciling bank records, and maintaining accounting records be divided among several employees to reduce the risk of errors and fraudulent activities, per the County of Erie Internal Controls Policy². In addition to following the County's Internal Control Policy, Auditee was made aware of the County's cash over/short policy that should have been utilized to report cash shortages.

Finding #1: Clerk's Office management gave cashiers blanket permissions to record, receipt, void, adjust and waive a fee transaction in NewVision with virtually no oversight.

The Auditee stated that all Clerk's Office's staff can void, adjust, and waive fees in NewVision. The Auditor requested a list of users and their access levels within the NewVision cashing system. The Auditor was not given the list of users and their access levels.

Improper combination of responsibilities places a single employee in a position to create and conceal errors, frauds, or misstatements in the course of his or her normal job responsibilities. Incompatible duties should be segregated so that different individuals can serve as a check on one another, per the County of Erie Internal Controls Policy. The Auditors recommend implementation of user roles and access levels in NewVision and to add an approval process to void or adjust fee transactions.

The Auditor further noted that the Clerk does not have the legal authority to waive fees, and thus should not have delegated the authority to do so to Clerk's Office staff. When the County Clerk charges fees that are set by law, the Clerk is entitled to those fees. One statute further provides that "the county officer authorized to receive fees or other form of compensation belonging to the county shall keep a record showing the nature thereof, from whom received, date of receipt, amount and when paid to the county treasurer." Nowhere does the law contemplate the possibility that the Clerk, as receiver of fees, may pick and choose which fees to collect.

The New York Attorney General has opined on this issue and conclusively found that no Clerk may waive fees which are set by law. Between the Clerk's "entitlement" to certain statutory fees, the obligation for the Clerk as recipient of such fees to pay into the county treasury, and the lack of any indication of discretionary authority vested in the Clerk, the Attorney General found that "there is no authority for a county or a county clerk to waive payment of all or part of the statutory fees which the

² Attached as Exhibit B.

county clerk receives.” It should be noted that the NYAG opinion was specifically analyzing a duty of the County Clerk as a “State office”, but the same logic still applies. Where the County Clerk collects a fee, the amount of which is codified, the County Clerk has no authority to waive or decline to collect that fee.

Management Review of Financial Records and Periodic Reconciliations:

Finding #1: There is a critical lack of management oversight regarding financial records.

The Auditor found very little evidence of oversight by management regarding the financial activities of the Clerk’s office. The Clerk has one member of the management team in both accounting and oversight roles. While the vast majority of County Departments have a civil service accountant on staff to perform the input and reconciliation functions to be submitted for approval, the Clerk’s Office has one person serving in both roles. In addition to the segregation of duties issue that this situation creates, the lack of a reliable financial oversight structure represents a material weakness.

The Auditor also noted that the Clerk’s Office maintains several bank accounts completely separate from SAP. At any given time, the Clerk had in excess of five million dollars (\$5,000,000) on deposit. The total revenue receipts in a month typically exceed nine million dollars (\$9,000,000). The Second Deputy was primarily responsible for all bank reconciliations, compiling all deposits into a single daily deposit, initiating and processing disbursements, all bank transfers, and internal and external wire transfers between the bank accounts and State agencies, with little or no oversight or review by a senior staff member who wasn’t the Second Deputy. According to the Second Deputy, Clerk’s Office staff assumed portions of these responsibilities on an as-needed basis.

Review of activities by a supervisor or other senior staff member is a vital mitigating control where adequate segregation is not obtainable. The Auditor recommends that Management evaluate the control functions on a regular basis. The Auditor further recommends that due to the size and scope of the Clerk’s operations, the annual audit for the County performed by an outside firm should include some portion of the Clerk’s Office.

Finding #2: The Clerk’s Office is not collecting the \$20.00 service charge incurred when a payment is returned due to insufficient funds (NSF).

Pursuant to New York General Municipal Law § 85 and New York General Obligations Law § 5-328, County Legislatures can impose a service charge to payors when a payment is returned for non-sufficient funds. The Erie County Legislature has made use of this authority and imposed a \$20.00 service charge when such payments are returned.

During testing we found there were 43 returned checks that were deposits in the Erie County Clerk’s M&T Concentration bank account during 2022 and the payors were not charged the \$20.00 NSF service charge. The Clerk’s Office should have imposed a \$20 NSF service fee for the 43 returned payments and \$860.00 should have been the combined total of fees collected. The Auditor informed the Auditee of the finding and they stated they were not aware of the County’s NSF policy.

The Auditor recommends that upon the Erie County Clerk’s Office’s knowledge that a check is returned for insufficient funds, the Clerk’s Office will initiate collection efforts and impose the \$20.00 NSF service charge before action is taken by the Comptroller’s Office, per the County of Erie Accounting policy - Received Payments Backed by Insufficient Funds (NSF) Policy³.

³ Attached as Exhibit C.

Finding #3: The Clerk's Office is not reporting shortages in cash transactions as required by the County of Erie Accounting policy – Shortage or Overage of Transacted Funds.

The County Policy controlling treatment of shortages requires documented losses exceeding \$20.00 to be reported to the Comptroller, and losses exceeding \$100.00 to be reported to the Sheriff. The sole exception to these requirements applies when the shortages are corrected resulting from calculation or accounting errors.

During fieldwork the Auditee stated if there were any deposit discrepancies during the close-out operations, a supervisor would review detailed close out reports and correct the difference prior to including it in the deposit. However, after reviewing the Concentration account, the Auditor noted approximately 124 cash deposit differences in the Concentration bank account for 2022. The Auditee stated that when the Clerk's Office is notified of discrepancies by the bank, the Clerk will attempt to correct the deposit in NewVision. Of the 124 cash differences, the Auditor further found that the Clerk's Office M&T Concentration bank account had 14 shortages that required reporting, per the County Policy. Nine such instances involved amounts exceeding \$20.00 totaling \$450.00 in losses which required reporting to the Comptroller's Office. Five instances involved amounts exceeding \$100.00 totaling \$990.00 in losses which required reporting to the Sheriff's Office.

The Auditor informed the Auditee of the finding; the Auditee stated the office was not aware of the County's policy regarding cash shortages. Auditee was unable to produce any supporting documentation which would indicate that the cash differences at issue were resolved.

The Auditor recommends that the Erie County Clerk's Office completes the loss reporting requirements, per the County of Erie Accounting policy regarding Shortage or Overage of Transacted Funds⁴. The Auditor further recommends that the Clerk provide specific training to all Clerk's Office staff regarding Erie County Cash Management policies.

Completeness, Accuracy and Timeliness:

Finding #1: The majority of the financial reports generated from the NewVision system and given to the Auditors for testing purposes, could not be reconciled.

During testing, the Auditor was given conflicting financial data. NewVision reports containing daily and monthly totals that were provided by Auditee could not be reconciled. Specific examples are provided below and described in greater detail in the findings and recommendations section for each audited revenue.

Pistol: During testing we found that the monthly NewVision *Pistols Hunting Fishing* report totals did not reconcile to the daily *Fee Detail Pistol Permits* report.

Court Fees: The monthly *Other County Fees for Cash Code Index No County\$25* did not reconcile to the daily *Fee Details* report for *County25 (Court Fees)*.

Mortgage Tax Report: The monthly *Mortgages on Hold Summary* report, and the monthly *Cash Code Summary* report for Mortgage Tax (Additional, Basic, NFTA, SONYMA and Expense) did not reconcile to the monthly *Statement of Mortgages Recorded*.

Most significantly, the report titled *Daily Fee Deposit*, which the Clerk uses to perform daily close-out operations, reports for the same time period but with different run dates, resulted in varying deposit

⁴ Attached as Exhibit D.

amounts. The vast majority of amount variances discovered pertained to net cash. The Auditee provided additional transaction detail that again did not reconcile to the *Daily Fee Deposit* totals or the bank deposits.

The Erie County Clerk's Office should ensure that transactions for a given time period have been processed, that they are accurate in amount, that they are recorded within the appropriate accounting period and that individual or groups of transactions have not been omitted or misdirected. Each recommendation is based on the County of Erie Internal Controls Policy.

The Auditor recommends that the Erie County Clerk work with NewVision to develop *accurate* daily and monthly reports to ensure that revenues being reported to the County and outside agencies are true and correct.

Finding #2: The Erie County Clerk is not submitting the required monthly document of monies received by day to the Comptroller's Office.

During testing the Auditors found that the Clerk's Office has not submitted the required monthly breakdown of monies received each day to the Comptroller's Officer, per the Erie County Administrative Code. The relevant provision requires the Clerk to "make a full and true statement for each calendar month of all moneys received *each day* by her or him, her or his deputies, officers or employees in their official capacity and shall transmit and deliver such statements to the comptroller within five business days after the expiration of such month." The Clerk's Office sends a "County of Erie Bank Deposit Transmittal" to the Comptroller's Office on a monthly basis reporting the monthly revenue totals for the Clerk's operating budget that were collected. This monthly transmittal takes the form of a lump sum with no temporal or categorical breakdown; no documentation is included which would corroborate the monthly totals. Without detailed accounting and supporting documentation, there is no way for the Comptroller's Office to verify that all monies were received.

Not only does the Clerk's current practice violate the Administrative Code, but it serves as a concrete example of deficient oversight of the Office. Without daily reporting, the Office of Comptroller is unable to perform its own legal obligations. Furthermore, this practice harms the Clerk's ability to timely and accurately respond to inquiries from outside auditors and agencies because its core financial data is not centrally compiled.

The Auditor recommends that the Erie County Clerk's Office submit detailed accounting for fees monthly to the Comptroller's Office, per § 1904 of the Erie County Administrative Code⁵. The Auditor further recommends that the Clerk's Office work with NewVision to develop a tool or process to upload daily transactions into SAP for month-end reconciliation of fees.

Safeguarding assets and periodic reconciliations:

Finding #1: Auditee did not provide Auditors with the daily or monthly reconciliation of all fees to the Clerk's Office M&T Concentration bank account.

During our testing, the Auditee was not able to provide Auditors with the requested reconciliation reports of all payments in NewVision to the Clerk's M&T Concentration bank account. In addition, mortgage tax, court fees and pistol permit fees were not being reconciled to the M&T Concentration bank account daily or monthly. Per Auditee, the daily court fee and pistol permit reports in NewVision were created because the Auditor requested them.

⁵ Attached for convenience as Exhibit E.

It is further noted that the Clerk's Office does not use SAP, the County's accounting system, nor do they have a separate accounting system that would be utilized to record transactions as part of their reconciliation process. NewVision is a cashier system, not an accounting system. The Clerk's Office utilizes the QuickBooks system to issue checks, but also not as accounting software.

Accounting records must be compared periodically to ensure accountability for assets (cash) and to protect assets from shrinkage. The Auditors recommend that periodic reconciliations are done on the Clerk's Concentration account, per the County of Erie Internal Controls Policy. The Auditor noted that large (six-figure) checks were being written from the Concentration account. It is further recommended that the Clerk's Office consider alternative solutions such as ACH or establishing positive pay with M&T Bank to better safeguard County assets – particularly against the threat of fraudulent checks. The Auditor discussed switching to ACH with the Auditee during the course of the audit.

Finding #2: The Clerk's Office is not restrictively endorsing all checks immediately upon receipt.

The Erie County Cash Receipts policy requires immediate restrictive endorsement of all checks received. The policy further provides the specifications detailing how envelopes are to be opened, record-keeping obligations, and qualifications for accepting checks.

During our walkthrough to observe and evaluate the operations of the Land Records area, we observed a part-time clerk in Land Records intake and process USPS, FedEx and UPS incoming post and parcels. The clerk opened each envelope without removing any of its contents, noted the date and the name of the relevant department on the outside of the envelope, and placed it on a table for cashiers to process as they became available. The Auditee stated that any unprocessed mail remaining at the end of the day is locked in the Supervisor's office overnight to be processed the following day. The Auditee stated that mail is normally processed within two days of receipt in the order that it was received. The Auditor noted that check payments were not restrictively endorsed until the cashier recorded the payment in the NewVision cashiering system.

The Auditor recommends that the Erie County Clerk's Office open mail in an area separate from other cash handling operations by an employee that is not involved in accounts receivable or other cash handling processes. The Auditor also recommends maintaining a log and photocopy of all checks that are received and restrictively endorse all checks immediately upon receipt, per the County of Erie's Cash Receipts – Overview Policy⁶.

⁶ Attached as Exhibit F.

FINDINGS AND RECOMMENDATIONS

Pistol Permits:

Finding #1: It was found that the Clerk's Office unlawfully waived pistol permit fees in 2022.

The Auditor interviewed the County Clerk, the First Deputy, the Second Deputy, and the Senior Cashier (Pistol Permits) to gain an understanding of the revenue collection process for pistol permits as well as the flow of financial information within the organization.

During our walkthrough, the Auditee stated that some pistol permit applications received were missing check payments and the Clerk authorized waiving the pistol permit fees for these applications. The Auditor detected no distinct pattern suggesting that certain fees were waived or specific circumstances which led to waiver.

There is no authority for a county or a county clerk to waive payment of all or part of the statutory fees which the county clerk receives, per Exhibit A, II. Basis of Office. For the same reasons that the Clerk cannot waive or delegate waiver authority to Clerk's Office staff, as detailed in the prior section discussing segregation of duties, the Clerk may not waive fees related to pistol permits. Furthermore, the Auditor's findings suggest that fees were waived at random. Arbitrary and capricious fee waiver together with the lack of explanatory documentation, at minimum, opens the Clerk's Office to accusations of impropriety which the Clerk would be poorly situated to refute. The Auditors recommend that the Clerk immediately cease the unlawful practice of fee waiver.

Finding #2: Daily and monthly NewVision reports for recording and receipting pistol permits had conflicting amounts and did not reconcile.

The Auditee provided the Auditors with NewVision daily pistol permit fee detail reports and monthly pistol permit fees transmitted which included County and State hunting and fishing licenses for January through December of 2022. The Auditor tested daily pistol permit fee activity totals to the monthly totals for all transactions from January 2022 through December 2022. The NewVision daily activity totals did not reconcile to the monthly total for any of the months tested. The Auditee stated that the NewVision daily fee reports were new, and he was not aware of the differences between the reports.

Testing of Pistol Permit Fees			
Daily Activity Totals to Monthly Total			
	New Vision Daily Activity Totals	New Vision Monthly Total	New Vision Daily vs. Monthly Variance
Jan	\$12,853.00	\$13,368.00	(\$490.00)
Feb	\$12,582.00	\$13,112.00	(\$530.00)
Mar	\$18,393.00	\$18,988.00	(\$595.00)
Apr	\$13,291.00	\$14,165.00	(\$837.00)
May	\$14,019.00	\$14,504.00	(\$435.00)
Jun	\$18,093.00	\$18,791.00	(\$673.00)
Jul	\$13,344.00	\$14,084.00	(\$710.00)
Aug	\$18,265.00	\$19,833.00	(\$1,178.00)
Sep	\$17,952.00	\$19,357.00	(\$639.00)
Oct	\$26,389.00	\$26,864.00	(\$453.00)
Nov	\$19,409.00	\$19,925.00	(\$292.00)
Dec	\$7,434.00	\$7,619.00	(\$180.00)
	\$192,024.00	\$200,610.00	(\$7,012.00)

The Auditor recommends that the Clerk's Office work with NewVision to develop accurate daily and monthly reports to ensure that all financial reporting to the County or any outside agency are true and accurate. The Auditor further recommends that the Clerk's Office work with NewVision to develop a

tool or process to upload daily transactions into SAP for month-end reconciliation of fees.

Finding #3: The Clerk's Office is overcharging for the initial pistol permit application, changes from paper to plastic, inter-county transfers and various amendments. [per the New York State and County Legislative allotted pistol permit fee amounts⁷.

During testing, the Auditor found that the Erie County Clerk's Office is overcharging for the initial pistol permit application fee, changes from paper permits to plastic permits, inter-county transfers and various license amendments. Per our fieldwork and the Erie County Clerk's Office pistol permit schedule of fees, the pistol permit initial application fee is \$20.00; an amendment is \$3.00 each; replacements and duplicates are \$18.00; and inter-county transfers are \$8.00 and \$5.00. Per NYS Penal Law § 400.00 (14)⁸, the initial pistol permit fee schedule is codified at \$3-\$10 per carry license, \$3 per amendment, \$5 per inter-county transfer, and \$5 per duplicate.

Also, it appears that the Clerk's Office has been misinterpreting the statute in its charging process for amendments. The Clerk has been charging \$3 per change, rather than \$3 per transaction. For example, if an applicant removes one handgun and adds two others, the Clerk's Office is currently charging \$9.00 while NYS Penal Law only allows a \$3.00 charge; therefore, the Clerk's Office overcharged the hypothetical applicant by \$6.00. In addition, according to the Clerk's Office Schedule of Fees, an initial applicant is charged an additional \$10 if the applicant requires a photograph, on top of the initial application fee of \$20.00, resulting in an overcharge of \$10.00. The Auditors requested a list of fees and calculations that were set up in NewVision during 2022 but the list was not provided; therefore, we included the Erie County Clerk's Office Schedule of Fees from their website.

NewVision Fee Detail PP Report:

22139962	09/12/2022	564.00	PISTOL PERM \$ 3 AMEND
22139962	09/12/2022	567.00	PISTOL PERM \$ 3 ADD
22139962	09/12/2022	754.00	PISTOL PERM \$ 2 PLASTIC CARD
22139966	09/12/2022	40.00	PISTOL PERM \$ 2 PLASTIC CARD
22139966	09/12/2022	60.00	PISTOL PERM \$ 3 ADD

For example, receipt number 22139962 dated 9/12/2022, indicates that the applicant paid \$564.00 for a \$3 license amendment, \$567.00 for a \$3 license amendment adding a firearm, and \$754 pistol permit \$2 plastic card charge, resulting in a final bill totaling \$1,885.00. Under NYS Penal Law, the charge should have totaled \$8.00.

Another example, Receipt number 22139966 dated 9/12/2022, indicates that the applicant paid \$40.00 for pistol permit \$2 plastic card charge and \$60.00 for a \$3 firearm addition for a total of \$100.00. Under NYS Penal Law, the charge should have totaled \$8.00.

The Erie County Clerk's Office Schedule of Fees:

<https://www4.erie.gov/clerk/schedule-fees>

⁷ For greater detail on the legality of the pistol permit process, see Exhibit G. For fees, see specifically Ex. G, Part III(E).

⁸ A copy of NYS Penal Law § 400.00 is attached for convenience as Exhibit H.

Pistol Permits

Application	\$ 20.00
Duplicate permit	\$ 18.00
Plastic Card Fee	\$ 2.00
Transfer pistol permit from Erie County to another county	\$ 8.00
Transfer pistol permit from another county to Erie County	\$ 5.00
Application photograph	\$ 10.00
Name change amendment	\$ 3.00
Address change amendment	\$ 3.00
Handgun registration / addition	\$ 3.00
Handgun removal	\$ 3.00

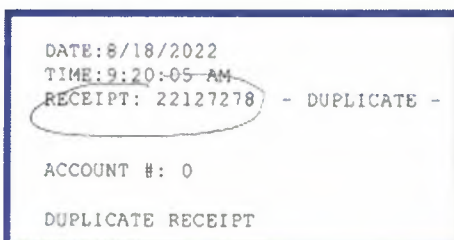
Certain fees found on the Clerk's website are acceptable. For example, the \$10 application photo fee is permitted because the photograph is required by law and the Clerk is providing a service of convenience. Most charges are not. The Clerk is currently overcharging for the initial application, changes from paper to plastic (which qualifies as a replacement or reissue), inter-county transfers and various amendments. The Auditor believes these to be impermissible fees and recommends that the Erie County Clerk's Office immediately change its pistol permit fee rates to align with the allotted amounts prescribed by NYS Penal Law and County Legislature.

Finding #4: The process for voiding pistol permit fees results in flawed calculations for monthly totals and causes discrepancies in cash and the reporting of pistol permit revenue in NewVision system.

When a pistol permit cashier voids a receipt transaction in NewVision, the system removes the initial amount and receipt number. The entire transaction is not reported in the daily total; however, when the cashier voids that transaction it creates a new receipt number, and the voided amount is deducted from the daily total. This flaw presents a shortage in the daily total when there should have been no change in the daily total. If the transaction is not resubmitted, the flaw presents an inaccurate revenue total.

During testing of the daily pistol permit fees, the Auditor discovered a voided transaction with receipt number 22127924, dated 8/18/22, voiding 12 initial pistol permit application fees for a total of (\$240.00). This represented an unusual transaction, and the Auditee was asked to provide additional details regarding this transaction. When reviewing the additional information, it was found that the original transaction was processed on receipt number 22127278, dated 8/18/22, for 12 initial applicants for a total of \$240.00. Due to the apparent system weakness previously stated, NewVision removed the original receipt number and fee amount from the daily total. Upon further review, the Auditor found that the transaction following the void, which is receipt number 22127925, dated 8/18/22, recorded the same 12 new application fees that were previously entered and voided. At the end of the day, the report showed a daily fee total of \$1,738.00 instead of \$1,978.00 – exactly \$240.00 short, creating a \$240.00 cash overage in the cash drawer. No cash difference was reported.

Receipt number 22127278 dated 8/18/22 for a total of \$240.00:



A list of users and security access levels within NewVision was requested on at least three separate occasions but were never provided. Additionally, the Auditor asked the Auditee to schedule a meeting with NewVision to clarify questions about system controls and variances in the reports.

The Auditor recommends using one numeric receipt number per applicant, that all receipts are included in daily transaction totals and that NewVision user role and access level policies be implemented to increase security measures. The Auditor also recommends that the Clerk add a process through which pistol permit clerks obtain approval prior to voiding or adjusting any transactions. The Auditor further recommends that the Clerk work with NewVision to investigate why the original pistol permit transaction was removed from the system when voided to determine if this is a system flaw or internal control issue.

Finding #5: The County Clerk's Office lacks adequate internal and systems controls protecting the fee collection process within the pistol permit division.

The Clerk's Office pistol permit fee accounting process suffers from a failure to reconcile the documents it receives and generates with the fees that the Clerk collects. Only the Clerk's Office has full access to the three systems used to facilitate the pistol permit process. Thus, the Comptroller and other oversight agencies have no way to confirm that the fees contained in the Clerk's reports are true and accurate.

While conducting fieldwork, the Auditor found that there were no procedures in place to reconcile pistol permit fees collected to pistol permit applications processed. All initial pistol permit application fees are receipted in NewVision where a document number is assigned. Once receipted, the physical application is manually entered into Gun Keeper, the weapons management software system used by the Clerk's Office, with the assigned document number. Next, the file is assigned a barcode from a separate software system called BatchScan, which the Clerk uses to track the progress of a particular application after it leaves the Clerk's Office.

The Auditor initially requested testing documentation from Gun Keeper for new applications in 2022 to be reconciled to pistol permit fees collected in NewVision. The Auditor was denied access to any reports from Gun Keeper, even after asking the Clerk to redact personal identifiers or any other potentially protected information. Alternatively, the Auditors requested a chronological list of barcode numbers assigned to all new pistol permit applications in 2022. The testing objective was to verify that new application fees collected in NewVision reconciled to the number of barcodes issued for new applications. After testing the daily barcodes in BatchScan to the NewVision daily pistol permit fees, the Auditor was unable to reconcile the daily or monthly pistol permit fee totals to the barcodes issued for new applications for the six months tested.

It should be noted that that the data provided to the Auditor was not suitable for accurate testing and that limited access to the pistol permitting process substantially hindered testing. During a meeting on 5/31/23, the Principal Technical Support Services Specialist stated that NewVision, Gun Keeper and BatchScan did not interface in any way. Therefore, there are no internal or system controls in place to detect missing or waived pistol permit fees.

