

**STATE OF NEW YORK**

10706

**IN ASSEMBLY**

June 15, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Weinstein)  
-- (at request of the Office of Court Administration) -- read once and  
referred to the Committee on Judiciary

AN ACT to amend chapter 367 of the laws of 1999, amending the civil practice law and rules and the judiciary law relating to authorization of pilot programs permitting use of facsimile transmission or electronic means to commence an action or special proceeding, in relation to authorization of pilot programs permitting use of electronic means in certain courts; and to amend chapter 416 of the laws of 2009, amending the civil practice law and rules relating to service of papers by electronic means, in relation to development of a program relating to the use of electronic means for the commencement of certain actions; and providing for the repeal of certain provisions of chapter 367 of the laws of 1999 upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Chapter 367 of the laws of 1999, amending the civil prac-  
2 tice law and rules and the judiciary law relating to authorization of  
3 pilot programs permitting use of facsimile transmission or electronic  
4 means to commence an action or special proceeding, is amended by adding  
5 three new sections 6-a, 6-b and 6-c to read as follows:

6 § 6-a. (a) Notwithstanding any other provision of law, the chief  
7 administrator of the courts, with the approval of the administrative  
8 board of the courts, may promulgate rules authorizing a program in the  
9 use of electronic means in the supreme court and in the county court  
10 for: (1) the filing with a court of an accusatory instrument for the  
11 purpose of acquiring jurisdiction in a superior court, as provided by  
12 articles 195 and 200 of the criminal procedure law, and (2) the filing  
13 and service of papers in pending criminal actions and proceedings.

14 (b) (1) Except as otherwise provided in this subdivision, partic-  
15 ipation in this program shall be strictly voluntary and will take place  
16 only upon consent of all parties in the criminal action or proceeding;  
17 except that a party's failure to consent to participation shall not bar  
18 any other party to the action from filing and serving papers by elec-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 tronic means upon the court or any other party to such action or  
2 proceeding who has consented to participation. Filing an accusatory  
3 instrument by electronic means with the court for the purpose of confer-  
4 ring jurisdiction over a criminal action upon such court shall not  
5 require the consent of any other party; provided, however, that upon  
6 such filing any person who is the subject of such accusatory instrument  
7 and any attorney for such person shall be permitted to immediately  
8 review and obtain copies of such instrument if such person or attorney  
9 would have been authorized by law to review or copy such instrument if  
10 it had been filed with the court in paper form.

11 (2) The chief administrator may eliminate the requirement of consent  
12 to participation in this program in supreme and county courts of not  
13 more than six counties provided he or she may not eliminate such  
14 requirement for a court without the consent of the district attorney,  
15 the consent of the criminal defense bar as defined in section six-c of  
16 this act and the consent of the county clerk of the county in which such  
17 court presides. Notwithstanding the foregoing, the chief administrator  
18 may not eliminate the requirement of consent to participation in a county  
19 hereunder until he or she shall have provided all persons or organ-  
20 izations, or their representative or representatives, who regularly  
21 appear in criminal actions or proceedings in the superior court of such  
22 county with reasonable notice and an opportunity to submit comments with  
23 respect thereto and shall have given due consideration to all such  
24 comments, nor until he or she shall have consulted with the members of  
25 the advisory committee continued pursuant to subdivision (c) of section  
26 6 of chapter 416 of the laws of 2009, as amended.

27 (c) Where the chief administrator eliminates the requirement of  
28 consent as provided in paragraph two of subdivision (b) of this section,  
29 he or she shall afford counsel the opportunity to opt out of the  
30 program, via presentation of a prescribed form to be filed with the  
31 court where the criminal action is pending. Said form, which shall not  
32 be part of the case record, shall permit an attorney to opt out of  
33 participation in the program under any of the following circumstances,  
34 in which event, he or she will not be compelled to participate:

35 (1) Where the attorney certifies in good faith that he or she lacks  
36 appropriate computer hardware and/or connection to the internet and/or  
37 scanner or other device by which documents may be converted to an elec-  
38 tronic format; or

39 (2) Where the attorney certifies in good faith that he or she lacks  
40 the requisite knowledge in the operation of such computers and/or scan-  
41 ners necessary to participate. For the purposes of this paragraph, the  
42 knowledge of any employee of an attorney, or any employee of the attor-  
43 ney's law firm, office or business who is subject to such attorney's  
44 direction, shall be imputed to the attorney.

