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**REPORT ON LEGISLATION BY THE
CORRECTIONS & COMMUNITY REENTRY COMMITTEE**

A.5726

M. of A. Lentol

AN ACT to amend the criminal procedure law, in relation to providing jurisdiction to Queens County for cases arising from Rikers Island facilities

THIS BILL IS OPPOSED

The Corrections and Community Reentry Committee of the New York City Bar Association (the “Association”) opposes A.5726, which would strip the Bronx County District Attorney of jurisdiction over criminal cases arising from Rikers Island. Instead, the legislation would transfer jurisdiction for offenses committed at Rikers Island exclusively to the Queens County District Attorney. The Committee opposes this bill because it raises serious state constitutional questions and would undermine the prosecutorial discretion and independence of New York City’s District Attorneys. This bill was vetoed by Governor Cuomo in 2014¹ and has been opposed by the Queens District Attorney, the Bronx District Attorney, the District Attorneys Association, the City of New York, the NYCLU and The Legal Aid Society.

The Association is an independent, non-governmental organization of 24,000 lawyers, law professors, and government officials from the United States and 50 other countries. Throughout its 144-year history, the Association has consistently advocated for a fair, just, and efficient judicial process and respect for the rule of law.

Rikers Island is within Bronx County. Accordingly, the Bronx County District Attorney prosecutes most crimes committed on Rikers Island. However, current law does not limit prosecutorial jurisdiction to the Bronx. For example, now, the Attorney General may prosecute corruption cases arising from Rikers Island, and local prosecutors in other jurisdictions may prosecute cases when offenses committed at Rikers Island implicate their jurisdiction.

The proposed law, however, would amend subdivision 4 of section 20.40 of the Criminal Procedure Law by adding a new subdivision (n), which would read, “[a]n offense committed at Rikers Island facilities shall be prosecuted by Queens County.” This would require the Queens County District Attorney to prosecute all offenses committed at Rikers Island facilities and bar other local prosecutors and the Attorney General from doing so. The Bronx County District

¹ S.4928-B/A.7333-B, 237th Session (N.Y. 2013), Veto Memo 581.

Attorney would be deprived of the ability to prosecute crimes committed in the county he or she was elected to represent.

This jurisdiction stripping raises serious state constitutional questions. The New York State Constitution requires that every county elect a district attorney to prosecute crimes within that county.² The governor may remove any district attorney who fails to faithfully prosecute people within his or her jurisdiction.³ New York State County Law also dictates that, with certain exceptions, every district attorney shall prosecute all crimes cognizable by the courts of the county in which the district attorney was elected or appointed.⁴ These constitutional concerns were recognized by Governor Cuomo in his veto message for this legislation last year.⁵

The only justification presented in the bill for the legislation is that it would “provide cost savings and management efficiencies for New York City.” This reason is not convincing. As noted in the letter of opposition from the City Of New York, “the City does not anticipate that it would realize any savings from the proposed law.” The impetus for the bill is, at best, unclear and, at worst, subject to interpretation that some believe it would be preferable to have these cases tried not in Bronx County but in another jurisdiction where perhaps greater prosecutorial leniency will be exercised. There is no real justification given for what may well be unconstitutional tampering with jurisdictional boundaries.

For the forgoing reasons, the Committee opposes A.5726.

May 2015

² N.Y. Const. Art. XIII, § 13.

³ N.Y. Const. XIII, § 13 (b).

⁴ Cty. L. § 700(1).

⁵ *Supra* fn 1.