The lack of connectivity between systems is a major cause of the Clerk's Office inability to properly reconcile fees. The Auditors received daily fee reports and daily BatchScan reports. The Auditor found that BatchScan reports were missing entire days. The reason that days were missing relates back to manual submission of BatchScan files by Clerk's Office staff. Thus, submissions were only made on business days. In 2022, substantial COVID restrictions were still in place, resulting in a large number of applications arriving through the mail. When the mailed applications arrived, Clerk's Office staff backdated the payment in NewVision to the date on the application, but BatchScan generated its own

barcode date based on the date of actual submission into the system. The Auditor noted that, in the event a fee was voided or waived in NewVision, a barcode in BatchScan would not be changed or otherwise affected unless Clerk's Office staff made that change manually. If BatchScan was linked to NewVision, these discrepancies could have been more easily avoided.

Furthermore, the Auditor found that the limited detail that BatchScan reports provided by Auditee hampered the testing process. When asked, the Auditee was unable to provide BatchScan report details other than barcodes and date of scanning. To meet the applicable testing standard, the Auditor would have needed to view all fees recorded, specific confirmation that the fee was paid, voided, or waived, and whether a corresponding application was attached.

The sole reason that this testing did not occur was the Auditee's failure to comply with Auditor's numerous requests to provide redacted GunKeeper reports. Therefore, it must be noted that the information contained in this section is not based on the Auditor's personal observation of Auditee's complete process. Due to strict access limitations that were placed on the Auditor by Auditee, much of the information discussed in this section is based on what the Auditee told the Auditor and any reports that were provided.

The discrepancies resulting from reconciliation failure and siloed systems creates a significant opportunity for fraud. Auditors recommend that the Clerk's Office work with the NewVision, Gun Keeper and BatchScan software providers to facilitate the interface connection of such systems. Until this occurs, the internal and system controls will remain inadequate, and the Clerk's Office will be unable to reliably reconcile pistol permit fees. In the alternative, the Clerk's Office should assess NewVision and the system's ability to meet the specific needs of the Clerk's Office in providing adequate and reliable financial reporting.

Finding #6: A portion of the hunting and fishing license fees that the Clerk collects on behalf of the NYS Department of Environmental Conservation (DEC) is misdirected to the Comptroller's Office.

The Clerk's Office collects state-imposed fees on behalf of the NYS DEC for hunting, fishing, and trapping licenses. Collectively, these fees for annual licensure are referred to as sporting fees. The DEC has established an automatic monthly ACH withdrawal, removing hunting and fishing license fees directly from the Clerk's M&T Concentration account.

During testing the Auditor found that \$1,550.26 of the New York State portion of the hunting and fishing license was remitted to the Comptroller's Office in the monthly pistol permit total and was also withdrawn by the DEC on a monthly basis from the Clerk's M&T Concentration bank account for a total of \$1,545.11. It was noted that there was a variance between what the DEC withdrew and what was remitted to the Comptroller's Office totaling \$5.15. The Auditee stated that they were unaware of the ACH withdrawal by NYS DEC, which further supports the Auditor's recommendation regarding the need for the Clerk's Office to reconcile the bank accounts in a timely manner.

NYS Portion of Hunting & Fishing License			
	New Vision Monthly Transmitted NYS HF	Bank Statement NYSDEC ACH Debit	Variance of New Vision vs. ACH
Dec 21	\$58.58		
Jan	\$23.62	\$57.86	\$0.72
Feb	\$0.00	\$23.62	\$0.00
Mar	\$0.00	\$0.00	\$0.00
Apr	\$34.96	\$0.00	\$0.00
May	\$49.45	\$34.96	\$0.00
Jun	\$23.62	\$47.25	\$2.20
Jul	\$28.34	\$23.62	\$0.00
Aug	\$370.71	\$28.34	\$0.00
Sep	\$723.79	\$368.50	\$2.21
Oct	\$20.79	\$723.78	\$0.01
Nov	\$211.68	\$20.79	\$0.00
Dec	\$4.72	\$211.67	\$0.01
Jan 23		\$4.72	\$0.00
	\$1,550.26	\$1,545.11	\$5.15

The Auditor notified the Auditee of this finding immediately and asked that Auditee stop remitting the NYS DEC portion of the hunting and fishing license to the Comptroller's Office. The Auditor recommends monthly fee reconciliations of NewVision transactions to the Clerk's Office M&T Concentration bank account.

Significant Finding #1: Clerk's Office personnel had access to New York State Office of Mental Health "OMH" records for pistol permit applicants without proper authorization.

During our fieldwork, the Auditee stated that two employees from the Clerk's Office were given access to pistol permit applicants' mental health records on the New York State Office of Mental Health website. The Auditee stated that there was no formal agreement to access mental health records and the Erie County Sheriff's Office set them up with usernames so they could search for, access, and pull mental health records, per Auditee's email dated 4/24/23.

There is no way for the Erie County Clerk's Office to access, handle, or maintain confidential mental health records without violating State and Federal law, as per HIPAA and § 400 of the NY Penal Law. The Auditor recommends that all account access to the New York State Office of Mental Health system be immediately returned to the Erie County Sheriff's Office. The Clerk's Office should promulgate formal document destruction policies should such information be inadvertently sent to the Clerk's Office in the future.

Significant Finding #2: The Erie County Clerk's Office had electronic access to fingerprinting, criminal history and wanted and/or missing persons data contained on the New York State Division of Criminal Justice Services' "DCJS" database.

During the walkthrough the Auditee stated that the Clerk's Office's pistol permit process included the pulling of applicants' fingerprinting and background check information. The Auditor was provided with a Use & Dissemination Agreement (UDA), entered into in late 2019, between the Erie County Clerk's Office and the New York State Division of Criminal Justice Services (DCJS)⁹. The UDA purports to authorize employees of the Erie County Clerk's Office to access information based on the submission of non-criminal fingerprint cards.

The statutory authority used to justify the delegation of background check obligations to the County

⁹ Agreement is attached as Exhibit I.

Clerk's Office staff does not support that proposition. As a general rule, designated law enforcement officers are the only individuals permitted to access confidential information of this nature pursuant to their statutory responsibility to investigate "all statements required in the application." Without an explicit legislative carveout, DCJS cannot delegate to non-law enforcement employees, including staff in the Clerk's Office. Additionally, the individual who signed the UDA on behalf of the Clerk's Office occupies a civil service position and is not permitted to bind the County without explicit authorization. A forthcoming change in the law has rendered the arrangement between DCJS and the Clerk's Office counterintuitive.

Court Fees:

Finding #1: Daily and monthly NewVision reports for recording and receipting court fees had conflicting amounts and did not reconcile.

According to § 525(1) of New York State County Law, the "County Clerk shall . . . be the clerk of the Supreme Court and clerk of the County Court within his [or her] own county". As de jure court clerk, the Clerk's Office collects fees that the New York State Office of Court Administration (OCA) charges attorneys and litigants to initiate legal actions and file documents in Supreme and County Courts. Fees received by the Clerk's Office are held on behalf of the Courts and remitted to various state and local agencies pursuant to guidance provided by OCA.

The Auditor interviewed the County Clerk, the First Deputy, and the Second Deputy to gain an understanding of the revenue collection processes for court fees as well as the flow of financial information within the organization.

During testing, the Auditor found that the NewVision *Fee Detail County-25* reports for recording court fees did not reconcile to the NewVision monthly reports. The Auditors tested daily court fee transaction totals to monthly report totals for all transactions occurring between January 2022 and December 2022. Eleven out of the twelve months tested did not reconcile to the daily totals.

In essence, the Clerk is a fiduciary of NYS Supreme and County Court funds. If the financial information is not accurate, it opens the County to legal liability. The Auditor recommends that the Clerk's Office work with NewVision to ensure that accurate monthly reports are properly reconciled and delivered to the Office of Court Administration and Erie County Comptroller's Office. The Auditor further recommends that the Auditee develop a tool or process to upload daily transactions into SAP for month-end reconciliation of fees. If developing such a tool exceeds the current system's capabilities, the Auditor recommends that NewVision be replaced with a system capable of providing financial data consistent with the Clerk's obligations under § 1904 of the Erie County Administrative Code.

Finding #2: The *Unified Court System – Office of Budget & Finance* (UCR) report does not reconcile to the monthly *4-Court Report* generated by NewVision.

The Unified Court Report (UCR) is a standardized administrative report that OCA requires County Clerks to complete for record, accounting, and budgetary purposes. The *4-Court Report* is the mechanism by which the Auditee prepares the *Unified Court Report*. However, the Auditor noted that the *4-Court Report* does not reconcile with the UCR. By virtue of this fact alone, the Auditor found that the financial information delivered to the Unified Court System was inaccurate.

During testing, the Auditor found that the UCR revenue distribution report contained variances ranging from \$78.00 to \$369.00 and exceeded \$1500.00 over the course of the full year. These data are based on the financial information contained in the NewVision *4-Court Report* of court fees collected by the Clerk's Office in 2022. A variance was found in all 12 months.

The Auditors recommend that the Clerk's Office reconcile court fees collected daily and ensure monthly totals are reconciled before remitting funds. The Auditor further recommends that the Clerk's Office work with NewVision to develop a tool or process facilitating the upload of daily transactions into SAP for month-end reconciliation of fees.

Finding #3: Certain County revenue totals were never collected by the Clerk's Office, nor remitted to the County as revenue.

Most fees collected by OCA are set by statute, primarily Article 80 of the New York State Civil Practice Law and Rules (CPLR). Within these statutory fees are breakdowns administered by OCA, which determines how the Clerk's Office apportions court fees and where apportionments are sent. The entirety of most fees winds up in the New York State Treasury. However, Erie County is entitled to a portion of the court fee paid when an index number is generated upon the initiation of legal action.

During testing, the Auditor found that the line-item total detailing Erie County's portion of index number fees, titled *County Revenue – Other Commissioner of Education* (OCE), which is calculated and reported to the Unified Court System as revenue, was never collected by the Erie County Clerk's Office nor was it remitted to the County as revenue.

We discussed this finding with the Auditee, who stated that the OCE total is calculated by adding the revenue total derived from the number of index numbers generated during a particular period and dividing it by 25. This calculation was set up on an excel spreadsheet by prior administration and the Auditee could not articulate what the amount represented. The Auditors reviewed the NewVision Cash Code Summary Report to verify this amount but were unable to confirm that this fee had been collected. Auditors requested a schedule of fees with OCA-imposed breakdowns from the Clerk. The Auditor also requested a summary of values in NewVision used to calculate the proper distribution of court fees. Neither the Clerk's Office nor NewVision provided the requested information until June 13, 2023.

Since the current Erie County Clerk took office in 2017, no new breakdown guidance has been provided to the Clerk's Office. Auditee stated that the Clerk's Office made distributions based on an existing formula. The Auditor contacted the administration for the Eighth Judicial District, several departments of the NYS Comptroller's Office, the NYS Department of Treasury, and OCA's administrative headquarters in Albany. No entity was ever able to produce the fee breakdown which guides County Clerks in executing their statutory duty. Nevertheless, the Auditee failed to produce the values currently programmed in the NewVision system used to facilitate the distribution process until June 13, 2023.

The Auditors recommend that the Clerk's Office verify with the Unified Court System that the current fees and calculations are relevant and accurate. If those values are not accurate, the Auditor recommends that the Clerk's Office immediately update NewVision and make appropriate adjustments to the reports filed with the Comptroller's Office and Unified Court System.

Finding #4: The Clerk's Office is not reconciling daily court e-file credit card payments to the Clerk's M&T Concentration account.

Court fees are not paid to the Court directly. New York State Supreme and Erie County Courts require documents to be "E-filed". This process is done through a state-administered online system known as the New York State Court Electronic Filing System (NYSCEF). The Clerk's Office can accept multiple payment methods for receiving court fees through (NYSCEF). Credit card payments are one such method through which court fees can be paid. The Clerk's Office utilizes Merchant Services (MS) – which covers transactions processed through VISA, MasterCard, and Discover – and American Express (AmEx) service providers to process their credit card transactions. These providers

electronically deposit court fees processed through NYSCEF directly into the Clerk's Office M&T Concentration bank account.

During testing it was found that AmEx and MS deposits could not be reconciled to the bank statement given the information requested could not be provided. The Auditor found that AmEx and MS deposits were comingled in the Global E-File statement received from the Courts, preventing the Auditor from reconciling the Global Statement with the Clerk's M&T Concentration bank account. The Auditor made several requests for individual merchant service provider statements; however, the Auditor was given the Court E-File Global Payments Charge Statements which could not be reconciled to the Clerk's Office Concentration bank account deposits to the daily NewVision *Fee Details* report for *County25*. The Auditee couldn't provide adequate information to reconcile the fees processed by these two providers. To meet the proper testing standard, the Auditor needed to attempt a line-by-line reconciliation with the documentation provided but was ultimately unable to do so.

The Auditor noted one primary – but not exclusive - cause for the reconciliation failure. While testing the Auditor found that every time a transaction involving the generation of index numbers was voided, the report provided by the Clerk's Office showed that the NewVision system doubled the amount of the void. This systemic flaw was found to contribute to the differences in daily and monthly court fee totals. The Auditor provided an example of the conflicting reports to the Auditee and the NewVision representatives for further investigation. See example below

NewVision Fee Detail County 25 Report:

VOID	2022107534	\$25.00	22087218	6/3/2022
	2022107534	\$25.00	22087211	6/3/2022
Total Count	2	\$50.00		

Court E-File Global Payments Charge Statement:

22087211	06/03/2022	RECEIPT TOT.		\$395.00
240	2022107534	VOID	\$210.00	
24R	2022107535	VOID	\$95.00	
218	2022107536	VOID	\$45.00	
218	2022107537	VOID	\$45.00	
22087218	06/03/2022	RECEIPT TOT.		(\$395.00)
VOID	2022107534	VOID	(\$210.00)	
VOID	2022107535	VOID	(\$95.00)	
VOID	2022107536	VOID	(\$45.00)	
VOID	2022107537	VOID	(\$45.00)	

The Auditor recommends that the Auditee perform monthly reconciliations for deposits from Merchant Services and AmEx to ensure all revenue transactions through the e-file system are accurately reported in NewVision and deposited into the Clerk's Office M&T Concentration bank account. The Auditor further recommends that NewVision develop a tool or process to upload daily transactions into SAP for month-end reconciliation of fees. In addition, the Clerk's Office needs to verify that all voided transactions are accurately being reported in NewVision to ensure financial data are true and accurate.

Comment #1: Proper signatures were missing from County of Erie Bank Deposit Transmittals (BDT).

During testing, the Auditor found that necessary authorizations were omitted from the County's BDTs. In January 2022, the Approver's signature was missing from the BDT for the same month. In June 2022, the Depositor's signature was missing from the BDT for the same month. The County's BDT is used to record the revenue transactions remitted by the Clerk's Office to the County via ACH monthly.

The Auditors recommend that the Clerk's Office promulgate a written process to verify that the

information contained in the monthly BDT is true and accurate, and to ensure that the proper authorizing signatures are on the BDT prior to transmittal.

Mortgage Tax:

Finding #1: The Erie County Clerk's Office did not withhold the proper amount of mortgage expense prior to remitting the revenue to the Comptroller's Office.

Similar to the manner in which local businesses collect sales tax from customers to remit to the NYS Department of Taxation and Finance, the Clerk's Office collects the state tax imposed on mortgages recorded in the Clerk's Office. To compensate the Clerk's Office for this service, the NYS Legislature has entitled County Clerks to "all their necessary expenses [related to the collection of mortgage tax], . . . shall be retained by them out of the moneys coming into their hands. The law authorizes County Clerks to tally up all reasonable expenses related to their mortgage tax collection duties and remove the total from the amount of tax collected each month. The Auditee provided the Mortgage Expense Request MT-3¹⁰ Form which indicated that \$572,105.00 was to be claimed in twelve increments on the Statement of Mortgages Recorded in the monthly amount of \$47,675.42 for 2022 and if was approved by New York State Real Property.

During testing the Auditor found that the mortgage expense deducted from the monthly Statement of Mortgages Recorded was incorrect for January, February, March and April of 2022 resulting in a \$3,045.02 loss of revenue. The Auditor recommends the Clerk's Office verifies the accuracy of the Statement of Mortgage Recorded prior to sending it to the Comptroller's Office for approval.

Finding #2: The Erie County Comptroller's Office approved the monthly Statement of Mortgages Recorded without verifying the accuracy of mortgage expense deducted based on the approved budget amount.

Every month, the Clerk's Office delivers a *Statement of Mortgages Recorded* to the Erie County Comptroller's Office each month containing breakdowns of the amount collected by the Clerk. The breakdown details how much money goes to the various entities entitled to portions of mortgage tax revenue such as the State of New York Mortgage Association (SONYMA), the Niagara Frontier Transportation Authority (NFTA), and the New York State Education Department (NYSED). The Clerk sends this monthly statement to the Comptroller for the purpose of signing off on the amounts contained in the statement. The document is not, however, accompanied by any supporting documentation that the Comptroller's Office may use to verify that the amounts stated are accurate. The Comptroller's Office, Accounting Division has requested this documentation, however the requests have been denied.

During testing the Auditor found that the Clerk's Office did not deduct the proper amount of mortgage tax expense in January, February, March or April 2022 resulting in a \$3,045.02 loss of revenue.

¹⁰ A sample form is attached as Exhibit J.

Year	Month	Total Service Fees	SAP Service Fees (ZFBM)	Variance
2022	April	\$47,072.72	\$47,675.42	(\$602.70)
2022	March	\$47,079.10	\$47,675.42	(\$596.32)
2022	Feb	\$47,050.58	\$47,675.42	(\$624.84)
2022	Jan	\$46,454.26	\$47,675.42	(\$1,221.16)

The Auditor recommends that the Comptroller's Office closely review the mortgage expense deducted on the Statement of Mortgages Recorded prior to approval to verify it is the approved budgeted amount.

Finding #3: Escrow Accounts held by the Clerk's Office are co-mingled with County funds in the Clerk's Office M&T Concentration bank account.

The Auditee stated during a walkthrough that attorneys can establish escrow accounts with the Clerk's Office to pay for transactions in the County Clerk's Registrar Division (Land Records). The Clerk's Office offers Registered User Online Services (RUOS) to customers who do frequent business with the Clerk's Office. Becoming a registered user requires a \$250 deposit to open a non-interest-bearing escrow account which must remain open for a minimum of six months. A customer must upload a signed Escrow Agreement¹¹ to become a registered user and to add funds to their account.

Fieldwork included interviewing the Auditee about the collection and disbursement of the escrow funds. Based on the terms of the escrow agreement and the County of Erie Agency Fund Policy, the Clerk is required to maintain an Agency Fund bank account separate from County funds. The Auditor found that that money being held in escrow is deposited into the Clerk's Office Concentration bank account and is therefore co-mingled with County funds. The Auditor requested the escrow balance as of December 31, 2021 and the Clerk's process for tracking book balances at the end of each fiscal month, as per County policy. The Auditor also found that the Comptroller's Office was not aware of any escrow funds being held by the Clerk's Office nor does the Auditee use the County accounting system to record, collect or distribute escrow funds. The Auditee stated that the Clerk's Office does not reconcile the escrow funds and does not record disbursement or collection of escrow activity. The Auditor requested escrow fund activity reports. The reports provided were incomplete and unable to be used to verify the escrow fund balances or monthly activity. It was determined at this time that the Auditee is not following the County's Agency Fund Policy, or the Escrow Agreement provided by the Clerk's Office.

The Auditor recommends that the Clerk open a separate Agency bank account to hold these escrow funds. Furthermore, the Auditor suggests funds be transferred monthly to the Concentration account to cover escrow activity and that SAP should be utilized for tracking of these Agency funds, per the County Policy. This recommendation was immediately discussed with the Auditee during fieldwork.

Finding #4: Conflicting Amounts of Mortgage Tax Collected on NewVision Cash Code Summary Report and the Monthly Statement of Mortgages Recorded.

During testing of mortgage tax expenses, the Auditor found variants in the monthly mortgage tax revenue amounts for Additional, Basic, NFTA, and SONYMA tax that was different from the monthly statement of mortgages recorded.

Due to mortgage tax revenue is outside the scope of this audit, the Auditor expanded the scope of the

¹¹ A sample escrow agreement is attached as Exhibit K.

audit and separated the issue herein described from the initial audit. The scope was expanded to include mortgage tax distributions of mortgage tax revenues. A letter sent to the Clerk's Office on May 4, 2023 described the expansion and separation of audits. The expanded audit will commence on the conclusion of this audit.

Comment #1: The Clerk's Office was unable to verify its annual mortgage tax expenses.

The Auditor requested to review the Auditee's process for calculating the total expense amount, however the Auditee stated they have no formal process to determine the total expense amount. The rationale used for the 2022 budget was to take previous year's budgeted amount and increase it by 3% due do salary increases in recently ratified union contracts. ¹¹

Based on the information provided, the Auditor was unable to determine whether the Clerk's Office was remitting too much money to the state or withholding too much money for the County. The Auditors recommend that the Clerk promulgate a written policy to ensure that the Clerk's Office can reliably verify the correct mortgage tax expense is being collected based on the Mortgage Expense Request MT-3 and the approved budget amount. Such policy should contain a procedure for verifying the Mortgage Statement, properly itemizing reimbursable costs, and routinely updating applicable costs.

Other Findings, Comments & Recommendations:

Finding #1: Detailed revenue reports generated by NewVision and used by the Clerk's Office to reconcile the revenues collected by the Clerk's Office are inconsistent with Clerk's Office reports.

The Auditor requested a report of all monthly revenues collected used to reconcile the revenues recorded and distributed. The Auditee provided a NewVision Cash Code Summary-State-NG report that detailed the individual breakdown of fees collected. After reviewing this report, it was found that not all revenues reconciled to the report. The Auditor requested additional supporting documentation to verify the variances; however, the information was not provided. The Auditor also noted that eight G/L numbers on the report where Auditors needed further information to identify what the dollar amounts reported therein represent. Several requests were made to the Auditee to verify what these dollar amounts represent; however, Auditee was unable to verify the revenue source. In addition, same request was made to NewVision, no response was received.

The Auditor recommends that the Clerk's Office works with NewVision to review and assess this report for accuracy and relevance.

Finding #2: Corporate filing and notary fees post in SAP but are not recognized as revenue in Erie County Clerk's Office NewVision system.

During the attempt to reconcile the Clerk's Concentration bank account to NewVision Cash Code Summary-State-NG report, the Auditor noted that both corporate filing and notary fees were received via ACH from New York State into the County's M&T account and then posted by the Comptroller's Office to the Clerk's G/L number 415150. Auditor discussed this with Auditee, and they were unaware that the revenue was being posted to the Clerk's Office G/L under recording fees.

The Auditor recommends that the Clerk's Office develop a process to recognize this revenue in the NewVision receipting system to provide accurate accounting of all revenues collected.

Comment #1: The Clerk's Office charges for bulk data and internet usage fees that were not authorized by the County Legislature.

In order to enter into an agreement or engage in a particular transaction(s), the Clerk needs authorization. This can take the form of coded authority found in New York State statute and regulation, the Erie County Charter, Administrative Code, or Local Law, or the Legislature can specifically grant an authorization to the Clerk by virtue of authority delegated to the Legislature by the State.

Currently the Clerk's Office is permitted by local law to license space to title companies for a fee. (See Exhibit X). However, when reviewing the NewVision Cash Code Summary Report, which reports on monthly revenue collected, the Auditor noted amounts attributed to bulk data sales and internet usage services was being recorded as revenue and remitted to the Comptroller's Office as recording fees in their monthly transmittal of fees. The Auditor performed a search for a legislative resolution or local law authorizing the Clerk's Office to charge for such fees but found no record of any such action by the Erie County Legislature. The Auditor further noted that bulk data fees, licensing of space, and internet usage fees are reported as recording fees.