45 Notwithstanding the foregoing: (i) where a party is not represented by  
46 counsel, he or she may not participate in the program except upon his or  
47 her request and permission of the court; (ii) a party not represented by  
48 counsel who has opted in shall be afforded the opportunity to opt out of  
49 the program for any reason via presentation of a prescribed form to be  
50 filed with the clerk of the court where the proceeding is pending; and  
51 (iii) a court may exempt any attorney from being required to participate  
52 in the program upon application for such exemption, showing good cause  
53 therefor.

54 (d) For purposes of this section, "electronic means" shall be as  
55 defined in subdivision (f) of rule 2103 of the civil practice law and  
56 rules.

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1 (e) (1) Nothing in this section shall affect or change any existing  
2 laws governing the sealing and confidentiality of court records in crim-  
3 inal proceedings or access to court records by the parties to such  
4 proceedings, nor shall this section be construed to compel a party to  
5 file a sealed document by electronic means.

6 (2) Notwithstanding any other provision of this chapter, no paper or  
7 document that is filed by electronic means in a criminal proceeding in  
8 supreme court or county court shall be available for public inspection  
9 on-line. Subject to the provisions of existing laws governing the seal-  
10 ing and confidentiality of court records, nothing herein shall prevent  
11 the unified court system from sharing statistical information that does  
12 not include any papers or documents filed with the action; and, provided  
13 further, that this paragraph shall not prohibit the chief administrator,  
14 in the exercise of his or her discretion, from posting papers or docu-  
15 ments that have not been sealed pursuant to law on a public website  
16 maintained by the unified court system where: (i) the website is not the  
17 website established by the rules promulgated pursuant to subdivision (a)  
18 of this section, and (ii) to do so would be in the public interest. For  
19 purposes of this subdivision, the chief administrator, in determining  
20 whether posting papers or documents on a public website is in the public  
21 interest, shall, at a minimum, take into account for each posting the  
22 following factors: (i) the type of case involved; (ii) whether such  
23 posting would cause harm to any person, including especially a minor or  
24 crime victim; (iii) whether such posting would include lewd or scandal-  
25 ous matters; and (iv) the possibility that such papers or documents may  
26 ultimately be sealed.

27 (3) Nothing in this section shall affect or change existing laws  
28 governing service of process, nor shall this section be construed to  
29 abrogate existing personal service requirements as set forth in the  
30 criminal procedure law.

31 § 6-b. (a) Notwithstanding any other provision of law, the chief  
32 administrator of the courts, with the approval of the administrative  
33 board of the courts, may promulgate rules authorizing a program in the  
34 use of electronic means in the family court for: (1) the origination of  
35 proceedings in such court, and (2) the filing and service of papers in  
36 pending proceedings.

37 (b) (1) Except as otherwise provided in this subdivision, partic-  
38 ipation in this program shall be strictly voluntary and will take place  
39 only upon consent of all parties in the proceeding; except that failure  
40 of a party or other person who is entitled to notice of the proceedings  
41 to consent to participation shall not bar any other party from filing  
42 and serving papers by electronic means upon the court or any other party  
43 or person entitled to receive notice of such proceeding who has  
44 consented to participation. Filing a petition with the court by elec-  
45 tronic means for the purpose of originating a proceeding shall not  
46 require the consent of any other party; provided, however, that, upon  
47 such filing, a party to such proceeding and any attorney for such person  
48 shall be permitted to immediately review and obtain copies of such docu-  
49 ments and papers if such person or attorney would have been authorized  
50 by law to review or obtain copies of such documents and papers if they  
51 had been filed with the court in paper form.

52 (2) In the rules promulgated pursuant to subdivision (a) of this  
53 section, the chief administrator may eliminate the requirement of  
54 consent to participation in this program in family courts of not more  
55 than six counties for:

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1 (i) the filing with the court of a petition originating a juvenile  
2 delinquency proceeding under article 3 of the family court act by a  
3 presentment agency as defined in section 301.2 of such act;

4 (ii) the filing with the court of a petition originating a proceeding  
5 to determine abuse or neglect pursuant to article 10 of the family court  
6 act by a child protective agency, as defined in section 1012 of such  
7 act; and

8 (iii) the filing and service of papers in proceedings specified in  
9 subparagraphs (i) and (ii) of this paragraph where, pursuant to such  
10 subparagraphs, such proceedings were originated in the court by elec-  
11 tronic filing.