The Auditor recommends that the Clerk's Office ensure that it has legal authority for all charges and fees that it currently imposes. The Auditor further recommends that the Clerk seek legislative approval for all charges including a request for the Division of Budget and Management to create a new G/L number for internet fees. As noted, for the fiscal year of 2022, approximately \$125,000.00 was reported as revenue for internet usage fees, \$15,000 in bulk data fees and \$166,000 in licensing of space.

Auditors Comments

Delays:

The Auditor must note that completion of the audit was not without unusual delays in both scheduling meetings and obtaining requested information. During the audit, for whatever reason(s), requests for meetings, documentation or information were met with substantial delays. These delays have impeded the Auditor in completing necessary audit fieldwork and final report in an expeditious manner. In addition, this extensive delay coupled with fact that some requested documents were not or could not be provided, prevented the Auditor from completing all required testing. The following is a list of documents that were requested but not provided:

- Internal and System Controls Questionnaire.
- New Vision reports showing daily transaction detail for mortgage tax.
- Deposit receipts, and any other documentation used to verify the deposit amounts in 2022.
- A copy of the 2022 excel spreadsheet used for the daily reconciliation of the M&T concentration account to NewVision.
- NewVision Agent Activity Reports showing daily total of American Express Settlement activity related to court fee activities for 2022.
- New Vision Agent Activity Reports showing daily total of Merchant Services (Visa, Mastercard and Discover) activities related to court fees for 2022.
- Pistol permit application information from Gun Keeper and barcode data needed for testing.
- Monthly activity report of escrow accounts.
- Monthly suspended mortgages on hold reports that shows the additions and deletions.
- Backlog data for mortgage tax, court fees or pistol permits for 2022.
- Leasing/License Agreement for Space Rental and fee established.
- Internet usage Agreement and the fee established.
- Bulk data usage information and charges.

Limited Access to NewVision:

NewVision is currently under contract with the County of Erie and is a County vendor who provides an EDP cashiering system for the Erie County Clerk's Office. During the audit multiple requests were made of the Auditee to meet with NewVision representatives due to the multiple reporting issues found during testing. Each request was unanswered by the Auditee and our final request for meeting with the Auditee and NewVision was denied by the Auditee.

The Auditors attempted to contact NewVision directly as they are a county vendor and their assistance was deemed imperative to the audit outcome. Two meetings were scheduled with NewVision by the Audit Division; however, after the vendor contacted the Clerk's Office, both meetings were subsequently canceled. The NewVision representatives both stated to the Auditor they did not feel comfortable meeting without the Clerk's Office present. The Audit Division requested the Associate Deputy Comptroller, a licensed attorney, to draft a letter to NewVision regarding our need for their cooperation¹².

The Auditee then contacted the Lead Auditor stating they would set up a meeting with NewVision. The meeting was held with no resolve to any of the Auditors questions. Follow up emails were sent with little to no response.

The Auditor recommends that Erie County's Division of Budget and Management and the Erie County Clerk's Office work together to seek alternative solutions for the receipting, documenting and reporting of County revenues generated through the County Clerk's Office. The NewVision Maintenance Agreement¹³ will expire on December 31, 2023. If it is the Erie County Legislature's decision to renew this agreement, stronger language should be drafted and added that would give the Audit Division direct access to this vendor for audit purposes.

¹² A copy of the letter is attached as Exhibit L.

¹³ A copy of the agreement is attached as Exhibit M.

RESULTS OF EXIT CONFERENCE

An exit conference was held on June 26, 2023 with the County Clerk, members of his staff, and the Comptroller. The draft audit report was reviewed and discussed over several meetings due to the number of findings and time sensitivity of critical issues. The Clerk was in general agreement with the Auditor's findings, comments and recommendations.

The Comptroller and Clerk agreed that the final report would be issued prior to receiving the Clerk's comments. This order was principally the result of audit delays, the numerous findings needing to be addressed, and prior obligations of the Clerk.

The Comptroller's Office requested that the Clerk submit his responses to the County Legislature within 60 days. The Audit Division will review the comments and respond if appropriate.

The Erie County Comptroller's Office, Division of Audit would like to thank the Erie County Clerk and his staff members for the courtesy extended to us during the audit.

ERIE COUNTY COMPTROLLER'S OFFICE

cc: Michael P. Kearns, Erie County Clerk
Hon. Mark C. Poloncarz, Erie County Executive
Hon. Kevin R. Hardwick, Erie County Comptroller
Robert W. Keating, Director, Division of Budget and Management
Erie County Fiscal Stability Authority

Exhibit

A



To: Jessica Schuster, Chief of Staff; Mary Nytz-Hosler, Deputy Comptroller for Audit
From: Eric J. Mikols, Esq., ADC
Re: Clerk's Authority to Waive Fees
Date: May 9, 2023

I. Introduction

Certain actions taken by the Erie County Clerk have created a need to conclusively determine the authority of a County Clerk to take discretionary action pertaining to legally prescribed fiscal duties. Specifically, the Erie County Clerk has asserted the right to "waive" certain fees in connection to the pistol permit process. Part II describes the legal basis for the Office of County Clerk and the ministerial nature of the position. Part III briefly applies these principles to the pistol permit process under Article 400 of the New York Penal Law; it also serves as the conclusion.

II. Basis of Office

The statutory obligations of the County Clerk are particularly vague. Per New York County Law, "the county clerk shall perform the duties prescribed by law as register, and be the clerk of the supreme court and clerk of the county court within his county. He shall perform such additional and related duties as may be prescribed by law and directed by the board of supervisors."¹ This statute leaves an abundance of space for state and local legislatures to carve out the duties of the County Clerk elsewhere in the law.

One word that is nearly ubiquitous in legal language referencing the Office of Clerk is the modal verb "shall." Among the tasks that the Clerk "shall" perform include providing "books, files and other necessary equipment for filing, recording and depositing of documents, maps, papers in actions and special proceedings of both civil and criminal nature, judgment and lien dockets and books for the indexing of the same as directed or authorized by law."²

Particularly as applied to municipal officials, duties are prescribed as "discretionary" or "ministerial." The former involves "the exercise of judgment and choice, not an implementation of a hard-and-fast rule exercisable at one's own will or judgment," while the latter refers to "an act that involves obedience to instructions or laws instead of discretion, judgment or skill."³ Courts deem an act or obligation ministerial by the presence of a "governing rule or standard with a compulsory result."⁴ The Office of County Clerk is broadly considered a ministerial office – or an administrative office required to "perform duties or acts required by rules, statutes, or regulations"⁵. It is of critical importance that a County Clerk understand the difference between the two, since governmental immunity attaches to official action *only* when said action is discretionary; ministerial failure can eviscerate the shroud of immunity that government officials enjoy⁶.

¹ NY COUNTY § 525(1); see also NY Const. Art. 6, § 6.

² NY COUNTY § 525(2).

³ Black's Law Dictionary (11th Ed. 2019).

⁴ *Tango v. Tuvelech*, 61 N.Y.2d 34, 41 (1983).

⁵ *Id.* It should not go unnoticed that the words "ministerial" and "clerical" are synonyms.

⁶ *Haddock v. City of New York*, 75 N.Y.2d 478, 485 (1990). This does not necessarily mean that the officer will be held liable, since the Plaintiff needs to show that the municipality owned him or her a "special duty". In the grand scheme of governmental negligence actions, ministerial failure can be best described as the official's loss of ability to control his or her own fate.

Prominent examples where courts have imposed liability against municipalities on the basis of ministerial failure include violating local policy requiring informed placement of employees with criminal records⁷; recertifying a day care after complaints of abuse have been substantiated⁸; failure to enter judgment for a landlord when the tenant fails to respond to proper service⁹; violating a city charter provision requiring the medical examiner to perform autopsies on all suspicious deaths¹⁰; and failure to order abatement when a child tests positive for lead poisoning¹¹.

There is only one opinion addressing the Clerk's ability to waive fees, which, while not directly on point, remains highly instructive. The subject of the opinion involved a County Clerk who wanted to reduce the amount of court fees that the county was entitled to¹². The statute at issue provided that "whenever a county clerk renders a service in his capacity as clerk of the supreme or a county court, in an action pending in such court, he is entitled to the fees specified in this section, payable in advance."¹³ The key word in this statute, per the Attorney General, is "entitled". Further forcing the Clerk's hand is another statute providing that "the county officer authorized to receive fees or other form of compensation belonging to the county shall keep a record showing the nature thereof, from whom received, date of receipt, amount and when paid to the county treasurer."¹⁴

Between the Clerk's "entitlement" to certain statutory fees, the obligation of the Clerk as recipient of such fees to pay into the county treasury, and the lack of any indication that discretionary authority is vested in the Clerk, the Attorney General found that "there is no authority for a county or a county clerk to waive payment of all or part of the statutory fees which the county clerk receives."¹⁵ It should be noted that the NYAG opinion was specifically analyzing a duty of the County Clerk as a "State office", but the same logic still applies. Where the County Clerk collects a fee, the amount of which is codified, the County Clerk has no authority to waive or decline to collect that fee.

III. Pistol Permit Application

Given the legal authority, the question of whether the Clerk can waive pistol permit fees is not particularly close. In Erie County, the "officer shall collect and pay into the county treasury the following fees: for each license to carry or possess a pistol or revolver or to purchase or take possession of a semiautomatic rifle, not less than three dollars nor more than ten dollars as may be determined by the legislative body of the county."¹⁶

On November 17, 2005, the Erie County Legislature approved a pistol permit fee of \$10, effective January 1, 2006. There is no language in state law, the County Charter, or Administrative Code granting the County Clerk the authority to waive all or part of those fees. Since the statute directs such fees to be collected and paid into the county treasury, the County Clerk does not have the authority to waive those fees.

⁷ *Id.*

⁸ *McLean v. City of New York*, 12 N.Y.3d 194 (2009) reading NY SSL § 390(2)(d)(ii)(B)(4) providing that registration "shall not" be accepted unless OCFS "has received no complaints."

⁹ *Brusco v. Braun*, 84 N.Y.2d 674 (1994) reading NY RPAPL § 732(2) providing that "the judge *shall* render judgment in favor of petitioner.

¹⁰ *Lauer v. City of New York*, 95 N.Y.2d 95 (2000).

¹¹ *Pelaez v. Seide*, 2 N.Y.3d 186 (2004).

¹² 1974 N.Y. Op. Atty. Gen. 245.

¹³ NY CPLR § 8020.

¹⁴ NY COUNTY § 407.

¹⁵ 1974 N.Y. Op. Atty. Gen. 245.

¹⁶ NY Penal Law § 400.00(14).

Exhibit B



SUBJECT: ACCOUNTING SYSTEM

TOPIC: Internal Controls

PURPOSE: Erie County and related stakeholders of the County's financial statements rely on the accuracy and integrity of the County's financial reports and processes which are strengthened by stringent internal controls. This topic presents an overview of internal control and serves as a guide for County management officials, at every level, to execute their responsibilities for designing and implementing internal controls appropriate for the key business processes that they manage.

The Government Finance Officer's Association of the United States and Canada ("GFOA") 2005 publication titled *Governmental Accounting, Auditing, and Financial Reporting* ("Blue Book"), outlines the following five essential elements of a comprehensive framework for internal control:

- Provide a favorable *control environment*
- Provide for the *continuing assessment of risk*
- Provide for the design, implementation, and maintenance of effective *control-related policies and procedures*
- Provide for the effective *communication* of information
- Provide for continuous *monitoring* of the effectiveness of control-related policies and procedures, as well as the resolution of any potential problems identified

The focus of this topic is the third item above: the design, implementation and maintenance of effective control-related policies and procedures for Erie County.

COUNTY POLICY: Each operating department is responsible for the systems and processes within its domain. Part of each department's responsibility includes department heads ensuring that certain key objectives and processes are achieved. Department heads must ensure that all employees that perform accounting functions are instructed to follow the Comptroller's Office's accounting policies and procedures. Every process should include controls to achieve the following objectives:

Completeness – Ensure that transactions for a given duration have been processed and individual or groups of transactions have not been omitted or misdirected.

Accuracy - Ensure that transactions are accurate in amount, account and other applicable elements.

Timeliness - Ensure that transactions are recorded within the appropriate reporting period. All transactions must be processed within the applicable accounting period and recorded before there is opportunity for amounts to be misdirected.

Authorization - Ensure that only specified individuals should be able to initiate a transaction, such as purchase requisitions and check requests.

Properly designed records - Ensure that accounting records are properly designed to capture all required data into the County's official accounting system. Use of "shadow books" that duplicate data in the official accounting system is strictly prohibited.

Security of assets and records (including backup and disaster recovery) - Security must be maintained over a government's assets and records to minimize the danger of loss or misuse. Thus, individuals should have access to assets or records based on the specific needs of their positions, and assets and records should be protected against physical harm. Likewise, management (Division of Information and Support Services) should provide for the regular backup of computer records. A disaster recovery plan should be in place to ensure continued time processing of transactions in the event of unforeseen circumstances (for example, natural disasters) that might adversely affect the accounting system's regular operation.

Segregation of incompatible duties - Duties are said to be "incompatible" from an internal control perspective if they allow a single individual to commit an irregularity and then conceal it. Incompatible duties should be segregated so that different departments or individuals can serve as a check on one another. In practice, three types of functions are commonly considered to be mutually incompatible: (1) authorization of transactions, (2) record-keeping, and (3) custody of assets. Ideally no one individual should be able to authorize a transaction, record the transaction in the accounting records and maintain custody of the assets resulting from the transaction.

Periodic reconciliations - Related accounting records must be compared periodically.

Analytical review - Is the process of determining the reasonableness of financial data by comparing their behavior with other financial and nonfinancial data. From another perspective, analytical review attempts to compare what is reported to what might reasonably be expected. Analytical review is particularly important because it is often the only practical means of determining if data in the financial statements are complete.

Safeguarding Assets - Protect assets against shrinkage, which is the unintended reduction of assets due to theft and unanticipated shortage from vendors. This control objective is most common for inventories of supplies, cash, etc. – addresses controls that are in place to ensure accountability for the asset and to prevent shrinkage.

Managerial Review - Accounting records are reliable to the extent that they faithfully reflect underlying facts. Sufficient management of activities ensures that controls are functioning as intended and that any errors or unauthorized activity is detected before the impact becomes significant. Managerial review includes activities taken by the manager to gain assurance that controls are functioning or provide a warning before a malfunction significantly impacts operations.

A manager can employ various tools to achieve this objective, including:

- Reviewing and testing reconcilements to ensure they are performed correctly
- Reviewing an aged listing of reconciling items
- Performing balance fluctuation analysis

All employees are required to notify their department head and the Comptroller's Office of weaknesses and opportunities to enhance internal controls.

Official County of Erie Accounting Policies are authorized, issued and maintained by the Office of the Comptroller

Revised Date: September 2009

Exhibit

C



SUBJECT: CASH MANAGEMENT

TOPIC: Received Payments Backed by Insufficient Funds (NSF)

PURPOSE: This topic sets forth the policy for handling payments received by the County that are backed by insufficient funds

COUNTY POLICY: Pursuant to Section 85 of New York General Municipal Law and Section 5-328 of the New York General Obligations Law, a service charge of \$20.00 for insufficient funds has been established by the Erie County Legislature (Comm. 7E-13, approved on April 11, 2002) and shall be assessed for each check that cannot be cleared and collected by a depository bank.

Upon the County's knowledge that a payor payment is returned for insufficient funds, the Comptroller's Office will notify the relevant County department. In some instances, the department itself will initiate collection efforts and impose the \$20 NSF fee before action is taken by the Comptroller's Office.

The applicable County department is responsible for completing initial collection efforts which may include written requests, emails, telephone contacts and personal visits. If a second written request is made, it is recommended that it be sent via certified mail. The relevant County department shall notify the payor of the \$20 NSF fee and pursue collection of that fee in consultation with the Comptroller's Office.

All collections must be deposited, recorded and credited to the NSF Check Fees revenue account in the County's accounting system.

If the applicable department's collection efforts fail, the appropriate information should be forwarded in writing to the Comptroller's Office Revenue Recovery Unit for additional recovery efforts.

County of Erie Accounting Policies are authorized, issued and maintained by the Office of the Comptroller

Revision Date: March 2022

Exhibit

D



SUBJECT: CASH MANAGEMENT

TOPIC: Shortage or Overage of Transacted Funds

PURPOSE: This topic establishes policy for point-of-service financial transactions (e.g., at Comptroller's Office's Cashier's Area, County Clerk's Office, Sheriff's Office, Probation Services and County parks and golf courses) in which cash is tendered for payments of County taxes, fees, fines and other charges.

Each department that handles point-of-service financial transactions must install controls to ensure that a designated cashier (or cashiers) accounts for all coins and currency, money orders and checks related to the day's business activity; this should be completed at the conclusion of each business day. Upon accounting for each cash register's daily tape as compared to all coins and currency, money orders and checks within the drawer, either the comparison matches or does not match (i.e., a shortage or overage exists).

COUNTY POLICY: All shortages or overages of County monies and securities, including those which the County has legally accepted custody and responsibility, must be documented and reported to the department head or supervisor regardless of the cause or amount.

The types of shortages (losses) that should be reported to the department supervisor who is responsible for point-of-service financial transactions are:

- Actual or suspected theft, burglary or robbery (employee or otherwise)
- Errors in record-keeping or making change in which theft is not suspected
- Acceptance of invalid or non-redeemable paper including post office or express money orders, and forged or altered checks, drafts, promissory notes, etc.
- Acceptance of counterfeit US currency

Completing Loss Reports

Reporting requirements:

- All losses/shortages must be reported immediately to the supervisor of the custodian whose funds experienced the loss. The supervisor must maintain a written record of all reported losses.
- All documented losses amounting to more than \$20.00, except corrected shortages resulting from accounting or calculation errors, must be reported to the Comptroller's Office.
- All documented losses amounting to more than \$100.00, except corrected shortages resulting from accounting or calculation errors, must be reported to the County Sheriff's Department.
- Attempted theft, burglary or robbery must be reported immediately to the supervisor and the County Sheriff's Department regardless of whether a loss actually occurred.

Additional reporting requirements – In addition to the above reporting requirements, there are special reporting requirements for counterfeit currency and losses affecting credit deposits:

Counterfeit currency:

- In the event that counterfeit currency is discovered by a County department/office while in the County's possession, counterfeit currency must be reported to and confiscated by the County Sheriff's Department and further reported to the Comptroller's Office. In turn, the Comptroller's Office, working in conjunction with the County Sheriff's Department must report the counterfeit currency to the U.S. Treasury Department. If a credit deposit is involved, the resulting shortage must be reported accordingly.
- In the event that counterfeit currency is discovered by the depository bank and reported as a reduction of a County deposit, the Comptroller's Cashier's Office must: (1) file the required reports and (2) complete the necessary adjustments to the deposit. Note that the bank will notify the U.S. Treasury Department and surrender the counterfeit currency directly to the U.S. Treasury Department.

Losses affecting credit deposits:

- All losses that affect a credit deposit must be reported in detail to the department head and the Comptroller's Office regardless of the cause or the amount of the loss.

Statements Regarding Losses

County employees may not comment or make statements to public media or press regarding a loss. County employees may solely provide comments and share statements with authorized representatives of the County Sheriff's Department, the Comptroller's Office and the County Attorney's Office.

Official County of Erie Accounting Policies are authorized, issued and maintained by the Office of the Comptroller

Revision Date: August 2019

Exhibit

E



Article 19 - County Clerk - Code

Section	19.01	Election.
	19.02	Powers and duties.
	19.03	Deputy county clerks.
	19.04	Accounting for fees.
	19.05	Bond of county clerk.
	19.06	Seal.

Section 19.01 Election. [Reserved]

Section 19.02 Powers and duties.

The county clerk shall have and exercise all the powers and duties now or hereafter conferred or imposed upon her or him by any applicable law. She or he shall perform such additional and related duties as may be prescribed by law not inconsistent with the county charter or this code, and directed by the county executive.

Section 19.03 Deputy county clerks.

The county clerk may, within the appropriations provided therefore, appoint to serve at her or his pleasure such deputy county clerks as she or he deems necessary for the conduct of the office. All such appointments or revocations thereof shall be in writing and filed and recorded in her or his office. The county clerk shall designate in writing filed and recorded in her or his office the order in which such deputy county clerks shall have and exercise the powers and duties of the county clerk during the temporary absence or inability of the county clerk to act. The deputy first named on such writing shall in case of a vacancy in the office of the county clerk perform the duties of the county clerk until a successor is elected or appointed and has qualified.

Section 19.04 Accounting for fees.

All moneys to which the county may be entitled under and by virtue of the laws of the state of New York, or which the county clerk may receive for all and any official services by her or him, or by any of her or his assistants, clerks, employees or subordinates, shall apply to and be for the benefit of the county and shall be collected by such clerk, accounted for and paid over within five days after the first day of each and every month to the comptroller. Said county clerk shall make a full and true statement for each calendar month of all moneys received each day by her or him, her or his deputies, officers or employees in her, his or their official capacity and shall transmit

and deliver such statements to the comptroller within five days after the expiration of such month. Each statement shall have attached thereto a certification by said county clerk to the effect that the same is in all respects a full and true statement of all moneys received by her or him as herein required. At the time of rendering any such statement, such clerk shall pay to the comptroller for the benefit of said county the whole amount or the balance of the moneys received by her or him since making the last preceding monthly report. Other funds or fees collected, by the county clerk shall be collected, paid over, deposited and reported in accordance with the law applicable thereto.

Section 19.05 Bond of county clerk.

The county clerk and such of her or his deputies, officers and employees as the county legislature shall require shall give a surety bond to the county in a sum to be fixed by the county legislature conditioned for the faithful performance of her or his duties, which bond shall be approved as to form by the county attorney and as to sufficiency of surety by the county executive and filed in the office of the county clerk.

Section 19.06 Seal.

1. The seal of the county of Erie shall be the seal of the county clerk and register.

The county clerk shall affix or imprint such seal upon any and all instruments requiring the same.

Exhibit

F



SUBJECT: CASH MANAGEMENT

TOPIC: Cash Receipts - Overview

PURPOSE: This topic covers deposits and the allocation of all fees, revenues and other received funds for which the County is responsible. For this topic, the term “cash” includes coins and currency, checks, money orders and cashiers and certified checks. Also reference a separate topic titled Acceptable Forms of Payment.

COUNTY POLICY: Handling cash involves a substantial amount of risk to the County. All County divisions, departments and units that handle cash must be vigilant and dedicated to strong internal controls for handling cash – doing so minimizes the potential for mishandling funds.

Cash handling operations must be dutifully reviewed and managed on a daily basis. To minimize the potential for mistakes or misappropriation of cash, segregation of cash handling duties is recommended. The duties of collecting cash, maintaining documentation, preparing deposits and reconciling records should be separated among different individuals. In departments in which separation of cash handling duties is not feasible, strict individual accountability and thorough review and management is required.

For claims payments from New York State and its agencies, every effort should be made to collect via electronic deposit directly into the County’s bank account. In circumstances where check payment is the only alternative, the department should instruct the remitter to mail its check directly to the Comptroller’s Office for processing.

All cash received by operating departments within the County should be either deposited with the Comptroller’s Office’s cashier immediately (i.e., within one business day) or, if specifically authorized by the Comptroller’s Office, it may be deposited by the operating department in a bank account specified by the Comptroller’s Office with the required deposit information immediately forwarded to the Comptroller’s Office.

In all instances, immediate bank deposit is essential so all available cash is placed in interest bearing accounts or investments in order to maximize interest earnings and provide the best possible control over the County’s cash resources.

PROCEDURE: Processing Checks and Money Orders - All checks must be restrictively endorsed immediately upon receipt, in the following manner:

FOR DEPOSIT ONLY
THE COUNTY OF ERIE, NEW YORK

At its option, the operating department may include its department name in this endorsement.

All cash received via USPS mail service must be opened in an area separate from other cash handling operations by an employee that is not involved in accounts receivable or other cash handling process. Departments should maintain a log and/or a photocopy of all checks that are received.