12 Notwithstanding the foregoing, the chief administrator may not elimi-  
13 nate the requirement of consent to participation without the consent of  
14 each authorized presentment agency, child protective agency of an  
15 affected county, the family court bar providing representation to  
16 parents, and the family court bar providing representation to children  
17 (as represented by the head of each legal services organization repres-  
18 enting parents and/or children, the head of each public defender organ-  
19 ization, and president of the local bar association as applicable) in  
20 any county in which such elimination shall apply.

21 Notwithstanding the foregoing, the chief administrator may not elimi-  
22 nate the requirement of consent to participation in a county hereunder  
23 until he or she shall have provided all persons or organizations, or  
24 their representative or representatives, who regularly appear in  
25 proceedings in the family court of such county, in which proceedings the  
26 requirement of consent is to be eliminated, with reasonable notice and  
27 an opportunity to submit comments with respect thereto and shall have  
28 given due consideration to all such comments, nor until he or she shall  
29 have consulted with the members of the advisory committee continued  
30 pursuant to subdivision (d) of section 6 of chapter 416 of the laws of  
31 2009, as amended.

32 (c) Where the chief administrator eliminates the requirement of  
33 consent as provided in paragraph two of subdivision (b) of this section,  
34 he or she shall afford counsel the opportunity to opt out of the  
35 program, via presentation of a prescribed form to be filed with the  
36 clerk of the court where the proceeding is pending. Said form, which  
37 shall not be part of the case record, shall permit an attorney to opt  
38 out of participation in the program under any of the following circum-  
39 stances, in which event, he or she will not be compelled to participate:

40 (1) Where the attorney certifies in good faith that he or she lacks  
41 appropriate computer hardware and/or connection to the internet and/or  
42 scanner or other device by which documents may be converted to an elec-  
43 tronic format; or

44 (2) Where the attorney certifies in good faith that he or she lacks  
45 the requisite knowledge in the operation of such computers and/or scan-  
46 ners necessary to participate. For the purposes of this paragraph, the  
47 knowledge of any employee of an attorney, or any employee of the attor-  
48 ney's law firm, office or business who is subject to such attorney's  
49 direction, shall be imputed to the attorney.

50 Notwithstanding the foregoing: (i) where a party or a person entitled  
51 to notice of the proceedings is not represented by counsel, he or she  
52 may not participate in the program except upon his or her request and  
53 permission of the court; (ii) a party who is not represented by counsel  
54 that has opted in, shall be afforded the opportunity to opt out of the  
55 program for any reason via presentation of a prescribed form to be filed  
56 with the clerk of the court where the proceeding is pending; and (iii) a

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1 court may exempt any attorney from being required to participate in the  
2 program upon application for such exemption, showing good cause there-  
3 for.

4 (d) For purposes of this section, "electronic means" shall be as  
5 defined in subdivision (f) of rule 2103 of the civil practice law and  
6 rules.

7 (e) Notwithstanding any provision of this chapter, no paper or docu-  
8 ment that is filed by electronic means in a proceeding in family court  
9 shall be available for public inspection on-line. Subject to the  
10 provisions of existing laws governing the sealing and confidentiality of  
11 court records, nothing herein shall prevent the unified court system  
12 from sharing statistical information that does not include any papers or  
13 documents filed with the action.

14 (f) Nothing in this section shall affect or change any existing laws  
15 governing the sealing and confidentiality of court records in family  
16 court proceedings or access to court records by the parties to such  
17 proceedings, nor shall this section be construed to compel a party to  
18 file a sealed document by electronic means.

19 (g) Nothing in this section shall affect or change existing laws  
20 governing service of process, nor shall this section be construed to  
21 abrogate existing personal service requirements as set forth in the  
22 family court act and the civil practice law and rules.

23 § 6-c. (a) For purposes of section six-a of this act, "consent of the  
24 criminal defense bar" shall mean that consent has been obtained from all  
25 provider offices and/or organizations in the county that represented  
26 twenty-five percent or more of the persons represented by public defense  
27 providers pursuant to section 722 of the county law, as shown in the  
28 most recent annual reports filed pursuant to subdivision one of section  
29 722-f of the county law. Such consent, when given, must be expressed in  
30 a written document that is provided by a person who is authorized to  
31 consent on behalf of the relevant public defender organization, agency  
32 or office.

33 (b) Notwithstanding the provisions of any other law, no party or his  
34 or her counsel shall be charged a fee for viewing information filed by  
35 electronic means, or for downloading or printing such information  
36 through the use of such party's or counsel's own equipment. The chief  
37 administrator of the courts shall ensure that sufficient computer termi-  
38 nals and staff are available at the courthouse of each court participat-  
39 ing in the program in the use of electronic means, to enable parties and  
40 their counsel to access information, subject to the provisions of  
41 sections six-a and six-b of this act and laws governing the sealing and  
42 confidentiality of court records, filed by electronic means at such  
43 courthouse in a prompt and convenient manner.

44 § 2. Subparagraphs 1 and 2 of paragraph (B) of subdivision (b) of  
45 section 6 of chapter 367 of the laws of 1999, amending the civil prac-  
46 tice law and rules and the judiciary law relating to authorization of  
47 pilot programs permitting use of facsimile transmission or electronic  
48 means to commence an action or special proceeding, are REPEALED, subpar-  
49 agraphs 3, 4 and 5 of paragraph (B) are renumbered subparagraphs 1, 2  
50 and 3 and subparagraph 1, as amended by chapter 543 of the laws of 2011,  
51 is amended to read as follows:

52 1. One or more classes of cases (excluding matrimonial actions as  
53 defined by the civil practice law and rules, election law proceedings,  
54 proceedings brought pursuant to article 78 of the civil practice law and  
55 rules, and proceedings brought pursuant to the mental hygiene law) in  
56 supreme court in **Erie**, Livingston, Monroe, Rockland, Tompkins, Allegany,

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1 Essex, Onondaga, Suffolk and Westchester counties and in the counties  
2 within the city of New York, and

3 § 3. Subdivisions (c) and (d) of section 6 of chapter 416 of the laws  
4 of 2009, amending the civil practice law and rules relating to service  
5 of papers by electronic means, as added by chapter 543 of the laws of  
6 2011, are amended to read as follows:

7 (c) (1) The [~~chief administrator shall create an~~] advisory committee to  
8 consult with [~~him or her~~] the chief administrator regarding the develop-  
9 ment of a program relating to the use of electronic means for the  
10 commencement of criminal actions and the filing and service of papers in  
11 pending criminal actions and proceedings is continued. The committee  
12 shall consist of such number of members as will enable the chief admin-  
13 istrator to obtain input from those who are or would be affected by such  
14 electronic filing program, and such members shall include county clerks;  
15 chief clerks of supreme, county and other courts; district attorneys;  
16 not-for-profit legal service providers; public defenders; statewide and  
17 local specialty bar associations whose membership devotes a significant  
18 portion of their practice to assigned criminal cases pursuant to subpar-  
19 agraph (i) of paragraph (a) of subdivision 3 of section 722 of the coun-  
20 ty law; institutional providers of criminal defense services and other  
21 members of the criminal defense bar; representatives of victims' rights  
22 organizations; unaffiliated attorneys who regularly appear in  
23 proceedings that are or would be affected by such electronic filing  
24 program and other interested members of the criminal justice community.  
25 Such committee shall help the chief administrator to evaluate the impact  
26 of such electronic filing program on litigants including unrepresented  
27 parties, practitioners and the courts and to obtain input from those who  
28 are or would be affected by such electronic filing program, including  
29 district attorneys, not-for-profit legal service providers, public  
30 defenders, statewide and local specialty bar associations whose member-  
31 ship devotes a significant portion of their practice to assigned crimi-  
32 nal cases pursuant to subparagraph (i) of paragraph (a) of subdivision 3  
33 of section 722 of the county law, institutional providers of criminal  
34 defense services and other members of the criminal defense bar, repre-  
35 sentatives of victims' rights organizations, unaffiliated attorneys who  
36 regularly appear in proceedings that are or would be affected by such  
37 electronic filing program and other interested members of the criminal  
38 justice community.

39 (2) No later than January 1, [~~2012~~] 2015, the chief administrator of  
40 the courts shall submit to the legislature, the governor and the chief  
41 judge of the state a report of the evaluation including the entities or  
42 individuals consulted, the input received, all problems encountered or  
43 otherwise brought to the attention of the chief administrator of the  
44 courts or his or her agents, all solutions devised to address the prob-  
45 lems, presentment of all outstanding problems, any recommendations of  
46 the advisory committee to the chief administrator, along with recommen-  
47 dations for legislation [~~authorizing the development of a program relat-~~  
48 ~~ing~~] in relation to the use of electronic means for the commencement of  
49 criminal actions and the filing and service of papers in pending crimi-  
50 nal actions and proceedings. In the report, the chief administrator also  
51 shall address issues that bear upon the need for the courts, district  
52 attorneys and others to retain papers filed with courts or served upon  
53 parties in criminal proceedings where electronic means can or have been  
54 used and make recommendations for such changes in laws requiring  
55 retention of such papers as to the chief administrator may seem appro-  
56 priate.