To be accepted, each presented check must:

- Be payable to the County of Erie, NY. This includes a check payable to an individual who must restrictively endorse it payable to the County of Erie
- Be current dated - post dated or "stale dated" (over six months or shorter period if noted on the face of the check) checks are not acceptable
- Be properly signed or endorsed by the presenter
- Be in agreement with respect to numeric and written amounts
- Be typed or legibly written in ink
- Have Federal Reserve routing codes printed (as part of the MICR encoding) at the bottom of the check. The routing codes printed in the upper right hand corner are no longer required by the Federal Reserve and are not always printed on the checks. The routing codes will be separated from the other numbers in the MICR line by a small, centered rectangle followed by two small squares with one above the other. The location within the MICR line may vary, but the symbol described above will precede and follow the routing code.
- Not be altered or grossly mutilated
- Not have any unreasonable restrictions placed on the face which excessively limit its application
- Contain sufficient information to permit tracing the presenter (e.g. account number, address, telephone number, property [SBL] number etc.)

Accounting function - When making a deposit, operating departments are responsible for coding cash receipt allocation information on the proper forms. All funds being delivered to the Comptroller's Office's Cashier's Area (located at 95 Franklin Street/Rath Building, First Floor) must be delivered in person. **INTERDEPARTMENTAL MAIL IS NOT ACCEPTABLE.**

The Comptroller's Office's Cashier's Area is responsible for comparing all deposit amounts with the corresponding allocation amounts. If discrepancies are noted, then the Cashier's Area shall take the appropriate corrective action.

Each business day the Comptroller's Office Division of Investments and Cash Management is responsible for allocating the deposits processed by the Comptroller's Cashier's Area into the accounting system and reconciling the amounts deposited in the bank to the accounting system.

Unidentified receipts must also be deposited immediately (within one business day) with allocation information coded by the Comptroller's Office establishing the unidentified nature of the receipt. Ultimately, responsibility for cash receipt allocation rests with the Comptroller's Office (as appropriate, upon follow-up with the department).

If assistance is needed regarding the forms used to record a cash receipt, the Comptroller's Office's Division of Cash Management should be contacted.

Foreign funds – The County does not accept payments in foreign funds. “Foreign funds” include all coins and currency issued by a non-U.S. government and all checks written on non-U.S. bank or for non-U.S. dollar values.

Prior to making payments, payees (i.e., an individual, group or entity that receives a payment, such as through cash, check, money order or promissory note) should convert all foreign currency to U.S. currency.

Official County of Erie Accounting Policies are authorized, issued and maintained by the Office of the Comptroller

Revision Date: June 2019

Exhibit

G



To: Mary Nitz-Hosler, Deputy Comptroller for Audit
From: Eric J. Mikols, Esq., ADC
CC: Amy Barlow, Staff Auditor
Re: Pistol Permit Process
Date: April 20, 2023 – Updated June 10, 2023

I. Introduction

The Erie County Clerk's Office (ECCO) hasn't been audited in eight years. The last time that ECCO was audited, the investigation was superficial and inexplicably hyper-focused on the specific date each month that the Clerk paid over amounts to the Niagara Frontier Transportation Authority (NFTA). Despite the high priority of getting to ECCO, per the heat map, very little in terms of substantial performance auditing has been completed. This year the Division of Audit is looking into three functions of ECCO: court fees, mortgage tax, and pistol permits. These are the three areas that either pose the highest risk of mismanagement, constitute core functions of ECCO, or have generated the most complaints. Pistol permits are best categorized among the latter. The Comptroller's Office has received credible information that pistol permit functions at ECCO are, at best, problematic. At worst, these issues open the County up to extraordinary liability.

The purpose of this memorandum is to establish a multi-dimensional baseline for the pistol permit process that the Audit Division can use as a guide throughout the course of the investigation. Part II describes the statutory and regulatory process for issuance of pistol permits. Part III offers an opinion based on what we know about the ECCO pistol permit process by comparing its process to that of County Clerks in neighboring counties. A brief conclusion will follow.

II. Statutory & Regulatory Procedures

The pistol permit process begins with a determination of eligibility¹. There is a presumption that an individual is eligible to receive a pistol permit unless their background trips a statutory exclusion². The final authority to issue or deny pistol permit applications is held by the "licensing officer."³ This section will not address renewals or appeals of denied applications, since both procedures are designated to the State Police and the Courts and are thus clearly out of the hands of county officials.

A. Application

¹ NY Penal Law § 400.00(2). Following the *Bruen* decision, New York's century old "may issue" concealed carry law was struck down as unconstitutional. The only permissible statutory structure remaining is known as "shall issue", which removes any degree of governmental discretion from the process.

² NY Penal Law § 400.00(1)(a)-(n). Constitutional exclusions include people under 21, convicted felons, fugitives, addicted persons, unlawful immigrants, dishonorably discharged ex-military members, those subject to involuntary civil commitment or mental health supervision, those under license suspension or revocation, subject to guardianship, or has not completed the requisite training requirements.

³ "Licensing Officer" is defined as, "in the city of New York the police commissioner of that city; in the county of Nassau the commissioner of police of that county; in the county of Suffolk the sheriff of that county except in the towns of Babylon, Brookhaven, Huntington, Islip and Smithtown, the commissioner of police of that county; for the purposes of § 400.01 of this chapter the superintendent of state police; and *elsewhere in the state a judge or justice of a court of record having his office in the county of issuance.*" NY Penal Law § 265.00(10).

Applications for pistol permits are to be made to the “licensing officer” of the jurisdiction where the applicant lives, or, in the circumstance where the applicant is seeking employment-based justification, where the employer is principally located⁴. Applications can include any manner of required fields, provided that all inquiries are constitutional. The baseline form requires the applicant’s name, address, occupation, date of birth, citizenship status and a statement of eligibility. The application form may vary from county to county, but all forms need to be approved by the Superintendent of the State Police⁵. Applicants need to provide duplicate two-by-two photographs that have been taken within thirty days of application⁶.

There is no explicit role for the County Clerk in the application, or at any other point of the pistol permit process. The statute holds that “no license shall be issued . . . except by the licensing officer, and then only after investigation and finding that all statements in a proper application for a license are true.”⁷ This issue has been litigated before. In the late 1980s, the Rensselaer County Sheriff sued the County Clerk in order to compel the latter to turn over all documents relating to pistol permits⁸. The Court held that the Sheriff had no statutory right to exercise an exclusive monopoly on all things pistol permit⁹. Moreover, that case specified that the issuance of pistol permits was a “function of the court” and that the licensing officer has inherent authority “to determine the clerical requirements necessary to assist in the determination to approve or deny the application”¹⁰. Apparently, the position of pistol permit clerk was couched within the County Court Judge, until such position was eliminated by the Office of Court Administration. Once that happened, counties began taking responsibility for funding the position, and the Clerk was often identified as the county-level agency best situated to accept applications based on considerations of “public convenience, efficiency, and accessibility.”¹¹ Courts have often allowed jurisdictions to get creative in order to respond to demand¹². Ultimately, it is the licensing officer who has the authority and responsibility to establish clerical procedure¹³.

Money charged and received by the County under the statute fall into two buckets: expenses and fees. “The expense of providing a licensing officer with blank applications, licenses, and record books for carrying out the provisions of this section shall be a charge against the county, . . .”¹⁴ Certain fees can also be collected by the licensing officer of the county and shall be paid “into the county treasury.”¹⁵ The fee schedule is codified at \$3-\$10 per carry license, \$3 per amendment, \$5 per inter-county transfer, and \$5 per duplicate¹⁶. Some downstate municipalities are permitted to charge more, and that distinction has been challenged and upheld by the federal courts¹⁷.

⁴ NY Penal Law § 400.00(3)(a).

⁵ *Id.*; Op. Atty. Gen. 120-1937.

⁶ *Id.* Many jurisdictions offer a photograph service at the point of application to reduce the instance of photo expiration.

⁷ NY Penal Law § 400.00(1).

⁸ *McGreevy v. Casale*, 147 Misc.2d 534, 535 (1990).

⁹ *Id.* at 537.

¹⁰ *Id.* at 536. The licensing officer would not be able to prescribe clerical rules and regulations that violate state law.

¹¹ *Id.* at 537.

¹² See *Federation of New York State Rifle and Pistol Clubs, Inc. v. McGuire*, 101 Misc.2d 104 (1979) (Upholding the decision of a police commissioner to accept applications by appointment rather than open access).

¹³ This can be a convoluted task for a County Court Judge, given that NY Penal Law § 400.30 permits local governments to adopt local laws, ordinances, rules, and regulations which apply more stringent requirements on applicants.

¹⁴ NY Penal Law § 400.00(13).

¹⁵ 3. Op. State. Compt. 152, 1947; NY Penal Law § 400.00(14).

¹⁶ NY Penal Law § 400.00(14).

¹⁷ *Kwong v. Bloomberg*, 723 F.3d 160 (2d Cir. 2013).

At first glance, this provision is similar to the mortgage tax analogue permitting the Clerk to recoup expenses. Opinions from the Attorney General suggest that the County must eat the expense portion of pistol permit processing. The distinction between the pistol permit provision and the mortgage tax provision is not counterintuitive. In the mortgage tax process, the County Clerk has a statutory role and is collecting money on behalf of the state; thus, the Clerk is entitled to the expenses it incurs in doing so. The County Clerk has no such role in the pistol permit process. The purpose of § 400.00(13) is best interpreted as a declaration by the State Legislature that the pistol permit application process is a county process, and that counties are both responsible for the expenses incurred and entitled to fees generated¹⁸. That being said, fee provisions have been interpreted strictly. The Attorney General admonished a village that charged additional fees to applicants, holding that the statutory schedule preempted local laws and policies¹⁹. Even where multiple changes are made to an applicant's license, the Attorney General specified that the entire transaction constitutes one amendment, not each individual change²⁰. The only expense which can be charged back to the state is "the cost of software, programming and interface required to transmit any record that must be electronically transmitted by the dealer or licensing officer to the division of state police."²¹

B. Investigation

"Before a license is issued or renewed, there shall be an investigation of all statements required in the application by the duly constituted police authorities of the locality where such application is made."²² Investigators are required to draw on two distinct sources of information: (1) information maintained by the State Police or New York State Division of Criminal Justice Services (DCJS); and (2) the Office of Mental Health (OMH)²³. The language of the statute clearly indicates that the background checks should be completed by law enforcement, providing that records "shall be available for inspection by the investigating officer of the police authority."²⁴

The investigation process begins with fingerprinting, which should be conducted by "the investigating officer."²⁵ Fingerprinting is non-negotiable, and the Courts, in one instance, upheld the denial of a permit where the applicant did not have fingerprints to submit due to a genetic condition²⁶. Historically, and according to statute, fingerprints were supposed to be taken in "quadruplicate" and distributed among DCJS, the State Police, the FBI for input into CODIS, and for local law enforcement reserve. Today, given that fingerprinting is done electronically, the specifics of this portion of the statute have been rendered obsolete and use of the electronic system instead of cards "eight inches square" have not been challenged in court. Once fingerprints are input into the system, DCJS is required to send information to the investigating officer "without unnecessary delay."²⁷ State and local authorities cannot compel the FBI to return information timely (or at all) and may proceed in abstentia if they don't hear back²⁸.

¹⁸ This was a necessary clarification since the licensing officer, typically being a judge, has financial ties to the state and the county. Such ambiguity is fertile ground for confusion and mistake.

¹⁹ Op. Atty. Gen. (Inf.) 87-45.

²⁰ Op. Atty. Gen. 2005-7.

²¹ NY Penal Law § 400.00(16-b).

²² NY Penal Law § 400.00(4).

²³ *Id.* See also NY Penal Law § 400.02.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Parker v. Nastasi*, 97 A.D.2d 547 (2d Dep't 1983).

²⁷ NY Penal Law § 400.00(4).

²⁸ Op. Atty. Gen. 115-1970.

Mental health records follow a similar, potentially more involved process depending on where the applicant is officially domiciled. To obtain mental health records, the "investigating officer of the police authority" is obligated to solicit any records under the applicant's name from "the appropriate office of the department of mental hygiene concerning previous or present mental illness."²⁹ When the applicant "is domiciled in a foreign state, the investigation shall include inquiry of the foreign state for records concerning the previous or present mental illness of the applicant, and, to the extent necessary for inspection by the investigating officer, the applicant shall execute a waiver of confidentiality of such record in such form as may be required by the foreign state."³⁰ This portion of the statute makes abundantly clear that (1) a thorough search of mental health records is non-negotiable; (2) confidentiality laws both in New York and a secondary state, if applicable, are to be strictly adhered to; and (3) the records may only be sought and reviewed by designated members of law enforcement.

Fingerprints are not supposed to be accessed by just anyone. "No such fingerprints may be inspected by any person other than a peace officer, who is acting pursuant to his or her special duties, or a police officer, except on order of a judge or justice of a court of record either upon notice to the licensee or without notice, as the judge or justice may deem appropriate."³¹ DCJS does not have the authority, in and of itself, to delegate the collection of criminal background check information to non-law enforcement employees.

It does not appear as though counties are forbidden from farming out the work of calling references and verifying statements out to the cities and towns, but there is no requirement that they do so. "Upon completion of the investigation, the police authority shall report the results to the licensing officer without further delay."³²

C. Filing

Once the application is approved by the licensing officer, the County Clerk's only statutory role is triggered. Licenses "shall be filed by the licensing officer with the clerk of the county of issuance."³³ The form a license takes is approved by the Superintendent of State Police, and must include the licensee's photograph, the specifications of weapons registered to the licensee, and premises indicators³⁴. While technically, "the name and address of any person to whom an application for any license has been granted shall be public record," the practical reality is different³⁵. Anyone applying for, renewing, or having already received a pistol permit can file a statement opting out of the public record database created pursuant to § 400.02³⁶. This exemption can be sought at any time and, in practice, can be granted for any reason³⁷. So long as the signor doesn't make a statement that is demonstrably false, the exemption will be granted³⁸.

²⁹ NY Penal Law § 400.00(4)

³⁰ *Id.* It should be noted that there is a difference between "residence" and "domicile". The latter is considered an individual's primary "home", while the former includes part-time and seasonal properties. NYS only requires an applicant to prove residency. *Osterweil v. Bartlett*, 21 N.Y.3d 580 (2013).

³¹ *Id.*

³² *Id.*

³³ NY Penal Law § 400.00(5)(a).

³⁴ NY Penal Law § 400.00(7).

³⁵ See *Id.*

³⁶ NY Penal Law § 400.00(5)(b).

³⁷ See NY Penal Law §§ 400.00(5)(b)(i)-(iii), (e)(ii).

³⁸ NY Penal Law §§ 400.00(5)(c), (e).

Once granted, the County Clerk is responsible for keeping these forms “separate and apart from all other records” in a confidential location³⁹. This is the extent of the documents retained by the Clerk.

In addition to the routine filing of approved licenses and the segregated maintenance of exemption forms, the County Clerk only has one additional responsibility. When an applicant moves from one county to another, the county clerk, upon request of the licensee, transfers the record from to the pistol permit clerk of the county to which the licensee moved, as well as the state police⁴⁰. This information is not the robust background check and mental health information that goes into the investigatory portion of the application process. The information to be transferred is limited to the license itself, the licensee’s name, birthdate, address, gender, race, social security number, and basic details describing the firearms owned by the licensee⁴¹.

D. Amendment & Recertification

Any time a person acquiesces or disposes of a firearm, that person needs to file for an amendment to their license which reflects the change⁴². Per statute, the request for amendment is made to the licensing officer, who then files the amendment in the “executive department, division of state police, Albany.”⁴³ A similar application must be made when the individual moves. Ironically, application to amend a license based on a change of address must be completed within ten days, while an addition or subtraction of specific firearms possessed has no timeframe.

Recertification is more complex, particularly because the rules have differed depending on where the individual lives⁴⁴. To further complicate matters, the statute adds the Division of State Police into the mix for the purposes of recertification⁴⁵. Based on the language, the most reasonable interpretation of the law would require the individual to apply to the licensing officer for amendment and recertification⁴⁶. It would then fall to the licensing officer to file the information with the Division of State Police for recertification⁴⁷. General recertifications for pistol permit and semi-automatic rifle possession are required every five years, while concealed carry permits are required every three⁴⁸.

III. County Procedures

Based on the information already collected during the walk-through, Erie County’s pistol permit system deviates substantially from the statutory scheme and the norms practiced by surrounding counties. While the Erie County Clerk may serve a limited clerical role in the process, the current practices of the Erie County Clerk’s Office constitute an egregious breach of privacy laws and open the County up to substantial liability. If the concerns based on this preliminary information are not alleviated during the course of the

³⁹ NY Penal Law § 400.00(5)(d). This responsibility was taken incredibly seriously. In 2016, Monroe County kept these records in a locked sub-basement and made it abundantly clear that any disclosure would be met with dire consequences.

⁴⁰ NY Penal Law § 400.00(5)(a); Op.Atty.Gen. Jan. 3. 1978.

⁴¹ *Id.* The statute also makes clear that database documents can only be released pursuant to a court order and cannot be FOILed. Exemption forms are similarly treated.

⁴² NY Penal Law § 400.00(9).

⁴³ *Id.*

⁴⁴ See NY Penal Law § 400.00(10)(a).

⁴⁵ NY Penal Law § 400.00(10)(b).

⁴⁶ See NY Penal Law § 400.00(10).

⁴⁷ NY Penal Law § 400.00(10)(b).

⁴⁸ NY Penal Law §§ 400.00(10)(b), (c), (d).

audit, immediate measures will need to be taken to restructure the process and bring the County into compliance. Any meaningful changes will require consultation and buy in from the Clerk's Office, the Sheriff's Department, and eventually the County Attorney.

A. Clerk's Role in Accepting Applications

There is nothing inherently wrong with the County Clerk serving as a repository for accepting pistol permit applications⁴⁹. In Western New York Counties, approximately half assign intake duties to the Clerk while the other half silos the process in the Sheriff's Office. How each office proceeds with applications can vary dramatically, only some of whom maintain strict compliance with the statute. Based on a review of the legal authority and assessment of practices elsewhere in Western New York, the Erie County process is the least efficient and carries the greatest potential for improper disclosure of confidential information in the region.

At minimum, in Counties where the Clerk has some involvement in the pistol permit process, the Clerk's Office performs an intake function⁵⁰. Some offices, such as Genesee and Niagara require pistol permit clerks to become and remain certified through the E-Justice portal, which they say allows clerical staff to access DCJS and OMH information for the purpose of compiling a dossier of required information and scan the file to law enforcement. Each office assured me that Clerk's Office staff were not making any substantive decisions based on the information included in the report. Genesee County provided further detail into the OMH report, specifying that the only records that appear when such a report is run are civil commitments – private treatment information is not available. Other offices, such as Monroe County do nothing more than receive the application and collect the fees. After this true intake stage, the Clerk's Office sends the file to the Monroe County Sheriff or Rochester Police Department depending on the address of the applicant and does not see the file again until a license has been granted. Regardless of the level of involvement, one common thread was the explicit limitation of individuals who had access to confidential information. Each County I spoke two reported that no more than three individuals had access to DCJS and OMH information – in most cases, no one person had access to both databases. This stands in stark contrast to the information gathered from the Erie County Clerk, who appears to have given access to the entire department and even recruited temporary staff from elsewhere in the County to meet backlog.

It does not help matters that the Erie County Clerk's intake process requires staff to scan applications into three separate systems. The application is entered into the New Vision system for the purpose of collecting the associated fees, then it's entered into Gun Keeper for tracking purposes that staff did not articulate. Finally, the application is given a tracking number and code in the BatchScan system, which allows applicants to track the progress of the application. It is not entirely clear how the application materials are transferred to law enforcement for the investigation portion of the process. However, unlike all other counties, no fewer than twenty local police departments conduct investigations in connection with pistol permit licensure. While not necessarily unlawful, the Erie County process is accurately described as "too many cooks," and likely contributes to the disorganization which characterizes the current process.

The Monroe County Clerk's process strikes the best balance between common-sense efficiency and protecting confidential information. It makes sense for the County Clerk to handle intake. The Clerk must file approved applications and is specifically tasked with maintaining opt-out forms. Receiving the initial application adds organizational value for the Office and is a convenient location for members of the public

⁴⁹ See *McGreevy v. Casale*, 147 Misc.2d 534, 535 (1990).

⁵⁰ Counties using Clerks include Monroe, Niagara, Genesee, and Wyoming.

to submit applications. However, after intake, the Monroe County Clerk doesn't see the file again until the licensing officer has acted on it and has no access to the confidential information required to execute the background check. This arrangement properly segregates the duties of several county-level entities and simplifies the chain of custody in handling applications. Speaking solely to the functions of the Erie County Clerk's Office, adhering to the Monroe County model would have permitted the Office to avoid the daunting issues that it continues to face.

B. Fingerprints

Fingerprinting is another area where variations between jurisdictions abound, particularly as applied to the location applicants are sent and timing. A few counties direct applicants to a third party, which must be certified by the Federal Government, to complete the fingerprinting requirement⁵¹. Most counties take fingerprints in house at the Sheriff's Office⁵². Fingerprints serve a critical step in the process because the card is what triggers the background check and facilitates the collection of required information; I have heard this referred to as a "TLO Report".

Jurisdictions who send applicants to the Sheriff for fingerprinting all appear to comply with applicable law, while jurisdictions who obtain fingerprints through a third party typically do not. The fault appears to fall primarily on DCJS, which, according to statute, is supposed to compile information triggered by the background check and remit that information to the relevant law enforcement officer for investigation. In every jurisdiction, DCJS is not doing their statutory duty. However, in jurisdictions where the Sheriff takes an applicant's fingerprints, no Clerk's Office employees are accessing confidential information. This is acceptable because DCJS may delegate the collection aspect to Sheriffs' Offices, while it may not grant Clerks' Offices with the same access.

Timing is another component to consider. The Counties of Erie and Niagara require applicants to get fingerprinted prior to submitting an application. Niagara County articulated a compelling rationale for this departure. Because the Clerk's Office serves as an intake portal, the pistol permit department must keep all applications on file in the office. Apparently, there is a not-insignificant number of individuals who submit an application and never follow through on the fingerprinting component. This leaves the Clerk's Office with a pile of applications in purgatory. Requiring fingerprinting prior to submitting the application solves this problem. This isn't to say that pre-fingerprinting is necessarily the best option.

According to the instructions provided by the Erie County Clerk, applicants must be fingerprinted no more than 30 days prior to submission. An obvious rationale for this requirement is lacking and no legal authority is cited. During the walk-through, a cashier indicated that fingerprint receipts expire after six months and that the Erie County Clerk had been granted a six-month extension ostensibly to avoid expiration. The cashier also noted that Clerk Kearns issued a letter sometime in 2022 advising applicants that their fingerprint cards had "expired". The background information provided by the cashier was incomplete, but the letter allegedly resulted in the Clerk "waiving" certain fees, which he is not permitted to do.

The best policy – that is, the most efficient and effective method of processing applications while minimizing misuse or mishandling of confidential information – is to send applicants to the Sheriff's Office prior to submitting the application at the Clerk's Office. This order of operations avoids the issue of application

⁵¹ Erie and Genesee both specifically identified Identigo as their exclusive channel.

⁵² Monroe, Cattaraugus, and Chautauqua each confirmed this practice.

limbo and negates any real or perceived necessity on the part of the Clerk's Office to access DCJS and OMH records. The Clerk should provide rationale or support to justify the 30-day policy.

C. Background Check Agreement

The First Deputy County Clerk provided the Department of Audit with a "Use & Dissemination Agreement" (UDA) entered into in late 2019 between the Erie County Clerk's Office and the New York State Division of Criminal Justice Services⁵³. The UDA purports to authorize employees of the Erie County Clerk's Office to access information based on the submission of non-criminal fingerprint cards⁵⁴. No other County that I spoke to reported knowledge of any type of agreement that their County had with DCJS⁵⁵. This contract is fundamentally flawed on a number of levels and represents a major breach of privacy with the potential to open the County to considerable liability.