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1 (d) (1) The [~~chief administrator shall create an~~] advisory committee  
2 to consult with [~~him or her~~] the chief administrator regarding the  
3 development of a program relating to the use of electronic means for the  
4 origination of juvenile delinquency proceedings under article 3 of the  
5 family court act and abuse or neglect proceedings pursuant to article 10  
6 of the family court act in family court and the filing and service of  
7 papers in such pending proceedings is continued. The committee shall  
8 consist of such number of members as will enable the chief administrator  
9 to obtain input from those who are or would be affected by such elec-  
10 tronic filing [~~programs~~] program, and such members shall include chief  
11 clerks of family courts; representatives of authorized presentment and  
12 child protective agencies; other appropriate county and city government  
13 officials; institutional providers of legal services for children and/or  
14 parents; not-for-profit legal service providers; public defenders;  
15 attorneys assigned pursuant to article 18-B of the county law; and other  
16 members of the family court bar; representatives of victims' rights  
17 organizations; unaffiliated attorneys who regularly appear in  
18 proceedings that are or would be affected by such electronic filing  
19 program; and other interested members of the family practice community.  
20 Such committee shall help the chief administrator to evaluate the impact  
21 of such electronic filing program on litigants including unrepresented  
22 parties, practitioners and the courts and to obtain input from those who  
23 are or would be affected by such electronic filing program, including  
24 representatives of authorized presentment and child protective agencies,  
25 other appropriate county and city government officials, institutional  
26 providers of legal services for children and/or parents, not-for-profit  
27 legal service providers, public defenders, attorneys assigned pursuant  
28 to article 18-B of the county law and other members of the family court  
29 bar, representatives of victims' rights organizations, unaffiliated  
30 attorneys who regularly appear in proceedings that are or would be  
31 affected by such electronic filing program, and other interested members  
32 of the criminal justice community.

33 (2) No later than January 1, [~~2012~~] 2015, the chief administrator of  
34 the courts shall submit to the legislature, the governor and the chief  
35 judge of the state a report of the evaluation including the entities or  
36 individuals consulted, input received, all problems encountered or  
37 otherwise brought to the attention of the chief administrator of the  
38 courts or his or her agents, all solutions devised to address the prob-  
39 lems, presentment of all outstanding problems, any recommendations of  
40 the advisory committee to the chief administrator, along with recommen-  
41 dations for legislation [~~authorizing the development of a program relat-~~  
42 ~~ing~~] in relation to the use of electronic means for the origination of  
43 juvenile delinquency proceedings under article 3 of the family court act  
44 and abuse or neglect proceedings pursuant to article 10 of the family  
45 court act in family court and the filing and service of papers in such  
46 pending proceedings.

47 § 4. This act shall take effect immediately; provided, however, that  
48 sections 6-a, 6-b, and 6-c of chapter 367 of the laws of 1999, as added  
49 by section one of this act, shall expire and be deemed repealed Septem-  
50 ber 1, 2015; and provided further that the amendments to paragraph (B)  
51 of subdivision (b) of section 6 of chapter 367 of the laws of 1999 made  
52 by section two of this act shall not affect the expiration of such  
53 provisions and shall be deemed to be repealed therewith.

**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(f)**

**BILL NUMBER:** A10706

REVISED 06/19/12

**SPONSOR:** Rules (Weinstein)

**TITLE OF BILL:**

An act to amend chapter 367 of the laws of 1999, amending the civil practice law and rules and the judiciary law relating to authorization of pilot programs permitting use of facsimile transmission or electronic means to commence an action or special proceeding, in relation to authorization of pilot programs permitting use of electronic means in certain courts; and to amend chapter 416 of the laws of 2009, amending the civil practice law and rules relating to service of papers by electronic means, in relation to development of a program relating to the use of electronic means for the commencement of certain actions; and providing for the repeal of certain provisions of chapter 367 of the laws of 1999 upon expiration thereof

This measure is being introduced at the request of the Chief Judge of the State and the Chief Administrative Judge.

In its 2011 session, the Legislature directed that the Chief Administrative Judge establish two committees to consider whether the State's program for the electronic filing of papers with the courts and between litigating parties ("e-filing") should be extended into criminal courts and the Family Court, respectively. See L. 2011, c. 543. The Chief Administrative Judge thereafter established these committees, which, in accordance with the statutory direction, were comprised of representatives of bench, bar and others who would be affected by such extensions, including prosecutors, criminal defense practitioners, local government agencies, County Clerks and specialty bar associations across the State. Id., §5. In the reports recently filed by these committees(1), it is recommended that the Legislature slowly begin to phase-in e-filing in select criminal and Family Court cases in a small number of venues. This measure would give effect to these recommendations, which include:

> Establishment by the Chief Administrative Judge, with the approval of the Administrative Board of the Courts, of a consensual e-filing program in criminal parts in Supreme Court and County Court for (i) the filing of accusatory instruments in those courts, and (ii) the filing and service of papers in criminal actions and proceedings therein. Also, authorization to convert participation in this e-filing program from consensual to mandatory in up to six counties (with implementation in any of these counties to be conditioned upon prior approval of the local District Attorney, each criminal defense office providing representation to 25% or more of the persons represented by public defense providers in an affected county (through the head of a legal aid society, public defender's office or local bar association, as appropriate) and the local County Clerk).

> Establishment by the Chief Administrative Judge, with the approval of the Administrative Board of the Courts, of a consensual e-filing program in Family Court for (i) the origination of proceedings in such

Court, and (ii) the filing and service of papers in pending proceedings therein. Also, authorization to convert participation in this e-filing program from consensual to mandatory in up to six counties for purposes of the filing of article 3 (juvenile delinquency) petitions with Family Court by a presentment agency, the filing of article 10 (abuse/neglect) petitions with such Court by a child protective agency, and the exchange of papers in these proceedings (with implementation in any of these counties to be conditioned upon prior approval of the local authorized presentment agency, the local child protective agency and the local Family Court Bar (represented by the head of each legal services organization representing parents and/or children, the head of each public defender organization and the president of the local bar, as appropriate).

This measure also would make two minor adjustments to the existing e-filing program in Supreme Court civil parts: (1) adding Erie and Suffolk Counties to the current list of eight counties outside New York City in which the Chief Administrative Judge may authorize a program of mandatory e-filing in Supreme Court civil parts; and (2) eliminating certain restrictions on use of e-filing in Supreme Court civil proceedings in New York City (so that mandatory e-filing may be extended there on the same terms as it now may be extended in the authorized counties outside the City).

## I. Overview

New York's experiment with e-filing began in civil parts of Supreme Court in 1999 in a very limited pilot" (2). Over the ensuing years, as judges, attorneys, litigants and others having roles in the civil justice system have developed experience and comfort with e-filing, as the technology needed to e-file has improved markedly (and grown exponentially in its availability), and as e-filing has become routine practice in the Federal Court system, the State has gradually expanded its e-filing pilot. This expansion has always been very slow and deliberate: from a modest beginning where e-filing was sanctioned in only a few classes of cases in Supreme Court in a small number of venues, and only where the affected parties consented to its use, new classes of actions and venues in which e-filing may be used have gradually been added, and the e-filing program has expanded into Surrogate's Court, the Court of Claims and the New York City Civil Court. Also, the Chief Administrative Judge has been permitted to make use of e-filing mandatory in some actions in some venues. As of this time, in the spring of 2012, consensual e-filing may be authorized by court rule in all categories of cases in Supreme Court (it has, in fact, been authorized in 15 counties, primarily for commercial, tort and tax certiorari cases); in 11 counties in Surrogate's Court; in the 12 county Albany District of the Court of Claims; and in one case type in the New York City Civil Court. At the same time, mandatory e-filing may be established in Supreme Court in eight counties and in New York City, in a broad array of cases.

This expansion has clearly demonstrated that use of e-filing in the courts can have substantial benefits - including lower litigation costs and reduced access-to-justice barriers especially for solo practitioners, small firms and rural practice. These benefits have been well-documented in periodic reports filed by the Judiciary with the Legislature over the past decade. As now acknowledged by the advisory committees established this year by the Chief Administrative Judge, these and other benefits promised by e-filing can likewise be found where e-filing is extended to practice in criminal courts and the Family Court, and, accordingly, these committees have urged that the Legislature act promptly to institute pilot e-filing programs in those courts.

In making their recommendations, our advisory committees have recognized that, just as it was wise to proceed cautiously in rolling out e-filing in the State's civil courts, it makes the greatest sense to do the same with an e-filing rollout in criminal courts and the Family Court. However attractive the benefits e-filing may promise, there are simply too many important rights at stake in proceedings in these courts to start an aggressive e-filing program in them right away. For this reason, our advisory committees have proposed that, with very limited exception, the Legislature begin with strictly voluntary e-filing for Family Court and criminal courts, with consent of the parties required in each case. Moreover, in the instance of criminal court, the criminal advisory committee proposes that e-filing be authorized only for commencement of proceedings in superior courts (3), and the exchange of papers between parties and between parties and the court in such courts. In this regard, the advisory committee believes that superior courts generally are ready, technically and administratively, for this step, but that local criminal courts are not yet prepared and cannot become

prepared in a cost-effective manner at this time.