First and foremost, the statutory authority used to justify the delegation of background check obligations to County Clerk staff does not support that proposition. As a general rule, designated law enforcement officers are the only individuals permitted to access confidential information of this nature pursuant to their statutory responsibility to investigate "all statements required in the application⁵⁶". Without an explicit legislative carveout, DCJS can't delegate to non-law enforcement employees, including staff in the Clerk's Office.

The UDA invokes four sources of statutory and regulatory authority to justify the delegation. The first is a provision which allows DJCS to establish electronic systems for information-sharing efforts related to criminal justice data and activities between DJCS and "qualified agencies.⁵⁷" However, the term "qualified agencies" is defined with an enumerated list upon which County Clerk employees are not included.⁵⁸ A second provision relates to the ability of DCJS to charge fees for using the database and responding to inquiries; it does not mention delegation or use by other entities⁵⁹. The third statute describes the investigation portion of the pistol permit process. The UDA purports this statute to authorize the County Clerk's staff to conduct background searches and access information for licensing purposes⁶⁰. However, the statute confers no such authority, and uses the term "police authority" no fewer than five times in describing the actions of the individual accessing the background check information⁶¹. The final provision is a regulation which requires DCJS to "safeguard the security and privacy of criminal history record information" subject to certain exceptions⁶². The UDA invokes a subsection of that regulation to justify granting County Clerk staff access to non-criminal fingerprint submissions for the purpose of vetting

⁵³ See *Use & Dissemination Agreement between New York State Division of Criminal Justice Services and Erie County Clerk's Office – Pistol Permit Department*, dated November 1, 2019.

⁵⁴ See *Use & Dissemination Agreement*, Appx. A.

⁵⁵ Speaking with Niagara County, the pistol clerk was unaware of a similar UDA, but acknowledged training through the E-Justice NY portal prior to authorization being granted.

⁵⁶ NY Penal Law § 400.00(4). The term "duly constituted police authorit[y]" is singled out, excluding the possibility that such actions could be taken by the Clerk.

⁵⁷ NY Executive Law § 837(6).

⁵⁸ NY Executive Law § 835(9). The list includes courts, judicial administration, probation, sheriff and district attorney offices, state and local departments of corrections, the NY Department of Financial Services, the Office of Professional Medical Conduct, local CPS and DSS agencies while conducting a relevant investigation, the Medicaid Inspector General, local police departments, and a handful of forensics labs.

⁵⁹ NY Executive Law § 837(8-a).

⁶⁰ *Use & Dissemination Agreement*, Appendix A.

⁶¹ NY Penal Law § 400.00(4).

⁶² 9 NYCRR 6051.1(a).

employees who will be authorized to access the system themselves⁶³. Yet, the language permits disclosures “in connection with applications of persons who are required to access DCJS or FBI criminal justice information systems or data; engaged in the process of capturing fingerprints for submissions to DCJS or the FBI for criminal history background checks; or responsible for reviewing the results of such fingerprint-based background checks.”⁶⁴ This regulation only applies to individuals who are themselves permitted to access the information. Pursuant to the licensing statute, it is law enforcement, not the Clerk’s Office, who is “required” to access background check information. Without a pre-existing requirement, DCJS cannot sanction access to confidential information. In executing the UDA, DCJS impermissibly exceeded their legal authority.

Improper reliance on selected provisions of law notwithstanding, the UDA suffers from several other defects. For one, the Clerk’s Office is prohibited from engaging in any “secondary dissemination” except as “specifically authorized by law.”⁶⁵ Presumptively, the UDA considers transfer to law enforcement or the licensing officer to be an authorized transmittal. But, since the statute does not contemplate County Clerk staff initiating a transfer, that specific authorization is lacking, and potentially confines information required to process the application in the possession of a ministerial actor who lacks authority to proceed on it. Another issue is that the Clerk’s Office agreed to indemnify DCJS for any litigation arising from misuse of the information DCJS grants access to⁶⁶. Effectively, DCJS, who should have known that it didn’t have the authority to enter into the UDA, has extracted a binding guarantee to make the agency whole should any litigation arise that can be traced back to information accessed under the UDA. It’s unclear whether the indemnification provision would hold up in court, but it would make any potential legal defense significantly more difficult for the County. Finally, the individual who signed the UDA on behalf of the Clerk’s Office may not have had the authority to do so. The County’s signatory to the UDA is Thomas E. Smith, Jr., who lists his title as “Supervisor of Data Processing.”⁶⁷ According to the Department of Personnel, Mr. Smith occupies a civil service position. Typically, such staff are not permitted to bind the County without some sort of explicit authorization from management, and the Pistol Permit Department is not structured as to operate independently from the Clerk’s Office. Because Mr. Smith’s signature is the only signature on the UDA, it raises questions as to whether the administration was aware of and approved the agreement. Challenging the validity of the agreement on this basis raises thorny questions of apparent authority and would not be a quick and easy escape from the obligations under the UDA.

Defects aside, a change in the law has rendered the arrangement between DCJS and the Clerk’s Office counterintuitive. As of April 1, 2023, when pistol permits are denied, the applicant must appeal to a board comprised of DCJS and the Superintendent of State Police within 90 days of denial⁶⁸. DCJS is unlikely to find a way to delegate this function as well, and it makes little sense to permit non-law enforcement employees to access confidential information when DCJS may well have to act on it anyway.

D. Mental Health Records

⁶³ *Use & Dissemination Agreement*, Appendix A.

⁶⁴ 9 NYCRR 6051.1(a)(3).

⁶⁵ *Use & Dissemination Agreement* at 3.

⁶⁶ *Use & Dissemination Agreement* at 4.

⁶⁷ *Use & Dissemination Agreement* at 5.

⁶⁸ NY Penal Law § 400.00(4-a).

Erie County is one of three counties where Clerk's Office staff had access to OMH records⁶⁹. However, the Erie County Clerk is the only one of those three who could not articulate a protocol for accessing said records and had not explicit controls in place to ensure that non-designated staff were unable to access OMH records. To remain in compliance with the statute, no County Clerk staff should ever have access to OMH records. Yet, the manner in which the Erie County Clerk's Office accessed the OMH system and handled records represents an egregious breach of applicant's confidentiality and opens Erie County to enormous legal risk.

First and foremost, the Erie County Clerk should never have had access to the OMH system. No employee in the Clerk's Office was ever given permission to access the OMH system; even if such permission had been granted, OMH does not have the legal authority to delegate responsibilities to Clerk's Office staff or grant access to OMH records⁷⁰. In an email between a Clerk's Office Administrator and a Comptroller's Office Auditor, the former informed the latter that the Clerk's Office had "no formal agreement to access mental health records," and that the "Sheriff's Office set [the Clerk's Office] up with usernames."⁷¹ The justification for the aforementioned transaction is currently unknown and carries no legal significance for present purposes. The mere fact that the Sheriff's Office – who is statutorily permitted to review OMH records – shared its access with the Clerk's Office constitutes a per se breach of the statute and immediately placed millions of HIPAA-protected documents at immediate risk of unlawful disclosure.

This grievous lapse of judgment was further compounded by the lack of oversight and structure within the Clerk's Office. When requested by auditors, the Clerk's Office could not identify specific individuals who had access to OMH records, had no cybersecurity protocols designed to ensure confidentiality, and failed to produce any documentation resembling a document destruction policy. Ultimately, from the moment the Erie County Clerk had access to the OMH system, it was in violation of HIPAA and § 400 of the NY Penal Law. There is no way for the Erie County Clerk's Office to access, handle, or maintain confidential mental health records without violating State and Federal law. All account access to the OMH system should be immediately returned to the Sheriff's Office and the Clerk's Office should promulgate formal document destruction policies in the event that such information is inadvertently sent.

E. Fees

Inexplicably, the County Clerk appears to have taken it upon himself to set the fee schedule. State law preempts the field in the regulation of firearms licensing, and local governments do not have authority to impose rules and standards – including fees – beyond what is specifically permitted by state law⁷². Certain fees found on the website are acceptable. For example, the \$10 application photo fee is acceptable because a photograph is required by law and the Clerk is providing a service of convenience⁷³. Most charges are not.

Most prominently, the Clerk is currently overcharging for the initial application. The statute sets the cost of an application on a range between \$3 and \$10⁷⁴. In 2006, the Erie County Legislature passed a resolution

⁶⁹ Niagara and Genesee were the other two.

⁷⁰ See NY Penal Law § 400.00(4). The specific dollar amount within that range is set by each county legislature.

⁷¹ The transaction described occurred prior to January 1, 2022, while Timothy Howard served as Erie County Sheriff.

⁷² 1987 N.Y. Op. Atty. Gen. (Inf.) 107 (N.Y.A.G.), 1987 WL 273435.

⁷³ So long as amendments are being charged collectively, the \$3 "paper" fee charged by the Clerk is acceptable, while the \$5 "plastic" fee is not.

⁷⁴ NY Penal Law § 400.00(14).

setting certain fees associated with pistol permits⁷⁵. The declared purpose was to update and digitize the photographic process and incorporate such charges into the cost of applications, replacements, and renewals⁷⁶. The cost of an application per the Clerk's fee schedule is identical to the amount set by the Legislature in the 2006 resolution. However, the Clerk imposes an additional itemized charge for photographic services, raising the cost of an application with a photograph to \$30. This is inconsistent with the statute and with the intent of the Legislature per the resolution. The former clearly limits the amount that a county may charge an applicant to \$10⁷⁷. The latter breaks out the components of the \$20 fee, indicating that \$10 pays for the application and \$10 pays for the photograph⁷⁸. Effectively, the Clerk is double charging for photographs. The least disruptive change that the Clerk could make to bring its practice into legal compliance would be to eliminate the photograph charge, maintain the \$20 fee for applications and require applicants to have their picture taken upon delivery.

Another confounding fee involves changes from paper permits to plastic cards. Part of the legislative intent behind the 2006 resolution endeavored to enhance the quality of the licenses themselves from the paper permit to the more durable plastic card⁷⁹. To the Clerk's credit, the fee for a paper to plastic upgrade appears to have been removed from the fee schedule, ostensibly to preface the end of paper permit issuance. However, the \$18 "Duplicate Permit" fee surpasses even the unlawfully high amount determined by the Legislature, and the \$2 plastic fee is statutorily impermissible. Per statute, counties may not charge more than \$5 for duplicates, which include replacements and reissues⁸⁰. Some blame can reasonably be assigned to the County Legislature. The 2006 resolution labels a number of fees as "digitized image capture," but uses the term inconsistently throughout the document⁸¹. In some instances, the term appears to refer to the digitized scan of paperwork submitted to the Clerk, while in other instances, the term would most naturally refer to a photograph taken of the applicant. There is no statutory authority that would permit the Legislature to authorize the collection of a fee for standard filing in this area.

The Clerk's inter-county transfer fee exceeds the statutory amount by \$3, and no information has been provided that would indicate how the amount was determined. An issue that recurs with greater frequency is the Clerk's amendment practice. The statute permits counties to assess a \$3 fee "for each amendment" to an applicant's license⁸². The Clerk has interpreted this provision to mean that each individual change to be made to the applicant's license incurs a \$3 charge. For example, if an applicant were to file an in-county change of address, remove two weapons from his or her license, and add two different weapons, the Clerk would charge \$15 instead of \$3. This has been determined to be an incorrect reading of the statute⁸³. The statute permits "a person licensed to carry or possess a pistol or revolver [to] apply . . . for amendment of his license to include one or more such weapons or to cancel weapons held under license.⁸⁴" This language was interpreted to equate "amendment" with "transaction" rather than "alteration". Thus, the Erie County Clerk should only be charging \$3 per transaction, no matter how many changes are requested.

⁷⁵ See Minutes of the Erie County Legislature Meeting No. 8 at 390-391 (April 27, 2006).

⁷⁶ *Id.*

⁷⁷ NY Penal Law § 400.00(14).

⁷⁸ See Minutes of the Erie County Legislature Meeting No. 8 at 390 (April 27, 2006).

⁷⁹ *Id.* at 389.

⁸⁰ NY Penal Law § 400.00(14).

⁸¹ See Minutes of the Erie County Legislature Meeting No. 8 at 390 (April 27, 2006).

⁸² NY Penal Law § 400.00(14).

⁸³ See 2005 N.Y. Op. Atty. Gen. No. 7 (N.Y.A.G.), 2005 WL 516519.

⁸⁴ NY Penal Law § 400.00(9).

This statute takes the form of an unfunded mandate. The statute provides that “the expense of providing a licensing officer with blank applications, licenses, and record books for carrying out the provisions of this section shall be a charge against the county.⁸⁵” Because the state has preempted the field in this area, the Clerk is prohibited from externalizing the cost of the pistol permit operations he has undertaken. This may not be the state of affairs that the Clerk would prefer, but the hands of the Office are tied. The Clerk has the option to make requests of the County Legislature to transfer non-required responsibilities to the Sheriff’s Office or to take other cost-minimizing measures.

Most counties in Western New York charge improper fees for one type of transaction or another, but no other county charges impermissible fees across the board the way that Erie County does⁸⁶. The Clerk should immediately revise the fee schedule to bring the Office’s practices and procedures into line with state law.

IV. Conclusion

This is the first major audit of the Erie County Clerk’s Office in over a decade. It is not necessarily surprising that the current system is riddled with issues and fails to adhere to even the most basic statutory parameters. Now that those rules are in flux, it is increasingly critical that proper procedures are put in place so that the Clerk’s Office and other government entities who have a role in the licensing process are prepared to meet the legal requirements while minimizing disruption and backlog.

⁸⁵ NY Penal Law § 400.00(13).

⁸⁶ Niagara appears to be the only county who fully adheres to the statutory schedule. Monroe charges \$129 to apply, but the MCSO does fingerprints, making it possible that the cost includes the fingerprinting and background check.

Exhibit

H





KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Validity Called into Doubt by *Antonyuk v. Hochul*, N.D.N.Y., Nov. 07, 2022



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

McKinney's Consolidated Laws of New York Annotated

Penal Law (Refs & Annos)

Chapter 40. Of the Consolidated Laws (Refs & Annos)

Part Four. Administrative Provisions

Title W. Provisions Relating to Firearms, Fireworks, Pornography Equipment and Vehicles Used in the Transportation of Gambling Records

Article 400. Licensing and Other Provisions Relating to Firearms (Refs & Annos)

McKinney's Penal Law § 400.00

§ 400.00 Licensing and other provisions relating to firearms

Effective: April 1, 2023

Currentness

1. Eligibility. No license shall be issued or renewed pursuant to this section except by the licensing officer, and then only after investigation and finding that all statements in a proper application for a license are true. No license shall be issued or renewed except for an applicant (a) twenty-one years of age or older, provided, however, that where such applicant has been honorably discharged from the United States army, navy, marine corps, air force or coast guard, or the national guard of the state of New York, no such age restriction shall apply; (b) of good moral character, which, for the purposes of this article, shall mean having the essential character, temperament and judgement necessary to be entrusted with a weapon and to use it only in a manner that does not endanger oneself or others; (c) who has not been convicted anywhere of a felony or a serious offense or who is not the subject of an outstanding warrant of arrest issued upon the alleged commission of a felony or serious offense; (d) who is not a fugitive from justice; (e) who is not an unlawful user of or addicted to any controlled substance as defined in section 21 U.S.C. 802; (f) who being a noncitizen (i) is not illegally or unlawfully in the United States or (ii) has not been admitted to the United States under a nonimmigrant visa subject to the exception in 18 U.S.C. 922(y)(2); (g) who has not been discharged from the Armed Forces under dishonorable conditions; (h) who, having been a citizen of the United States, has not renounced his or her citizenship; (i) who has stated whether he or she has ever suffered any mental illness; (j) who has not been involuntarily committed to a facility under the jurisdiction of an office of the department of mental hygiene pursuant to article nine or fifteen of the mental hygiene law, article seven hundred thirty or section 330.20 of the criminal procedure law or substantially similar laws of any other state, section four hundred two or five hundred eight of the correction law, section 322.2 or 353.4 of the family court act, has not been civilly confined in a secure treatment facility pursuant to article ten of the mental hygiene law, or has not been the subject of a report made pursuant to section 9.46 of the mental hygiene law; (k) who has not had a license revoked or who is not under a suspension or ineligibility order issued pursuant to the provisions of section 530.14 of the criminal procedure law or section eight hundred forty-two-a of the family court act; (l) in the county of Westchester, who has successfully completed a firearms safety course and test as evidenced by a certificate of completion issued in his or her name and endorsed and affirmed under the penalties of perjury by a duly authorized instructor, except that: (i) persons who are honorably discharged from the United States army, navy, marine corps or coast guard, or of the national guard of the state of New York, and produce evidence of official qualification in firearms during the term of service are not required to have completed those hours of a firearms safety course pertaining to the safe use, carrying, possession, maintenance and storage of a firearm; (ii) persons who were licensed to possess a pistol or revolver prior to the effective date of this paragraph are not required to have completed a firearms safety course and test, provided, however, persons with a license issued under paragraph (f) of

subdivision two of this section prior to the effective date of the laws of two thousand twenty-two which amended this paragraph shall be required to complete the training required by subdivision nineteen of this section prior to the recertification of such license; and (iii) persons applying for a license under paragraph (f) of subdivision two of this section on or after the effective date of the chapter of the laws of two thousand twenty-two which amended this paragraph who shall be required to complete the training required under subdivision nineteen of this section for such license; (m) who has not had a guardian appointed for him or her pursuant to any provision of state law, based on a determination that as a result of marked subnormal intelligence, mental illness, incompetency, incapacity, condition or disease, he or she lacks the mental capacity to contract or manage his or her own affairs; (n) for a license issued under paragraph (f) of subdivision two of this section, that the applicant has not been convicted within five years of the date of the application of any of the following: (i) assault in the third degree, as defined in section 120.00 of this chapter; (ii) misdemeanor driving while intoxicated, as defined in section eleven hundred ninety-two of the vehicle and traffic law; or (iii) menacing, as defined in section 120.15 of this chapter; and (o) for a license issued under paragraph (f) of subdivision two of this section, the applicant shall meet in person with the licensing officer for an interview and shall, in addition to any other information or forms required by the license application submit to the licensing officer the following information: (i) names and contact information for the applicant's current spouse, or domestic partner, any other adults residing in the applicant's home, including any adult children of the applicant, and whether or not there are minors residing, full time or part time, in the applicant's home; (ii) names and contact information of no less than four character references who can attest to the applicant's good moral character and that such applicant has not engaged in any acts, or made any statements that suggest they are likely to engage in conduct that would result in harm to themselves or others; (iii) certification of completion of the training required in subdivision nineteen of this section; (iv) a list of former and current social media accounts of the applicant from the past three years to confirm the information regarding the applicants character and conduct as required in subparagraph (ii) of this paragraph; and (v) such other information required by the licensing officer that is reasonably necessary and related to the review of the licensing application.

1-a. No person shall engage in the business of gunsmith or dealer in firearms unless licensed pursuant to this section. An applicant to engage in such business shall also be a citizen of the United States, more than twenty-one years of age and shall be required to maintain a place of business in the city or county where the license is issued. For such business, if the applicant is a firm or partnership, each member thereof shall comply with all of the requirements set forth in this subdivision and if the applicant is a corporation, each officer thereof shall so comply.

1-b. For purposes of subdivision one of this section, serious offense shall include an offense in any jurisdiction or the former penal law that includes all of the essential elements of a serious offense as defined by subdivision seventeen of section 265.00 of this chapter. Nothing in this subdivision shall preclude the denial of a license based on the commission of, arrest for or conviction of an offense in any other jurisdiction which does not include all of the essential elements of a serious offense.

2. Types of licenses. A license for gunsmith or dealer in firearms shall be issued to engage in such business. A license for a semiautomatic rifle, other than an assault weapon or disguised gun, shall be issued to purchase or take possession of such a semiautomatic rifle when such transfer of ownership occurs on or after the effective date of chapter two hundred twelve of the laws of two thousand twenty-two that amended this subdivision. A license for a pistol or revolver, other than an assault weapon or a disguised gun, shall be issued to (a) have and possess in his dwelling by a householder; (b) have and possess in his place of business by a merchant or storekeeper; (c) have and carry concealed while so employed by a messenger employed by a banking institution or express company; (d) have and carry concealed by a justice of the supreme court in the first or second judicial departments, or by a judge of the New York city civil court or the New York city criminal court; (e) have and carry concealed while so employed by a regular employee of an institution of the state, or of any county, city, town or village, under control of a commissioner of correction of the city or any warden, superintendent or head keeper of any state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, provided that application is made therefor by such commissioner, warden, superintendent or head keeper; (f) have and carry concealed, without regard to employment or place of possession subject to the restrictions of state

and federal law, by any person; and (g) have, possess, collect and carry antique pistols which are defined as follows: (i) any single shot, muzzle loading pistol with a matchlock, flintlock, percussion cap, or similar type of ignition system manufactured in or before 1898, which is not designed for using rimfire or conventional centerfire fixed ammunition; and (ii) any replica of any pistol described in clause (i) hereof if such replica;

(1) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(2) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

3. Applications. (a) Applications shall be made and renewed, in the case of a license to carry or possess a pistol or revolver or to purchase or take possession of a semiautomatic rifle, to the licensing officer in the city or county, as the case may be, where the applicant resides, is principally employed or has his or her principal place of business as merchant or storekeeper; and, in the case of a license as gunsmith or dealer in firearms, to the licensing officer where such place of business is located. Blank applications shall, except in the city of New York, be approved as to form by the superintendent of state police. An application shall state the full name, date of birth, residence, present occupation of each person or individual signing the same, whether or not he or she is a citizen of the United States, whether or not he or she complies with each requirement for eligibility specified in subdivision one of this section and such other facts as may be required to show the good character, competency and integrity of each person or individual signing the application. An application shall be signed and verified by the applicant. Each individual signing an application shall submit one photograph of himself or herself and a duplicate for each required copy of the application. Such photographs shall have been taken within thirty days prior to filing the application. In case of a license as gunsmith or dealer in firearms, the photographs submitted shall be two inches square, and the application shall also state the previous occupation of each individual signing the same and the location of the place of such business, or of the bureau, agency, subagency, office or branch office for which the license is sought, specifying the name of the city, town or village, indicating the street and number and otherwise giving such apt description as to point out reasonably the location thereof. In such case, if the applicant is a firm, partnership or corporation, its name, date and place of formation, and principal place of business shall be stated. For such firm or partnership, the application shall be signed and verified by each individual composing or intending to compose the same, and for such corporation, by each officer thereof.

(b) Application for an exemption under paragraph seven-b of subdivision a of section 265.20 of this chapter. Each applicant desiring to obtain the exemption set forth in paragraph seven-b of subdivision a of section 265.20 of this chapter shall make such request in writing of the licensing officer with whom his application for a license is filed, at the time of filing such application. Such request shall include a signed and verified statement by the person authorized to instruct and supervise the applicant, that has met with the applicant and that he has determined that, in his judgment, said applicant does not appear to be or poses a threat to be, a danger to himself or to others. He shall include a copy of his certificate as an instructor in small arms, if he is required to be certified, and state his address and telephone number. He shall specify the exact location by name, address and telephone number where such instruction will take place. Such licensing officer shall, no later than ten business days after such filing, request the duly constituted police authorities of the locality where such application is made to investigate and ascertain any previous criminal record of the applicant pursuant to subdivision four of this section. Upon completion of this investigation, the police authority shall report the results to the licensing officer without unnecessary delay. The licensing officer shall no later than ten business days after the receipt of such investigation, determine if the applicant has been previously denied a license, been convicted of a felony, or been convicted of a serious offense, and either approve or disapprove the applicant for exemption purposes based upon such determinations. If the applicant is approved for the exemption, the licensing officer shall notify the appropriate duly constituted police authorities and the applicant. Such exemption shall terminate if the application for the license is denied, or at any earlier time based upon any information obtained by the licensing officer or the appropriate

police authorities which would cause the license to be denied. The applicant and appropriate police authorities shall be notified of any such terminations.