Also in keeping with the historical emphasis upon caution in rolling out e-filing, the advisory committees recommend that an e-filing rollout in Family Court and in the criminal courts limit the breadth of its reach. Thus, while the Family Court advisory committee recommends that e-filing in Family Court be authorized generally, it urges that its use be consensual in most venues. In no more than six pilot counties should the Chief Administrative Judge enjoy authority to eliminate the consent requirement(4). Where he or she would act on this authority, it must be with the advance approval of appropriate justice stakeholders in the affected counties (i.e., local presentment and child protective agencies, and the local Family Court Bar) and following consultation with a broad spectrum of other interested parties, including the Family Court advisory committee. Further, he or she may only so authorize mandatory e-filing in connection with origination of Family Court Act article three and article ten proceedings and subsequent exchange of papers in those proceedings. Likewise on the criminal side, the criminal advisory committee has recommended that e-filing now be limited to the superior courts; and while, as with the Family Court advisory committee, the criminal court advisory committee believes that a broad consensual program in those courts may be in order, it similarly recommends that the consent requirement in criminal court be eliminated in no more than six pilot counties and then only where the local District Attorney, the local criminal defense bar and the County Clerk give advance permission, and only after consultation with a broad spectrum of other interested parties, including the Criminal advisory committee. Moreover, both advisory committees recommend that, where mandatory e-filing is sanctioned in Family Court and superior criminal courts, all the protections now afforded to pro se litigants and counsel who, for want of computer equipment or skill with that equipment, are unable to proceed by e-filing civil cases in Supreme Court should obtain (except that pro se litigants should not proceed by e-filing without court permission, whereas, at present, in Supreme Court civil matters subject to mandatory e-filing, such litigants must e-file unless they affirmatively opt out). Finally, the committees recommend that the e-filing programs promoted by this measure be subject to a three-year sunset, i.e., by September 1, 2015.

Paramount, in the view of the advisory committees, is recognition that Family Court and criminal court proceedings require special layers of protection against inappropriate disclosure. Unlike most civil cases, papers and records in Family Court cases are categorically protected against routine disclosure (see Family Court Act § 166), and papers filed in both pending and completed criminal cases can carry particular sensitivity - whether or not formally sealed by the court. Accordingly, the advisory committees recommend that, where e-filing is expanded into Family Court and criminal court, there be no right of public access on-line to Family Court or criminal court papers that are e-filed.

Finally, the advisory committees recommend that they continue to function and that, as it did with the gradual phase-in of civil e-filing, the Legislature require a three-year report to the Legislature on progress achieved in Family Court and criminal court e-filing and the sunset of its authorization after three years. The advisory committees recognize that introduction of e-filing in different courts and case types requires particular care and a period of study so that parties, counsel, stakeholders and the political branches can ensure the protection of rights and the efficient implementation of this next step

in the modernization of the New York State Judiciary.