4. Investigation. Before a license is issued or renewed, there shall be an investigation of all statements required in the application by the duly constituted police authorities of the locality where such application is made, including but not limited to such records as may be accessible to the division of state police or division of criminal justice services pursuant to section 400.02 of this article. For that purpose, the records of the appropriate office of the department of mental hygiene concerning previous or present mental illness of the applicant shall be available for inspection by the investigating officer of the police authority. Where the applicant is domiciled in a foreign state, the investigation shall include inquiry of the foreign state for records concerning the previous or present mental illness of the applicant, and, to the extent necessary for inspection by the investigating officer, the applicant shall execute a waiver of confidentiality of such record in such form as may be required by the foreign state. In order to ascertain any previous criminal record, the investigating officer shall take the fingerprints and physical descriptive data in quadruplicate of each individual by whom the application is signed and verified. Two copies of such fingerprints shall be taken on standard fingerprint cards eight inches square, and one copy may be taken on a card supplied for that purpose by the federal bureau of investigation; provided, however, that in the case of a corporate applicant that has already been issued a dealer in firearms license and seeks to operate a firearm dealership at a second or subsequent location, the original fingerprints on file may be used to ascertain any criminal record in the second or subsequent application unless any of the corporate officers have changed since the prior application, in which case the new corporate officer shall comply with procedures governing an initial application for such license. When completed, one standard card shall be forwarded to and retained by the division of criminal justice services in the executive department, at Albany. A search of the files of such division and written notification of the results of the search shall be forwarded to the investigating officer and shall be made without unnecessary delay. Thereafter, such division shall notify the licensing officer and the executive department, division of state police, Albany, of any criminal record of the applicant filed therein subsequent to the search of its files. A second standard card, or the one supplied by the federal bureau of investigation, as the case may be, shall be forwarded to that bureau at Washington with a request that the files of the bureau be searched and notification of the results of the search be made to the investigating police authority. Of the remaining two fingerprint cards, one shall be filed with the executive department, division of state police, Albany, within ten days after issuance of the license, and the other shall remain on file with the investigating police authority. No such fingerprints may be inspected by any person other than a peace officer, who is acting pursuant to his or her special duties, or a police officer, except on order of a judge or justice of a court of record either upon notice to the licensee or without notice, as the judge or justice may deem appropriate. Upon completion of the investigation, the police authority shall report the results to the licensing officer without unnecessary delay.

4-a. Appeals from denial of an application, renewal, recertification or license revocation. If an application for a license is denied, not renewed, not recertified, or revoked, the licensing officer shall issue a written notice to the applicant setting forth the reasons for such denial. An applicant may, within ninety days of receipt of such notice, request a hearing to appeal the denial to the appeals board created by the division of criminal justice services and the superintendent of state police. An individual may be represented by counsel at any appearance before the appeals board and shall be afforded an opportunity to present additional evidence in support of their application. The commissioner of criminal justice services and the superintendent of state police shall promulgate rules and regulations governing such appeals process.

4-b. Processing of license applications. Applications for licenses shall be accepted for processing by the licensing officer at the time of presentment. Except upon written notice to the applicant specifically stating the reasons for any delay, in each case the licensing officer shall act upon any application for a license pursuant to this section within six months of the date of presentment of such an application to the appropriate authority. Such delay may only be for good cause and with respect to the applicant. In acting upon an application, the licensing officer shall either deny the application for reasons specifically and concisely stated in writing or grant the application and issue the license applied for.

4-c. Westchester county firearms safety course certificate. In the county of Westchester, at the time of application, the licensing officer to which the license application is made shall provide a copy of the safety course booklet to each license applicant. Before such license is issued, such licensing officer shall require that the applicant submit a certificate of successful completion of a firearms safety course and test issued in his or her name and endorsed and affirmed under the penalties of perjury by a duly authorized instructor.

5. Filing of approved applications. (a) The application for any license, if granted, shall be filed by the licensing officer with the clerk of the county of issuance, except that in the city of New York and, in the counties of Nassau and Suffolk, the licensing officer shall designate the place of filing in the appropriate division, bureau or unit of the police department thereof, and in the county of Suffolk the county clerk is hereby authorized to transfer all records or applications relating to firearms to the licensing authority of that county. Except as provided in paragraphs (b) through (f) of this subdivision, the name and address of any person to whom an application for any license has been granted shall be a public record. Upon application by a licensee who has changed his place of residence such records or applications shall be transferred to the appropriate officer at the licensee's new place of residence. A duplicate copy of such application shall be filed by the licensing officer in the executive department, division of state police, Albany, within ten days after issuance of the license. The superintendent of state police may designate that such application shall be transmitted to the division of state police electronically. In the event the superintendent of the division of state police determines that it lacks any of the records required to be filed with the division, it may request that such records be provided to it by the appropriate clerk, department or authority and such clerk, department or authority shall provide the division with such records. In the event such clerk, department or authority lacks such records, the division may request the license holder provide information sufficient to constitute such record and such license holder shall provide the division with such information. Such information shall be limited to the license holder's name, date of birth, gender, race, residential address, social security number and firearms possessed by said license holder. Nothing in this subdivision shall be construed to change the expiration date or term of such licenses if otherwise provided for in law. Records assembled or collected for purposes of inclusion in the database established by this section shall be released pursuant to a court order. Records assembled or collected for purposes of inclusion in the database created pursuant to section 400.02 of this chapter shall not be subject to disclosure pursuant to article six of the public officers law.

(b) Each application for a license pursuant to paragraph (a) of this subdivision shall include, on a separate written form prepared by the division of state police within thirty days of the effective date of the chapter of the laws of two thousand thirteen, which amended this section, and provided to the applicant at the same time and in the same manner as the application for a license, an opportunity for the applicant to request an exception from his or her application information becoming public record pursuant to paragraph (a) of this subdivision. Such forms, which shall also be made available to individuals who had applied for or been granted a license prior to the effective date of the chapter of the laws of two thousand thirteen which amended this section, shall notify applicants that, upon discovery that an applicant knowingly provided false information, such applicant may be subject to penalties pursuant to section 175.30 of this chapter, and further, that his or her request for an exception shall be null and void, provided that written notice containing such determination is provided to the applicant. Further, such forms shall provide each applicant an opportunity to specify the grounds on which he or she believes his or her application information should not be publicly disclosed. These grounds, which shall be identified on the application with a box beside each for checking, as applicable, by the applicant, shall be as follows:

(i) the applicant's life or safety may be endangered by disclosure because:

(A) the applicant is an active or retired police officer, peace officer, probation officer, parole officer, or corrections officer;

(B) the applicant is a protected person under a currently valid order of protection;

(C) the applicant is or was a witness in a criminal proceeding involving a criminal charge;

(D) the applicant is participating or previously participated as a juror in a criminal proceeding, or is or was a member of a grand jury; or

(E) the applicant is a spouse, domestic partner or household member of a person identified in this subparagraph or subparagraph (ii) of this paragraph, specifying which subparagraph or subparagraphs and clauses apply.

(ii) the applicant has reason to believe his or her life or safety may be endangered by disclosure due to reasons stated by the applicant.

(iii) the applicant has reason to believe he or she may be subject to unwarranted harassment upon disclosure of such information.

(c) Each form provided for recertification pursuant to paragraph (b) of subdivision ten of this section shall include an opportunity for the applicant to request an exception from the information provided on such form becoming public record pursuant to paragraph (a) of this subdivision. Such forms shall notify applicants that, upon discovery that an applicant knowingly provided false information, such applicant may be subject to penalties pursuant to section 175.30 of this chapter, and further, that his or her request for an exception shall be null and void, provided that written notice containing such determination is provided to the applicant. Further, such forms shall provide each applicant an opportunity to either decline to request the grant or continuation of an exception, or specify the grounds on which he or she believes his or her information should not be publicly disclosed. These grounds, which shall be identified in the application with a box beside each for checking, as applicable, by the applicant, shall be the same as provided in paragraph (b) of this subdivision.

(d) Information submitted on the forms described in paragraph (b) of this subdivision shall be excepted from disclosure and maintained by the entity retaining such information separate and apart from all other records.

(e)(i) Upon receiving a request for exception from disclosure, the licensing officer shall grant such exception, unless the request is determined to be null and void, pursuant to paragraph (b) or (c) of this subdivision.

(ii) A request for an exception from disclosure may be submitted at any time, including after a license or recertification has been granted.

(iii) If an exception is sought and granted pursuant to paragraph (b) of this subdivision, the application information shall not be public record, unless the request is determined to be null and void. If an exception is sought and granted pursuant to paragraph (c) of this subdivision, the information concerning such recertification application shall not be public record, unless the request is determined to be null and void. Notwithstanding the foregoing provisions of this subparagraph, local and state law enforcement shall, upon request, be granted access to and copies of such application information provided that such information obtained by law enforcement pursuant to this subparagraph shall not be considered a public record of such law enforcement agency.

(f) The information of licensees or applicants for a license shall not be disclosed to the public during the first one hundred twenty days following the effective date of the chapter of the laws of two thousand thirteen, which amended this section. After such period, the information of those who had applied for or been granted a license prior to the preparation of the form for requesting an exception, pursuant to paragraph (b) of this subdivision, may be released only if such individuals did not file a request for such an exception during the first sixty days following such preparation; provided, however, that no information contained in an application for licensure or recertification shall be disclosed by an entity that has not completed processing any such requests received during such sixty days.

(g) If a request for an exception is determined to be null and void pursuant to paragraph (b) or (c) of this subdivision, an applicant may request review of such determination pursuant to article seventy-eight of the civil practice laws¹ and rules. Such proceeding must commence within thirty days after service of the written notice containing the adverse determination. Notice of the right to commence such a petition, and the time period therefor, shall be included in the notice of the determination. Disclosure following such a petition shall not be made prior to the disposition of such review.

6. License: validity. Any license issued pursuant to this section shall be valid notwithstanding the provisions of any local law or ordinance. No license shall be transferable to any other person or premises. A license to carry or possess a pistol or revolver, or to purchase or take possession of a semiautomatic rifle, not otherwise limited as to place or time of possession, shall be effective throughout the state, except that the same shall not be valid within the city of New York unless a special permit granting validity is issued by the police commissioner of that city. Such license to carry or possess shall be valid within the city of New York in the absence of a permit issued by the police commissioner of that city, provided that (a) the firearms covered by such license have been purchased from a licensed dealer within the city of New York and are being transported out of said city forthwith and immediately from said dealer by the licensee in a locked container during a continuous and uninterrupted trip; or provided that (b) the firearms covered by such license are being transported by the licensee in a locked container and the trip through the city of New York is continuous and uninterrupted; or provided that (c) the firearms covered by such license are carried by armored car security guards transporting money or other valuables, in, to, or from motor vehicles commonly known as armored cars, during the course of their employment; or provided that (d) the licensee is a retired police officer as police officer is defined pursuant to [subdivision thirty-four of section 1.20 of the criminal procedure law](#) or a retired federal law enforcement officer, as defined in [section 2.15 of the criminal procedure law](#), who has been issued a license by an authorized licensing officer as defined in [subdivision ten of section 265.00 of this chapter](#); provided, further, however, that if such license was not issued in the city of New York it must be marked "Retired Police Officer" or "Retired Federal Law Enforcement Officer", as the case may be, and, in the case of a retired officer the license shall be deemed to permit only police or federal law enforcement regulations weapons; or provided that (e) the licensee is a peace officer described in [subdivision four of section 2.10 of the criminal procedure law](#) and the license, if issued by other than the city of New York, is marked "New York State Tax Department Peace Officer" and in such case the exemption shall apply only to the firearm issued to such licensee by the department of taxation and finance. A license as gunsmith or dealer in firearms shall not be valid outside the city or county, as the case may be, where issued. Notwithstanding any inconsistent provision of state or local law or rule or regulation, the premises limitation set forth in any license to have and possess a pistol or revolver in the licensee's dwelling or place of business pursuant to paragraph (a) or (b) of subdivision two of this section shall not prevent the transport of such pistol or revolver directly to or from (i) another dwelling or place of business of the licensee where the licensee is authorized to have and possess such pistol or revolver, (ii) an indoor or outdoor shooting range that is authorized by law to operate as such, (iii) a shooting competition at which the licensee may possess such pistol or revolver consistent with the provisions of [subdivision a of section 265.20 of this chapter](#) or consistent with the law applicable at the place of such competition, or (iv) any other location where the licensee is lawfully authorized to have and possess such pistol or revolver; provided however, that during such transport to or from a location specified in clauses (i) through (iv) of this paragraph, the pistol or revolver shall be unloaded and carried in a locked container, and the ammunition therefor shall be carried separately; provided further, however, that a license to have and possess a pistol or revolver in the licensee's dwelling or place of business pursuant to paragraph (a) or (b) of subdivision two of this section that is issued by a licensing officer other than the police commissioner of the city of New York shall not authorize transport of a pistol or revolver into the city of New

York in the absence of written authorization to do so by the police commissioner of that city. The term "locked container" shall not include the glove compartment or console of a vehicle.

7. License: form. Any license issued pursuant to this section shall, except in the city of New York, be approved as to form by the superintendent of state police. A license to carry or possess a pistol or revolver or to purchase or take possession of a semiautomatic rifle shall have attached the licensee's photograph, and a coupon which shall be removed and retained by any person disposing of a firearm to the licensee. A license to carry or possess a pistol or revolver shall specify the weapon covered by calibre, make, model, manufacturer's name and serial number, or if none, by any other distinguishing number or identification mark, and shall indicate whether issued to carry on the person or possess on the premises, and if on the premises shall also specify the place where the licensee shall possess the same. If such license is issued to a noncitizen, or to a person not a citizen of and usually a resident in the state, the licensing officer shall state in the license the particular reason for the issuance and the names of the persons certifying to the good character of the applicant. Any license as gunsmith or dealer in firearms shall mention and describe the premises for which it is issued and shall be valid only for such premises.

8. License: exhibition and display. Every licensee while carrying a pistol or revolver shall have on his or her person a license to carry the same. Every person licensed to possess a pistol or revolver on particular premises shall have the license for the same on such premises. Every person licensed to purchase or take possession of a semiautomatic rifle shall have the license for the same on his or her person while purchasing or taking possession of such weapon. Upon demand, the license shall be exhibited for inspection to any peace officer, who is acting pursuant to his or her special duties, or police officer. A license as gunsmith or dealer in firearms shall be prominently displayed on the licensed premises. A gunsmith or dealer of firearms may conduct business temporarily at a location other than the location specified on the license if such temporary location is the location for a gun show or event sponsored by any national, state, or local organization, or any affiliate of any such organization devoted to the collection, competitive use or other sporting use of firearms. Any sale or transfer at a gun show must also comply with the provisions of article thirty-nine-DD of the general business law. Records of receipt and disposition of firearms transactions conducted at such temporary location shall include the location of the sale or other disposition and shall be entered in the permanent records of the gunsmith or dealer of firearms and retained on the location specified on the license. Nothing in this section shall authorize any licensee to conduct business from any motorized or towed vehicle. A separate fee shall not be required of a licensee with respect to business conducted under this subdivision. Any inspection or examination of inventory or records under this section at such temporary location shall be limited to inventory consisting of, or records related to, firearms held or disposed at such temporary locations. Failure of any licensee to so exhibit or display his or her license, as the case may be, shall be presumptive evidence that he or she is not duly licensed.

9. License: amendment. Elsewhere than in the city of New York, a person licensed to carry or possess a pistol or revolver or to purchase or take possession of a semiautomatic rifle may apply at any time to his or her licensing officer for amendment of his or her license to include one or more such weapons or to cancel weapons held under license. If granted, a record of the amendment describing the weapons involved shall be filed by the licensing officer in the executive department, division of state police, Albany. The superintendent of state police may authorize that such amendment be completed and transmitted to the state police in electronic form. Notification of any change of residence shall be made in writing by any licensee within ten days after such change occurs, and a record of such change shall be inscribed by such licensee on the reverse side of his or her license. Elsewhere than in the city of New York, and in the counties of Nassau and Suffolk, such notification shall be made to the executive department, division of state police, Albany, and in the city of New York to the police commissioner of that city, and in the county of Nassau to the police commissioner of that county, and in the county of Suffolk to the licensing officer of that county, who shall, within ten days after such notification shall be received by him or her, give notice in writing of such change to the executive department, division of state police, at Albany.

10. License: expiration, certification and renewal. (a) Any license for gunsmith or dealer in firearms and, in the city of New York, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not limited to expire on an earlier date fixed in the license, shall, except as otherwise provided in paragraph (d) of this subdivision, expire not more than three years after the date of issuance. In the counties of Nassau, Suffolk and Westchester, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not limited to expire on an earlier date fixed in the license, shall expire not more than five years after the date of issuance; however, in the county of Westchester, any such license shall be certified prior to the first day of April, two thousand, in accordance with a schedule to be contained in regulations promulgated by the commissioner of the division of criminal justice services, and every such license shall, except as otherwise provided in paragraph (d) of this subdivision, be recertified every five years thereafter. For purposes of this section certification shall mean that the licensee shall provide to the licensing officer the following information only: current name, date of birth, current address, and the make, model, caliber and serial number of all firearms currently possessed. Such certification information shall be filed by the licensing officer in the same manner as an amendment. Elsewhere than in the city of New York and the counties of Nassau, Suffolk and Westchester, any license to carry or possess a pistol or revolver, issued at any time pursuant to this section or prior to the first day of July, nineteen hundred sixty-three and not previously revoked or cancelled, shall be in force and effect until revoked as herein provided. Any license not previously cancelled or revoked shall remain in full force and effect for thirty days beyond the stated expiration date on such license. Any application to renew a license that has not previously expired, been revoked or cancelled shall thereby extend the term of the license until disposition of the application by the licensing officer. In the case of a license for gunsmith or dealer in firearms, in counties having a population of less than two hundred thousand inhabitants, photographs and fingerprints shall be submitted on original applications and upon renewal thereafter at three year intervals. Upon satisfactory proof that a currently valid original license has been despoiled, lost or otherwise removed from the possession of the licensee and upon application containing an additional photograph of the licensee, the licensing officer shall issue a duplicate license.

(b) All licensees shall be recertified to the division of state police every five years thereafter, except as otherwise provided in paragraph (d) of this subdivision. Any license issued before the effective date of the chapter of the laws of two thousand thirteen which added this paragraph shall be recertified by the licensee on or before January thirty-first, two thousand eighteen, and not less than one year prior to such date, the state police shall send a notice to all license holders who have not recertified by such time. Such recertification shall be in a form as approved by the superintendent of state police, which shall request the license holder's name, date of birth, gender, race, residential address, social security number, firearms possessed by such license holder, email address at the option of the license holder and an affirmation that such license holder is not prohibited from possessing firearms. The form may be in an electronic form if so designated by the superintendent of state police. Failure to recertify shall act as a revocation of such license. If the New York state police discover as a result of the recertification process that a licensee failed to provide a change of address, the New York state police shall not require the licensing officer to revoke such license.

(c) A license to purchase or take possession of a semiautomatic rifle as defined in subdivision two of this section shall be recertified to the applicable licensing officer every five years following the issuance of such license. Failure to renew such a license shall be a violation punishable by a fine not to exceed two hundred fifty dollars, and such failure to renew shall be considered by the licensing officer when reviewing future license applications by the license holder pursuant to this chapter.

(d) Licenses issued under paragraph (f) of subdivision two of this section shall be recertified or renewed in the same form and manner as otherwise required by this subdivision, provided however, that such licenses shall be recertified or renewed every three years following the issuance of such license. For licenses issued prior to the effective date of this paragraph that were issued more than three years prior to such date, or will expire in less than one year from such date shall be recertified or renewed within one year of such date.

11. License: revocation and suspension. (a) The conviction of a licensee anywhere of a felony or serious offense or a licensee at any time becoming ineligible to obtain a license, including engaging in conduct that would have resulted in the denial of a license, under this section shall operate as or be grounds for, a revocation of the license. A license may be revoked or suspended as provided for in [section 530.14 of the criminal procedure law](#) or [section eight hundred forty-two-a of the family court act](#). Except for a license issued pursuant to [section 400.01](#) of this article, a license may be revoked and cancelled at any time in the city of New York, and in the counties of Nassau and Suffolk, by the licensing officer, and elsewhere than in the city of New York by any judge or justice of a court of record; a license issued pursuant to [section 400.01](#) of this article may be revoked and cancelled at any time by the licensing officer or any judge or justice of a court of record. A license to engage in the business of dealer may be revoked or suspended for any violation of the provisions of article thirty-nine-BB of the general business law. The official revoking a license shall give written notice thereof without unnecessary delay to the executive department, division of state police, Albany, and shall also notify immediately the duly constituted police authorities of the locality. The licensing officer shall revoke any license issued in which an applicant knowingly made a material false statement on the application. Notice of a revocation under this subdivision shall be issued in writing and shall include the basis for the determination, which shall be supported by a preponderance of the evidence. Such notice shall also include information regarding the ability to appeal such decision in accordance with subdivision four-a of this section.

(b) Whenever the director of community services or his or her designee makes a report pursuant to [section 9.46 of the mental hygiene law](#), the division of criminal justice services shall convey such information, whenever it determines that the person named in the report possesses a license issued pursuant to this section, to the appropriate licensing official, who shall issue an order suspending or revoking such license.

(c) In any instance in which a person's license is suspended or revoked under paragraph (a) or (b) of this subdivision, such person shall surrender such license to the appropriate licensing official and any and all firearms, rifles, or shotguns owned or possessed by such person shall be surrendered to an appropriate law enforcement agency as provided in subparagraph (f) of paragraph one of subdivision a of [section 265.20](#) of this chapter. In the event such license, firearm, shotgun, or rifle is not surrendered, such items shall be removed and declared a nuisance and any police officer or peace officer acting pursuant to his or her special duties is authorized to remove any and all such weapons.

12. Records required of gunsmiths and dealers in firearms. In addition to the requirements set forth in article thirty-nine-BB of the general business law, any person licensed as gunsmith or dealer in firearms shall keep a record book approved as to form, except in the city of New York, by the superintendent of state police. In the record book shall be entered at the time of every transaction involving a firearm the date, name, age, occupation and residence of any person from whom a firearm is received or to whom a firearm is delivered, and the calibre, make, model, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark on such firearm. Before delivering a firearm to any person, the licensee shall require him to produce either a license valid under this section to carry or possess the same, or proof of lawful authority as an exempt person pursuant to [section 265.20](#) of this chapter and either (a) the National Instant Criminal Background Check System (NICS) or its successor has issued a "proceed" response to the licensee, or (b) thirty calendar days have elapsed since the date the licensee contacted NICS to initiate a national instant criminal background check and NICS has not notified the licensee that the transfer of the firearm to such person should be denied. In addition, before delivering a firearm to a peace officer, the licensee shall verify that person's status as a peace officer with the division of state police. After completing the foregoing, the licensee shall remove and retain the attached coupon and enter in the record book the date of such license, number, if any, and name of the licensing officer, in the case of the holder of a license to carry or possess, or the shield or other number, if any, assignment and department, unit or agency, in the case of an exempt person. The original transaction report shall be forwarded to the division of state police within ten days of delivering a firearm to any person, and a duplicate copy shall be kept by the licensee. The superintendent of state police may designate that such record shall be completed and transmitted in electronic form. A dealer may be granted a waiver from transmitting such records in electronic form if the superintendent determines

that such dealer is incapable of such transmission due to technological limitations that are not reasonably within the control of the dealer, or other exceptional circumstances demonstrated by the dealer, pursuant to a process established in regulation, and at the discretion of the superintendent. Records assembled or collected for purposes of inclusion in the database created pursuant to section 400.02 of this article shall not be subject to disclosure pursuant to article six of the public officers law. The record book shall be maintained on the premises mentioned and described in the license and shall be open at all reasonable hours for inspection by any peace officer, acting pursuant to his special duties, or police officer. In the event of cancellation or revocation of the license for gunsmith or dealer in firearms, or discontinuance of business by a licensee, such record book shall be immediately surrendered to the licensing officer in the city of New York, and in the counties of Nassau and Suffolk, and elsewhere in the state to the executive department, division of state police.