## II. Section-by-Section Summary

Section 1 would amend chapter 367 of the Laws of 1999, the original e-filing statute, by adding new sections 6-a (to govern superior criminal court e-filing), 6-b (to govern Family Court e-filing) and 6-c (containing general provisions). Section 6-a would: (a) authorize the e-filing of superior court accusatory instruments that commence criminal actions, and of the papers and documents exchanged in those actions; (b) direct that such program be strictly voluntary upon consent of all parties, except where the Chief Administrative Judge eliminates the requirement of consent (which he or she may do in up to six counties so long as he or she secures prior consent of the local District Attorney, criminal defense bar and County Clerk and consults extensively with other interested members of the community along with the Criminal advisory committee); (c) provide that where e-filing is thereby made mandatory, parties will enjoy the same right to opt out of Participation in e-filing for want of technical resources or acumen as they would enjoy in a mandatorily e-filed civil case in Supreme Court and pro se litigants will automatically be excluded from such participation unless the court permits otherwise; (d) define e-filing by the same terms as CPLR 2103(f) provides for civil cases; (e) protect the confidentiality of e-filed documents, expressly applying all laws governing the sealing and Confidentiality of court records in criminal proceedings, and expressly providing that no e-filed paper or document in a criminal proceeding can be available for online public inspection. Section 6-b would: (a) authorize the e-filing of Family Court proceedings; (b) direct that such program be strictly voluntary upon consent of all parties, except where the Chief Administrative Judge eliminates the requirement of consent (which he or she may do in up to six counties and only for Family Court Act article 3 (juvenile delinquency) and article 10 (abuse and neglect) proceedings so long as he or she secures prior consent of the local presentment and child protective agencies and the local Family Court Bar and consults extensively with other interested members of the community along with the Family Court advisory committee); (c) provide that where e-filing is thereby made mandatory, parties will enjoy the same right to opt out of participation in e-filing for want of technical resources or knowledge of computer operation as they would enjoy in a mandatorily e-filed civil case in Supreme Court and pro se litigants will automatically be excluded from such participation unless the court permits otherwise; (d) define e-filing by the same terms as CPLR 2103(f) provides for civil cases; (e) protect the confidentiality of e-filed documents, expressly applying all laws governing the sealing and confidentiality of court records in Family Court proceedings, and expressly providing that no e-filed paper or document in a Family Court proceeding can be available for online public inspection. Section 6-c would define the "criminal defense bar" for purposes of establishing the proper body to give consent to e-filing in criminal cases in the superior court of a county. Also it would ban the imposition of a fee for access to efiled documents and papers; and require the courts to install sufficient computer kiosks in courthouses to permit parties and their counsel to have access to filed documents and papers.

Section 2 would make a technical amendment to chapter 416 of the Laws of 2009, as amended, to bring New York City's existing participation in the civil e-filing system under the same list of included and excluded categories of cases applicable to other counties subject to mandatory e-filing under Current law (i.e. Livingston, Monroe, Rockland, Tompkins, Allegany, Essex, Onondaga and Westchester). This section also would add

Erie and Suffolk Counties to that list of enumerated jurisdictions.

Section 3 would make a technical amendment to chapter 416 of the Laws of 2009, as amended, to continue the two e-filing advisory committees established for criminal courts and Family Court, respectively, and to require that the Chief Administrative Judge submit a report on e-filing in criminal courts and Family Court to the Legislature, Governor and Chief Judge not later than January 1, 2015. (5)

Section 4 would make this act effective immediately, except that sections 6-a, 6-b and 6-c as added by section 2 of this act, would expire on September 1, 2015. (6)

This measure, which would have no fiscal impact on the State, would continue the State's progress toward more streamlined and cost-effective court operations, which is especially vital to the effective operation of the justice system given continued resource restraints at all levels of government. It would do this while continuing the strict protection of litigant rights, confidentiality and community support that have been hallmarks of the Judiciary's gradual phase-in of civil e-filing. Perhaps most importantly, by speeding judicial intervention in time-critical Family Court proceedings, this measure could help protect the most vulnerable and literally save lives.

#### 2012 LEGISLATIVE HISTORY:

Senate 7592-A (Saland) (Rules)  
Assembly 10706 (Rules-Weinstein) (Codes)

#### FOOTNOTES:

(1) Copies of these reports may be viewed on-line at the Unified Court System's website: <http://www.nycourts.gov> (Under "Publications").

(2) See L. 1999, c. 367 (authorizing consensual e-filing programs in commercial and tax certiorari cases in Supreme Court in Monroe, Westchester, New York and Suffolk Counties, and in the Court of Claims).

(3) The superior courts are the Supreme Court and the County Court. Under this measure, e-filing would not be permitted in criminal proceedings in the local criminal courts of the State (i.e., the NYC Criminal Court, the District Courts, the City Courts and the Town and Village Justice Courts).

(4) Early experience with e-filing in New York, when bench and bar were generally unfamiliar with it, demonstrated that, where it is voluntary, relatively few practitioners choose to make use of it. Only where e-filing has been made mandatory have enough people made use of it -- thereby exposing them to its benefits and encouraging their future reliance upon it, as well as giving the State a fair sense of its pros and cons.

(5) Concerning on-line public inspection of papers and documents in criminal cases, the measure carves a small exception. It permits the Chief Administrative Judge to post such papers and documents on the court system's general website (which is different from the NYSCEF

website used by filers) where doing so would serve a public interest. This is to enable the Chief Administrative Judge to continue an existing practice wherein, in recognition of a high level of public interest, certain unsealed papers and documents in a few celebrated cases are posted on-line for the convenience of the public and the media.

(6) This is the same date as is now fixed for the expiration of authorization for the ongoing program of mandatory e-filing in civil parts of Supreme Court.