12-a. State police regulations applicable to licensed gunsmiths engaged in the business of assembling or manufacturing firearms. The superintendent of state police is hereby authorized to issue such rules and regulations as he deems reasonably necessary to prevent the manufacture and assembly of unsafe firearms in the state. Such rules and regulations shall establish safety standards in regard to the manufacture and assembly of firearms in the state, including specifications as to materials and parts used, the proper storage and shipment of firearms, and minimum standards of quality control. Regulations issued by the state police pursuant to this subdivision shall apply to any person licensed as a gunsmith under this section engaged in the business of manufacturing or assembling firearms, and any violation thereof shall subject the licensee to revocation of license pursuant to subdivision eleven of this section.

12-c. ² Firearms records. (a) Every employee of a state or local agency, unit of local government, state or local commission, or public or private organization who possesses a firearm or machine-gun under an exemption to the licensing requirements under this chapter, shall promptly report in writing to his employer the make, model, calibre and serial number of each such firearm or machine-gun. Thereafter, within ten days of the acquisition or disposition of any such weapon, he shall furnish such information to his employer, including the name and address of the person from whom the weapon was acquired or to whom it was disposed.

(b) Every head of a state or local agency, unit of local government, state or local commission, public authority or public or private organization to whom an employee has submitted a report pursuant to paragraph (a) of this subdivision shall promptly forward such report to the superintendent of state police.

(c) Every head of a state or local agency, unit of local government, state or local commission, public authority, or any other agency, firm or corporation that employs persons who may lawfully possess firearms or machine-guns without the requirement of a license therefor, or that employs persons licensed to possess firearms or machine-guns, shall promptly report to the superintendent of state police, in the manner prescribed by him, the make, model, calibre and serial number of every firearm or machine-gun possessed by it on the effective date of this act for the use of such employees or for any other use. Thereafter, within ten days of the acquisition or disposition of any such weapon, such head shall report such information to the superintendent of the state police, including the name and address of the person from whom the weapon was acquired or to whom it was disposed.

13. Expenses. The expense of providing a licensing officer with blank applications, licenses and record books for carrying out the provisions of this section shall be a charge against the county, and in the city of New York against the city.

14. Fees. In the city of New York and the county of Nassau, the annual license fee shall be twenty-five dollars for gunsmiths and fifty dollars for dealers in firearms. In such city, the city council and in the county of Nassau the Board of Supervisors shall fix the fee to be charged for a license to carry or possess a pistol or revolver or to purchase or take possession of a semiautomatic rifle and provide for the disposition of such fees. Elsewhere in the state, the licensing officer shall collect and pay into the county treasury the following fees: for each license to carry or possess a pistol or revolver or to purchase or take possession

of a semiautomatic rifle, not less than three dollars nor more than ten dollars as may be determined by the legislative body of the county; for each amendment thereto, three dollars, and five dollars in the county of Suffolk; and for each license issued to a gunsmith or dealer in firearms, ten dollars. The fee for a duplicate license shall be five dollars. The fee for processing a license transfer between counties shall be five dollars. The fee for processing a license or renewal thereof for a qualified retired police officer as defined under subdivision thirty-four of section 1.20 of the criminal procedure law, or a qualified retired sheriff, undersheriff, or deputy sheriff of the city of New York as defined under subdivision two of section 2.10 of the criminal procedure law, or a qualified retired bridge and tunnel officer, sergeant or lieutenant of the triborough bridge and tunnel authority as defined under subdivision twenty of section 2.10 of the criminal procedure law, or a qualified retired uniformed court officer in the unified court system, or a qualified retired court clerk in the unified court system in the first and second judicial departments, as defined in paragraphs a and b of subdivision twenty-one of section 2.10 of the criminal procedure law or a retired correction officer as defined in subdivision twenty-five of section 2.10 of the criminal procedure law shall be waived in all counties throughout the state.

15. Any violation by any person of any provision of this section is a class A misdemeanor.

16. Unlawful disposal. No person shall except as otherwise authorized pursuant to law dispose of any firearm unless he is licensed as gunsmith or dealer in firearms.

16-a. Registration. (a) An owner of a weapon defined in paragraph (e) or (f) of subdivision twenty-two of section 265.00 of this chapter, possessed before the date of the effective date of the chapter of the laws of two thousand thirteen which added this paragraph, must make an application to register such weapon with the superintendent of state police, in the manner provided by the superintendent, or by amending a license issued pursuant to this section within one year of the effective date of this subdivision except any weapon defined under subparagraph (vi) of paragraph (g) of subdivision twenty-two of section 265.00 of this chapter transferred into the state may be registered at any time, provided such weapons are registered within thirty days of their transfer into the state. Registration information shall include the registrant's name, date of birth, gender, race, residential address, social security number and a description of each weapon being registered. A registration of any weapon defined under subparagraph (vi) of paragraph (g) of subdivision twenty-two of section 265.00 or a feeding device as defined under subdivision twenty-three of section 265.00 of this chapter shall be transferable, provided that the seller notifies the state police within seventy-two hours of the transfer and the buyer provides the state police with information sufficient to constitute a registration under this section. Such registration shall not be valid if such registrant is prohibited or becomes prohibited from possessing a firearm pursuant to state or federal law. The superintendent shall determine whether such registrant is prohibited from possessing a firearm under state or federal law. Such check shall be limited to determining whether the factors in 18 USC 922 (g) apply or whether a registrant has been convicted of a serious offense as defined in subdivision sixteen-b of section 265.00 of this chapter, so as to prohibit such registrant from possessing a firearm, and whether a report has been issued pursuant to section 9.46 of the mental hygiene law. All registrants shall recertify to the division of state police every five years thereafter. Failure to recertify shall result in a revocation of such registration.

(a-1) Notwithstanding any inconsistent provisions of paragraph (a) of this subdivision, an owner of an assault weapon as defined in subdivision twenty-two of section 265.00 of this chapter, who is a qualified retired New York or federal law enforcement officer as defined in subdivision twenty-five of section 265.00 of this chapter, where such weapon was issued to or purchased by such officer prior to retirement and in the course of his or her official duties, and for which such officer was qualified by the agency that employed such officer within twelve months prior to his or her retirement, must register such weapon within sixty days of retirement.

(b) The superintendent of state police shall create and maintain an internet website to educate the public as to which semiautomatic rifle, semiautomatic shotgun or semiautomatic pistol or weapon that are illegal as a result of the enactment

of the chapter of the laws of two thousand thirteen which added this paragraph, as well as such assault weapons which are illegal pursuant to article two hundred sixty-five of this chapter. Such website shall contain information to assist the public in recognizing the relevant features proscribed by such article two hundred sixty-five, as well as which make and model of weapons that require registration.

(c) A person who knowingly fails to apply to register such weapon, as required by this section, within one year of the effective date of the chapter of the laws of two thousand thirteen which added this paragraph shall be guilty of a class A misdemeanor and such person who unknowingly fails to validly register such weapon within such one year period shall be given a warning by an appropriate law enforcement authority about such failure and given thirty days in which to apply to register such weapon or to surrender it. A failure to apply or surrender such weapon within such thirty-day period shall result in such weapon being removed by an appropriate law enforcement authority and declared a nuisance.

16-b. The cost of the software, programming and interface required to transmit any record that must be electronically transmitted by the dealer or licensing officer to the division of state police pursuant to this chapter shall be borne by the state.

17. Applicability of section. The provisions of article two hundred sixty-five of this chapter relating to illegal possession of a firearm, shall not apply to an offense which also constitutes a violation of this section by a person holding an otherwise valid license under the provisions of this section and such offense shall only be punishable as a class A misdemeanor pursuant to this section. In addition, the provisions of such article two hundred sixty-five of this chapter shall not apply to the possession of a firearm in a place not authorized by law, by a person who holds an otherwise valid license or possession of a firearm by a person within a one year period after the stated expiration date of an otherwise valid license which has not been previously cancelled or revoked shall only be punishable as a class A misdemeanor pursuant to this section.

18. Notice. Upon the issuance of a license, the licensing officer shall issue therewith, and such licensee shall attest to the receipt of, the following information and notifications: (a) the grounds for which the license issued may be revoked, which shall include but not be limited to the areas and locations for which the licenses issued under paragraph (f) of subdivision two of this section prohibits the possession of firearms, rifles, and shotguns, and that a conviction under sections 265.01-d and 265.01-e of this chapter are felonies for which licensure will be revoked;

(b) a notification regarding the requirements for safe storage which shall be in conspicuous and legible twenty-four point type on eight and one-half inches by eleven inches paper stating in bold print the following:

WARNING: RESPONSIBLE FIREARM STORAGE IS THE LAW IN NEW YORK STATE. WHEN STORED IN A HOME FIREARMS, RIFLES, OR SHOTGUNS MUST EITHER BE STORED WITH A GUN LOCKING DEVICE OR IN A SAFE STORAGE DEPOSITORY OR NOT BE LEFT OUTSIDE THE IMMEDIATE POSSESSION AND CONTROL OF THE OWNER OR OTHER LAWFUL POSSESSOR IF A CHILD UNDER THE AGE OF EIGHTEEN RESIDES IN THE HOME OR IS PRESENT, OR IF THE OWNER OR POSSESSOR RESIDES WITH A PERSON PROHIBITED FROM POSSESSING A FIREARM UNDER STATE OR FEDERAL LAW. FIREARMS SHOULD BE STORED BY REMOVING THE AMMUNITION FROM AND SECURELY LOCKING SUCH FIREARM IN A LOCATION SEPARATE FROM AMMUNITION. LEAVING FIREARMS ACCESSIBLE TO A CHILD OR OTHER PROHIBITED PERSON MAY SUBJECT YOU TO IMPRISONMENT, FINE, OR BOTH. WHEN STORED IN A VEHICLE OUTSIDE THE OWNER'S IMMEDIATE POSSESSION OR CONTROL, FIREARMS, RIFLES, AND SHOTGUNS MUST BE STORED IN AN APPROPRIATE SAFE STORAGE DEPOSITORY AND OUT OF SIGHT FROM OUTSIDE OF THE VEHICLE.

(c) any other information necessary to ensure such licensee is aware of their responsibilities as a license holder.

Nothing in this subdivision shall be deemed to affect, impair or supersede any special or local law relating to providing notice regarding the safe storage of rifles, shotguns or firearms

19. Prior to the issuance or renewal of a license under paragraph (f) of subdivision two of this section, issued or renewed on or after the effective date of this subdivision, an applicant shall complete an in-person live firearms safety course conducted by a duly authorized instructor with curriculum approved by the division of criminal justice services and the superintendent of state police, and meeting the following requirements: (a) a minimum of sixteen hours of in-person live curriculum approved by the division of criminal justice services and the superintendent of state police, conducted by a duly authorized instructor approved by the division of criminal justice services, and shall include but not be limited to the following topics: (i) general firearm safety; (ii) safe storage requirements and general secure storage best practices; (iii) state and federal gun laws; (iv) situational awareness; (v) conflict de-escalation; (vi) best practices when encountering law enforcement; (vii) the statutorily defined sensitive places in subdivision two of section 265.01-e of this chapter and the restrictions on possession on restricted places under section 265.01-d of this chapter; (viii) conflict management; (ix) use of deadly force; (x) suicide prevention; and (xi) the basic principles of marksmanship; and (b) a minimum of two hours of a live-fire range training course. The applicant shall be required to demonstrate proficiency by scoring a minimum of eighty percent correct answers on a written test for the curriculum under paragraph (a) of this subdivision and the proficiency level determined by the rules and regulations promulgated by the division of criminal justice services and the superintendent of state police for the live-fire range training under paragraph (b) of this subdivision. Upon demonstration of such proficiency, a certificate of completion shall be issued to such applicant in the applicant's name and endorsed and affirmed under the penalties of perjury by such duly authorized instructor. An applicant required to complete the training required herein prior to renewal of a license issued prior to the effective date of this subdivision shall only be required to complete such training for the first renewal of such license after such effective date.

Credits

(L.1965, c. 1030. Amended L.1967, c. 791, § 49; L.1971, c. 796; L.1971, c. 1097, §§ 82, 83; L.1973, c. 172, §§ 1-4; L.1973, c. 546, § 1; L.1973, c. 593, § 1; L.1974, c. 1041, §§ 10, 11; L.1974, c. 1042, § 2; L.1976, c. 584, § 1; L.1977, c. 480, § 1; L.1980, c. 233, §§ 15 to 17; L.1980, c. 843, §§ 47 to 50; L.1981, c. 175, § 5; L.1982, c. 71, § 1; L.1984, c. 739, § 1; L.1985, c. 778, § 2; L.1986, c. 539, § 1; L.1988, c. 437, § 1; L.1990, c. 707, § 1; L.1991, c. 414, § 1; L.1992, c. 320, § 1; L.1993, c. 448, § 1; L.1993, c. 449, § 1; L.1993, c. 498, §§ 2, 3; L.1994, c. 332, § 1; L.1994, c. 636, § 1; L.1994, c. 637, § 1; L.1995, c. 236, § 1; L.1995, c. 370, § 1; L.1996, c. 644, §§ 5, 6; L.1997, c. 446, §§ 3 to 6, eff. Aug. 25, 1997; L.1997, c. 447, § 2, eff. Aug. 25, 1997; L.1998, c. 378, § 8, eff. Nov. 1, 1998; L.1999, c. 210, §§ 5, 6, eff. Nov. 1, 1999; L.2000, c. 189, §§ 18, 19, eff. Nov. 1, 2000; L.2000, c. 189, § 20, eff. Aug. 8, 2000; L.2002, c. 318, § 5, eff. Aug. 6, 2002; L.2005, c. 195, § 1, eff. July 12, 2005; L.2005, c. 331, § 1, eff. July 26, 2005; L.2013, c. 1, § 48; L.2013, c. 98, § 3, eff. April 15, 2013; L.2018, c. 60, § 6, eff. June 11, 2018; L.2019, c. 104, § 1, eff. July 16, 2019; L.2019, c. 129, § 1, eff. Sept. 12, 2019; L.2019, c. 135, § 3, eff. Sept. 28, 2019; L.2019, c. 242, § 1, eff. Nov. 2, 2019; L.2019, c. 244, § 1, eff. Sept. 3, 2019; L.2020, c. 55, pt. N, § 2, eff. April 3, 2021; L.2022, c. 207, § 3, eff. Dec. 3, 2022; L.2022, c. 208, § 6, eff. July 6, 2022; L.2022, c. 212, §§ 1, 7, eff. Sept. 4, 2022; L.2022, c. 371, § 1; L.2022, c. 371, § 23, eff. Sept. 1, 2022; L.2022, c. 669, § 54, eff. Dec. 9, 2022.)

Editors' Notes

VALIDITY

<For validity of this section, see *Antonyuk v. Hochul*, ___ F.Supp.3d ___, 2022 WL 16744700 (N.D.N.Y. 2022); *People v. Sovey*, ___ N.Y.S.3d ___, 2022 WL 16704589 (Sup. Ct. New York 2022); *New York State Rifle & Pistol Assn., Inc. vs. Bruen*, 142 S.Ct. 2111 (2022).>

Exhibit

I



USE & DISSEMINATION AGREEMENT
between
NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES
and
ERIE COUNTY CLERK'S OFFICE – PISTOL PERMIT DEPARTMENT

Pursuant to Executive Law §837(6) and/or §837(8-a), the New York State Division of Criminal Justice Services (DCJS) hereby agrees to allow **Erie County Clerk's Office – Pistol Permit Department, Buffalo, NY**, the ("User Agency"), access to criminal history and wanted and/or missing persons data as may be contained in DCJS and, if applicable, federal Criminal Justice Information Services (CJIS) data files and other state repository files, as available through the Interstate Identification Index (hereinafter referred to as "III"), in accordance with the following terms and conditions:

DUTIES OF DCJS

DCJS will process authorized criminal history record inquiries, as specified in the Inquiry Specification list (attached hereto and hereinafter referred to as "Appendix A"), by searching its files and returning related criminal history, wanted and/or missing persons' information, as permitted by New York State law, DCJS administrative regulations, applicable federal statutes and regulations, and CJIS policies and procedures.

DCJS will allow the User Agency to access criminal history data electronically by allowing on-line searches of its files and, if applicable, CJIS files only for those authorized criminal justice purposes specified in Appendix A, and will return related criminal history, wanted and/or missing person's information, as permitted by New York State law, DCJS administrative regulations, applicable federal statutes and regulations, and CJIS policies and procedures.

DCJS will provide such information only to the extent that public funds are made available for that purpose.

DCJS will not allow the User Agency to access criminal history data for research purposes or any other purpose that is not specifically authorized by this Agreement.

DUTIES OF THE USER AGENCY

The User Agency will collect, receive, use, and report, when applicable, all information covered by this Agreement in compliance with all applicable state laws and regulations, and all applicable federal laws, regulations, policies and procedures, and restrict inquiries to only those specified in Appendix A.

The User Agency agrees to not access criminal history data for research purposes or any other purpose that is not specifically authorized by this Agreement. The User Agency must submit an official written request for access to criminal history data for purposes not specified in the Appendix A.

For employment and/or licensing purposes, the User Agency agrees to retain criminal history record information supplied by DCJS only for the duration of the appointment and/or licensing investigation process, including any subsequent administrative or judicial appeal of denial of the appointment and/or license. Thereafter, such information must be destroyed in a secure manner so as to preclude unauthorized access/use.

For electronic access, the User Agency must have and maintain the necessary computer and associated equipment. In addition to the aforementioned laws, regulations, policies and procedures, the User Agency must also comply with the Electronic Access Guidelines attached as Appendix B. Electronic access allows the User Agency to extract criminal history record information from DCJS criminal history files and, if applicable, CJIS for inclusion in a separate report, provided such information shall not be compiled by the User Agency into a separate data file(s), in either printed or electronic form, for: (i) the creation of a separate database in lieu of submitting a new inquiry to DCJS; (ii) secondary dissemination unless specifically authorized by law; (iii) research purposes; or (iv) any other purpose that is not specifically authorized by this Agreement.

USE & DISSEMINATION AGREEMENT
between
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and
ERIE COUNTY CLERK'S OFFICE – PISTOL PERMIT DEPARTMENT

The User Agency agrees to protect the security of criminal history record information that is contained in either printed or electronic form and comply with any and all provisions concerning the confidentiality of criminal history record information and the physical security of terminals, printers and other electronic devices, including, where applicable, mobile devices¹, enabled to electronically access the files of DCJS and, if applicable, the National Crime Information Center (NCIC)/III. All terminals, printers and other electronic devices, including mobile devices, under the control of the User Agency, which allow access to criminal history record information from DCJS files and, if applicable, NCIC/III files, must be in secure locations whether they are within the confines of the User Agency or the User Agency vehicles, or on the persons of the User Agency staff. Access to the locations must be restricted to authorized employees, or, if applicable, visitors - such as vendors - necessary for business purposes. Visitors to computer sites or terminal areas must be accompanied by User Agency staff at all times.

The User Agency will familiarize its personnel with, and adhere to, 42 U.S.C. §3789g and the applicable regulations (see, 28 CFR Part 20; Appendix C) and, when applicable, the CJIS Security Policy, as updated, the NCIC Manual, and the III Operational and Technical Manual, which are incorporated into this Agreement by reference. The User Agency will also familiarize its personnel with, and ensure adherence to, all physical and personnel security, and other relevant provisions, as specified in the Electronic Access Guidelines in Appendix B. This includes, but is not limited to, provisions concerning the confidentiality of criminal history record information and the physical security of terminals enabled to electronically access the files of DCJS and, if applicable, CJIS.

The User Agency will make records available that support and justify criminal history record inquiries to DCJS and, if applicable, CJIS for the purpose of conducting routine, periodic audits to ensure compliance with all applicable laws, regulations, policies, and procedures regarding the information furnished by DCJS and/or CJIS pursuant to this Agreement. The User Agency agrees to keep such records as DCJS may require including a log of all non-fingerprint inquiries, whether made by electronic and non-electronic means, to facilitate audits. The log will reflect, at a minimum, a record of each inquiry showing the date, time, name of subject, specific reason for the inquiry, file or case number, name of person requesting the inquiry, and the terminal operator. In those cases, for which an inquiry is made on behalf of another authorized agency, the ORI code of the requesting agency must be recorded. Fingerprint-based inquiries need not be logged.

The User Agency will appoint a Terminal Agency Coordinator (TAC) who will be responsible for ensuring compliance with this Agreement, and DCJS and, if applicable, CJIS regulations and policies. The TAC will train and affirm the proficiency of terminal operators who access the criminal history files of DCJS, and, if applicable, the criminal history record files of CJIS, prior to the operator being permitted access. For those User Agencies that access CJIS information, in addition to ensuring that training and testing of each terminal operator has been completed pursuant to NCIC policies and procedures, the TAC will also ensure that DCJS-approved training of each terminal operator has been completed and will maintain each operator's certification attesting to such training. For those User Agencies with access to only NYS criminal history, the TAC will ensure that DCJS-approved training of each terminal operator has been completed and will maintain each operator's certification attesting to such training. The TAC will also maintain a complete, accurate, and current listing of all terminal operators and their user identifications. The head of the User Agency will officially notify DCJS upon the appointment of any TAC by submitting a form supplied by DCJS. The User Agency agrees to provide sufficient time during normal business hours for the TAC to perform the duties and responsibilities associated with the position, as explained in the *TAC Guidelines (DCJS-EXT 2422)*.

Upon initial assignment or employment of all personnel who will have access to DCJS or CJIS criminal history record data, including programmers, technicians and other persons who will be utilized to effectuate access to, or initiate transmission of, DCJS or CJIS data, the User Agency will submit the fingerprints of those persons

¹ Mobile devices are to be used by law enforcement and partnering agencies only.

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between
NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES
and
ERIE COUNTY CLERK'S OFFICE – PISTOL PERMIT DEPARTMENT

and the required state, and, if applicable, federal fee(s) in accordance with DCJS and CJIS criteria for a fingerprint-based criminal history record search. The User Agency shall not permit access of any kind until the User Agency receives and reviews the fingerprint-based search results and makes a determination if access/employment is appropriate. New York State Correction Law §§752-753 provides factors to be considered in making such determinations when an individual has prior criminal convictions. If deemed acceptable, the individual may be granted access. If a felony conviction of any kind is found, access shall be denied and the User Agency will be responsible for immediately notifying DCJS' Office of Criminal Justice Records (OCJR). Where applicable, a further review may be conducted to determine whether extenuating circumstances exist to grant access to an individual with a felony conviction. Access to CJIS information by an individual with a felony conviction shall be determined pursuant to the federal CJIS Security Policy; and access to NYS-only criminal history information by an individual with a felony conviction shall be determined after a review by the DCJS Commissioner, or his or her designee. The User Agency will be notified upon a completion of such review whether such user shall be permitted access. If an individual approved for access is subsequently arrested, the User Agency will be notified. The User Agency will be responsible for notifying OCJR if such arrest results in a felony conviction. If a felony conviction results from such arrest, the User Agency agrees to review the individual's access in the manner outlined above.

In the event the User Agency believes there was a breach of the security of the System, i.e., the unauthorized acquisition of Computerized Criminal History (CHRI) data or any other criminal justice data provided to the User Agency as granted through this U&D, the User Agency shall initially and immediately notify the DCJS Director of Audit Services. The User Agency shall then immediately commence an investigation, in cooperation with the DCJS Director of Audit Services, to determine if a breach occurred, the scope of the breach and to restore the security of the System to prevent any further breaches. Upon completion DCJS, as the state entity owning the System, will determine if such breach is applicable to State Technology Law §208-STL §208 and GBL §899-aa.

ACCESS RESTRICTIONS

Access to criminal history and wanted and/or missing persons' data as may be contained in DCJS and, if applicable, CJIS data files and other state repository files, as available through III, shall only be used for authorized purposes.

Inquiries for employment and/or licensing purposes via telephone, computer to computer, remote terminal, correspondence, or other methods of non-fingerprint inquiry are prohibited. Fingerprints must be submitted for employment and/or licensing purposes.

Secondary dissemination of criminal history record information received from DCJS and/or CJIS is not permitted for any reason unless specifically authorized by law. Secondary dissemination means the transmission of criminal history record information in any form, printed or otherwise, to another agency or individual.

SUBSEQUENT QUERY REQUIREMENT

If the User Agency has a subsequent need for criminal history record information pertaining to an individual for whom a previous inquiry was made, the User Agency must submit a new inquiry to DCJS to ensure that it has the most current, complete, and accurate criminal history record report available for that individual. A criminal history record must never be used for research purposes or any other purpose that is not specifically authorized by this Agreement. Further, a criminal history record must not be used again in connection with an extension of the original purpose, or in connection with a new and different purpose. The criminal history record should be retained only so long as is necessary. Criminal history may be retained if: (i) it is a key

USE & DISSEMINATION AGREEMENT
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ERIE COUNTY CLERK'S OFFICE – PISTOL PERMIT DEPARTMENT

element in a case; (ii) there is a possibility that the record could be challenged; (iii) all levels of appeals have not been exhausted; or (iv) it is necessary to document the circumstances of the case/investigation at the time of the inquiry. Thereafter, such information must be destroyed in a secure manner.

Any criminal history record information electronically extracted and saved in a separate report by the User Agency must not be used for research purposes or any other purpose that is not specifically authorized by this Agreement. Further, any criminal history record information electronically extracted and saved in a separate report by the User Agency must not be used to create a separate database in lieu of submitting a new inquiry to DCJS.

SUSPENSION OF SERVICE, CANCELLATION, FINES

DCJS may suspend provision of all/part of the service covered by this Agreement to the User Agency for a known violation of any applicable state or federal laws, rules, regulations, policies, procedures, or this Agreement. The User Agency recognizes that a known violation of 42 U.S.C. §3789g and/or the applicable regulations by the User Agency, or its employees, may, if applicable, subject the User Agency to fines up to \$10,000, and may, if applicable, result in suspension of all federal funds. DCJS may resume furnishing any information authorized hereunder when it is satisfied that all violations have been eliminated. Either DCJS or the User Agency may, on 30 days written notice, terminate this Agreement for any reason.

INDEMNIFICATION OF DCJS

The User Agency, to the extent permitted by State or federal law, agrees to indemnify and hold DCJS, its officers and employees, harmless from and against any and all claims, demands, actions, suits, and proceedings brought by others arising out of the terms of this Agreement founded upon the negligence or other tortious conduct of the User Agency including, but not limited to, any liability for loss or damage by reason of any claim of false imprisonment or false arrest.

VALIDATION OF INACTIVE NON-CRIMINAL FINGERPRINTS/SWITCH TO INACTIVE STATUS

If DCJS retains the User Agency's non-criminal applicant fingerprints in its files for the purpose of issuing reports to the User Agency upon the subsequent arrest of the subject of the retained fingerprints, the User Agency agrees to provide DCJS with:

- (1) The names and NYSID numbers of individuals whose fingerprints were sent to DCJS for identification processing and retention, but whose applications were not approved for employment or licensure by the User Agency; and
- (2) The names and NYSID numbers of individuals who subsequently left the User Agency's employment or relinquished the licensure.

The User Agency agrees to provide these notifications as often as practicable, at least once per year. Once so notified by the User Agency, DCJS agrees to designate as "inactive" the fingerprints of individuals who are no longer in the employment or licensure situation for which they were fingerprinted.

USE & DISSEMINATION AGREEMENT
between
NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES
and
ERIE COUNTY CLERK'S OFFICE – PISTOL PERMIT DEPARTMENT

EFFECTIVE DATE

This Agreement shall supersede any prior Use and Dissemination Agreement between the parties and shall become effective when signed by the Commissioner of DCJS, or his or her designee, and the official of the User Agency having authority to bind the User Agency to the terms and conditions enumerated herein.

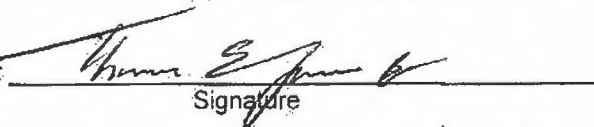
**NEW YORK STATE DIVISION OF
CRIMINAL JUSTICE SERVICES**

**USER AGENCY: ERIE COUNTY CLERK'S OFFICE
PISTOL PERMIT DEPARTMENT**

BY: _____


Signature

BY: _____


Signature

Printed Name: Adam Dean

Printed Name: Thomas E. Smith Jr

Title: Director

Office of Criminal Justice Records

Title: Supervisor of Data Processing

Date: _____

11/1/19

Date: _____

10/28/19

Appendix A

Authorized Inquiry Specification List

User Agency: Erie County Clerk's Office – Pistol Permit Department

ORI Number: NY931040Z

On-Line Inquiry Reason Code	Purpose of Inquiries	Enabling Authority
	NON CRIM FINGERPRINT CARD Non-criminal fingerprint submissions pertaining to pistol permit license applicants* (NY State and Federal CHRI response)	Penal Law §400.00(4)
	NON CRIM FINGERPRINT CARD Non-criminal fingerprint submissions for employees who have access to NY State or Federal Criminal History Record Information (CHRI), whether hard copy or electronic form, in the course of their job duties* (NY State CHRI response)	9 NYCRR 6051.1(a)(3)

Remarks:

* Fingerprint processing fee required pursuant to Executive Law §837(8-a)

** Agencies that are authorized to conduct an FBI fingerprint background check on an applicant (i.e. employment, license, permit, adoption) are obligated to ensure the applicant is provided certain notice. Refer to <https://www.fbi.gov/services/cjis/compact-council> for the following documents regarding the privacy protection of a non-criminal fingerprint submissions:

- Privacy Act Statement
- Guiding Principles: Agency Privacy Requirements for Noncriminal Justice Applicants
- Guiding Principles: Noncriminal Justice Applicants Privacy Rights

Exhibit

J



Exhibit

K



ESCROW AGREEMENT

THIS **ESCROW AGREEMENT** (the "Agreement") dated _____, is made between, Erie County Clerk (the "Clerk") and _____ (the "Customer").

WHEREAS, the Clerk provides various services for fees and costs as prescribed by New York statute and Erie County law;

WHEREAS, the Customer and the Customer's employees and/or agents require the services of the Clerk's Office; and

WHEREAS, the Customer and the Clerk have sought an efficient and effective means of obtaining such services;

NOW, THEREFORE, the Clerk and the Customer agree as follows:

1. A non-interest bearing escrow account shall be established primarily for payment of charges, costs, and fees incurred by Customer; as a courtesy, payment overages may be deposited by Clerk. Any account established pursuant to the provisions of this Agreement shall exist for a minimum of two (2) months and shall not be terminated within that time period by Customer. However, any request for a refund shall be deemed a request for refund of the entire balance of the account and shall, in addition, be deemed a request to close the account. No partial refunds will be made. In the event that an account is closed under such circumstances, Clerk shall not establish a separate and new account except after a period of three months. Clerk reserves the right to close an account for any reason at any time.
2. The Customer shall deposit funds into and maintain a balance in the escrow account to be drawn upon by the Customer for payment of Clerk's fees, charges, and costs.
3. An executed Agreement and the initial escrow deposit of \$250 (Two Hundred Fifty Dollars) must be submitted to the Clerk's Office in order to establish an account. The Clerk shall notify the Customer of the establishment and availability of the escrow account by written transmittal of the escrow account number to the Customer's address as indicated in this Agreement.
4. It is the Customer's sole responsibility to maintain the privacy of the assigned escrow account assigned to the Customer. The Clerk is not responsible for any unauthorized usage of the escrow account.
5. The receipt of the transaction shall be the record of the deposit, refund, or amounts paid when depositing money to the account or recording or filing documents, or obtaining copies from the Clerk.
6. The Customer shall maintain adequate funds in its escrow account to ensure timely processing of service transactions. If the Customer's escrow account balance is insufficient to process a transaction request, the transaction request will not be completed until sufficient funds are received and deposited.
7. The escrow account may be replenished at any time with a deposit by cash, check, money order, credit card, or online at the County Clerk's website (credit card only). If adding funds online, Customer is responsible for providing the correct account number for reference; County shall not be liable for any damages or loss incurred should the account identification field be completed incorrectly or incompletely. The use of a credit card will result in an additional processing fee charged by the credit card company to the Customer. The Customer may mail or deliver the deposit to the Accounting Department or to a cashier in the County Clerk's Office. The Customer will receive monthly escrow account activity statements for months in which escrow activity occurs only. In the event that County provides access to account records online, County shall cease providing monthly account activity statements.
8. If the Customer desires to close its escrow account, the Customer must provide written notice to the Clerk. The notice must indicate the Customer name and the escrow account number to be closed.

Upon receipt of such notice, the Clerk will close the escrow account and forward any remaining balance in the escrow account within two (2) weeks to the Customer at the address listed herein.

- 9. The Clerk retains the right to close any escrow account at any time in its sole discretion upon 14 days written notice to the Customer. In the event that there has been no activity on the escrow account for a period of at least three months, the Clerk may close the escrow account without written notice to the Customer. Upon closing, any remaining balance in the escrow account will be returned to the Customer at the address listed herein.
- 10. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 11. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provisions of this Agreement, the Clerk shall be entitled to recover reasonable attorney's fees, court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), and all expenses (including taxes), even if not taxable as court costs, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled. Venue for such action will be Erie County, New York.
- 12. The Clerk and the Customer agree by mutual consent to use Alternative Dispute Resolution (ADR) to resolve all issues in controversy under this Agreement prior to proceeding with any formal litigation. If either party refuses an offer for ADR, that party shall inform the other party in writing of the reason(s) for such refusal. If ADR is used, any agreement should be reached by the parties on the alternative procedures and terms to be used in lieu of formal litigation and participation in the process shall include officials of both parties who have authority to resolve the issue in controversy.
- 13. The Clerk and the Customer agree that this Agreement sets forth the entire agreement between the Clerk and the Customer, and that there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by both the Clerk and the Customer.

Complete all information

Contact: _____

Address: _____ City, State, Zip Code: _____

Telephone: _____ Email: _____

CUSTOMER (Company or Individual Name)

By: _____
(Signature)

Title: _____

Print Name: _____

ERIE COUNTY CLERK

By: _____
MICHAEL P. KEARNS, Erie County Clerk

Account #: _____

Exhibit

L





ERIE COUNTY COMPTROLLER
KEVIN R. HARDWICK

May 25, 2023

Camilo Amezquita
NewVision Systems Corporation / Catalis
50 Locust Avenue
New Canaan, CT 06840

Dear Mr. Amezquita:

This letter is a response to your communications with Amy Barlow, a Staff Auditor in the Erie County Office of Comptroller, in relation to an ongoing audit of the Erie County Clerk's Office. Ms. Barlow has requested a meeting with a representative of NewVision/Catalis to solicit insight into the technical aspects of the system used by the Clerk's Office in the scope of her duties as Staff Auditor.

Based on those communications, it appears that Ms. Barlow attempted to schedule a meeting based on the availability provided to her by Matthew Garrett and yourself. When she submitted a time accommodating the information provided, suddenly the entire following week was unavailable. Also noted were discussions with the Clerk's Office regarding this request. As Ms. Barlow noted to Mr. Garrett, time is of the essence in this matter, and the presence of Clerk's Office staff, while welcome, is not necessary.

According to the executed agreements between the County and NewVisions in 2004, 2013, and 2018 (collectively, "the Agreements"), NewVisions has been contracted by the County Executive with the approval of the County Legislature for the benefit of the County Clerk. Therefore, the County of Erie is NewVisions' client pursuant to the Agreements, not the County Clerk. As Erie County Comptroller, it is my responsibility to exercise fiscal oversight authority over all County Departments and any vendor contracts entered into thereby. Pursuant to that authority, I am asking you, or another representative at NewVisions/Catalis familiar with the system used by the Erie County Clerk, to accommodate Ms. Barlow's request to meet via Webex prior to 1700 on Friday May 26, 2023, irrespective of the Clerk's availability.

Please respond to Ms. Barlow, copying Mary-Nytz Hosler, Deputy Comptroller for Audit, to schedule a meeting to discuss her concerns. Thank you for your cooperation.

Sincerely,

KEVIN R. HARDWICK, PH.D.

By: 
Eric J. Mikols, Esq., Associate Deputy Comptroller

Exhibit

M





COUNTY OF ERIE

MICHAEL P. KEARNS
COUNTY CLERK

October 30, 2018

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

**Re: 2nd Extension of Software Maintenance Agreement-
NewVision Systems Corporation**

Dear Honorable Members:

The Erie County Clerk's Office is requesting authorization for Erie County to exercise our right of a second extension of the software maintenance agreement with NewVision Systems Corporation ("NewVision") for an additional five-year term. NewVision is the document management and workflow software provider to record, archive, and retrieve official records maintained by the County Clerk.

The County Clerk has maintained a relationship with NewVision since the execution of the original purchase and maintenance agreement in 2004. Upon the expiration of the original agreement, Erie County executed a Software Maintenance Agreement, ("Agreement"), the term of which is 5 years and has extended the Agreement once. By virtue of this Agreement, the Clerk's Office has been able to provide state-of-the art services to its residents doing business with the County.

The current extension of the agreement will expire on December 31, 2018. This requested extension will hold the cost of the Maintenance Agreement unchanged until December 31, 2023.

Should your Honorable Body require further information, representatives from the County Clerk's Office will be available to discuss. Thank you for your consideration of this matter.

Sincerely,

Michael P. Kearns
Erie County Clerk

Attachments
ERIE COUNTY HALL • 92 FRANKLIN STREET • BUFFALO, N.Y. • 14202 • PHONE: (716) 858-8866 • FAX: (716) 858-6550

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Michael P. Kearns, Erie County Clerk
Re: Erie County Clerk - 2nd Extension of Software Maintenance Agreement-
NewVision Systems Corporation
Date: October 30, 2018

SUMMARY OF RECOMMENDED ACTION

Authorization is requested to exercise our right of renewal for an additional five-year term with NewVision Systems Corporation ("NewVision") in order to maintain the document management and workflow system provided by the vendor.

FISCAL IMPLICATIONS OF PROPOSAL

The annual cost (\$80,325.00) of the five-year extension was included in the 2019 Budget submission by the County Clerk. Subsequent years of the extension will be adequately budgeted for in future budget submissions.

REASONS FOR RECOMMENDATION

The present agreement with NewVision is due expire on December 31, 2018. It is beneficial to the County financially and for continuity of service to extend the present agreement for an additional five-year term.

BACKGROUND OF PROPOSAL

The County Clerk has maintained a relationship with NewVision since the execution of the original purchase and maintenance agreement in 2004. Upon the expiration of the original agreement, Erie County executed a Software Maintenance Agreement, ("Agreement"), the term of which is 5 years and has extended the Agreement once in 2012. NewVision has worked diligently with the County to provide up-to-date services and software through an extension of the Software Maintenance Agreement to the County Clerk's Registrar Division in order to manage its records.

CONSEQUENCES OF NEGATIVE ACTION

If the contract is not renewed for a five-year term commencing in 2019 the County runs the risk of the annual cost of maintenance in the years 2020 - 2023 increasing. Without a maintenance agreement the system and software could not be supported by another vendor rendering the system ineffective and subject to expensive maintenance service calls. The county would not be able to install updates to the system.

STEPS FOLLOWING APPROVAL OF MEASURE

The five-year maintenance agreement will be executed by the Department of Law and County Executive.

A RESOLUTION SUBMITTED BY:
ERIE COUNTY CLERK

RE: 2nd Extension of Software
Maintenance Agreement-NewVision
Systems Corporation

WHEREAS, the County Clerk is responsible for recording, filing and maintaining a central repository of legal documents and records affecting property titles, including land and eral estate transactions in its Registrar Division; and

WHEREAS, the County Clerk executed an original purchase and maintenance agreement with NewVision Systems Corporation ("NewVision") in 2004 for document management and workflow to record, archive and retrieve official records maintained by the County Clerk. Upon the expiration of the original agreement, in 2008 Erie County executed a Software Maintenance Agreement, ("Agreement"), the term of which is five years. The Clerk has extended the Agreement once and the current extension expires on December 31, 2018; and

WHEREAS, the agreement has been reviewed and it has been determined that it continues to meet the needs of the County Clerk's Office; and

WHEREAS, the working relationship with the vendor has proven to be positive in response time, attention to the County's needs, and technological support; and

WHEREAS, the County Clerk's Office will benefit from continued uninterrupted support and service in addition to establishing the cost of the contract for a five-year period; and

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature does hereby authorize the County Executive to enter into a 2nd extension of the NewVision Systems Corporation Maintenance Agreement for a five-year period; and be it further

RESOLVED, that the funding for the cost of the 2019 maintenance agreement is included in the 2019 Budget as submitted; and be it further

RESOLVED, that funding for subsequent years 2020-2023 will be included as part of the annual budget process; and

RESOLVED, that certified copies of this resolution be sent to the County Executive, County Attorney, Erie County Comptroller, Erie County Clerk and the Director of Budget and Management and other parties deemed appropriate and that the County Executive shall execute the Agreement extending the terms of the Software Maintenance Agreement between NewVision Systems Corporation and the County of Erie.

SECOND EXTENSION OF SOFTWARE MAINTENANCE AGREEMENT

This Second Extension of Agreement dated the ___ day of _____, 2018 (this "Second Extension"), by and between the County of Erie, New York, (the "County"), having its offices located at 92 Franklin Street, Buffalo, New York 14202, on behalf of the Erie County Clerk (the "Clerk"), and NewVision Systems Corporation ("NewVision"), a Delaware corporation, having its principal place of business at 50 Locust Avenue, New Canaan, Connecticut 06840.

WITNESSETH

WHEREAS, NewVision currently provides software maintenance pursuant to that certain Clerk's Recording Information System Agreement dated August 10, 2004 and Software Maintenance Agreement dated September 1, 2008, as amended and as extended pursuant to that certain Extension of Software Maintenance Agreement dated December 12, 2012 (such documents, taken together, are referred to herein as the "Maintenance Agreement"); and

WHEREAS, the County and NewVision wish to further extend the term of the Maintenance Agreement for a period of five (5) years effective beginning January 1, 2019, pursuant to the terms of this Second Extension.

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

Each of the capitalized terms used in this Second Extension shall have the same meaning ascribed to it in the Maintenance Agreement unless such term is otherwise defined in this Second Extension.

2. TERM AND TERMINATION

The software maintenance provisions set forth in the Maintenance Agreement are hereby extended for a period of five (5) years commencing on January 1, 2019 (the "Commencement Date"). Thereafter, the Maintenance Agreement, unless renewed for an additional five-year term, shall automatically be renewed on an annual basis beginning on January 1 of each year unless terminated by either party by written notice given at least sixty (60) days prior to such date.

3. FEES

The fees for the Covered Maintenance Services for the period covered by this Second Extension shall be the fees set forth in the Payment Schedule attached hereto as Exhibit A (the "Payment Schedule"). Such fees shall be billed and payable in advance for each annual period on the Commencement Date and thereafter on each anniversary of the Commencement Date. Such fees shall remain firm throughout the initial five-year term of this Second Extension unless during such initial term or any portion thereof the consumer price index for the Northeastern United States increases by more than five percent (5%). In such event NewVision may increase the fee for

Covered Maintenance Services by up to five percent (5%) annually but in no event may such cumulative increases exceed ten percent (10%) during the initial five-year term of this Second Extension. Beginning on January 1, 2024 and on each January 1 thereafter, NewVision shall have the right to increase the fee for Covered Maintenance Services by up to five percent (5%) annually.

4. NOTICES

Any notice required or permitted by the Agreement will be in writing and accomplished by registered or certified delivery or overnight courier. Such notice will be effective when received. Notices to the County will be sent to:

Michael P. Kearns
Erie County Clerk
92 Franklin Street
Buffalo, New York 14202

Notices to NewVision will be sent to:

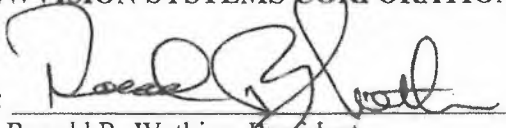
Ronald R. Watkins, President
NewVision Systems Corporation
50 Locust Avenue,
New Canaan, Connecticut 06840

5.REMAINING TERMS

All other terms of the Maintenance Agreement shall remain unchanged.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

NEUVISION SYSTEMS CORPORATION

By: 
Ronald R. Watkins, President
Date: 10/26/2018

COUNTY OF ERIE, NEW YORK

By: _____
Name:
Title:
Date:

Approved as to Form

By _____

Print name: _____

Approved as to Content


By Michael P. Kearns, Erie County Clerk

Exhibit A: Payment Schedule

Second Extension of Software Maintenance Agreement
Exhibit A: Payment Schedule

SOFTWARE MAINTENANCE SUPPLIED TO ERIE COUNTY	2019 SOFTWARE MAINTENANCE AND SERVICES	2020 SOFTWARE MAINTENANCE AND SERVICES	2021 SOFTWARE MAINTENANCE AND SERVICES	2022 SOFTWARE MAINTENANCE AND SERVICES	2023 SOFTWARE MAINTENANCE AND SERVICES
NEWVISION RECORDSNG SYSTEM FOR PROCESSING UP TO 250,000 OFFICIAL RECORDS PER YEAR INSTALLED AS PART OF THE FIVE YEAR MAINTENANCE AGREEMENT. RECORDSNG MAINTENANCE PRICE INCLUDES UNLIMITED NUMBER OF WORKSTATIONS	\$61,488	\$61,488	\$61,488	\$61,488	\$61,488
NEWVISION DATABASE MAINTENANCE	\$9,572	\$9,572	\$9,572	\$9,572	\$9,572
PROBLEM DETERMINATION – HW & SW	\$5,106	\$5,106	\$5,106	\$5,106	\$5,106
CO 2-2006 TAX LIEN IMPORT UTILITY	\$334	\$334	\$334	\$334	\$334
ELECTRONIC TAX WARRANTS – AUTO-RECORD FEATURE:	\$1,654	\$1,654	\$1,654	\$1,654	\$1,654
ELECTRONIC RECORDING (UP TO 30,000 DOCUMENTS ANNUALLY)	\$7,329	\$7,329	\$7,329	\$7,329	\$7,329
ERECORD WORKFLOW & STAMPING FOR DEEDS	\$331	\$331	\$331	\$331	\$331
AGENT ACCESS PORTAL	\$2,700	\$2,700	\$2,700	\$2,700	\$2,700
PDF DISPLAY OPTION FOR BACKFILE DOCUMENTS	\$350	\$350	\$350	\$350	\$350
TOTAL SW MAINTENANCE AND SERVICES FOR INSTALLED SYSTEM	\$88,863	\$88,863	\$88,863	\$88,863	\$88,863
DISCOUNT – WESTERN NY DEMO SITE	(\$4,961)	(\$4,961)	(\$4,961)	(\$4,961)	(\$4,961)
NET SW MAINTENANCE PRICE FOR ERIE COUNTY	\$83,902	\$83,902	\$83,902	\$83,902	\$83,902
LONG TERM AGREEMENT DISCOUNT	(\$3,577)	(\$3,577)	(\$3,577)	(\$3,577)	(\$3,577)
TOTAL ANNUAL AMOUNT	\$80,325	\$80,325	\$80,325	\$80,325	\$80,325