

Chapter 4

Legislation and Rules Revision

Legislation

The Office of Counsel is the principal representative of the Unified Court System in the legislative process. In this role, it is responsible for developing the Judiciary's legislative program and for providing the legislative and executive branches with analyses and recommendations concerning legislative measures that may have an impact on the courts and their administrative operations. It also serves a liaison function with bar association committees, judicial associations and other groups, public and private, with respect to changes in court-related statutory law.

Counsel's Office staffs the Chief Administrative Judge's advisory committees on civil practice, criminal law and procedure, family law, estates and trusts, and local courts (established in 1997). These committees formulate legislative proposals in their respective areas of concern and expertise for submission to the Chief Administrative Judge. When approved by the Chief Administrative Judge, they are transmitted to the Legislature, in bill form, for sponsors and legislative consideration.

Each advisory committee also analyzes other legislative proposals submitted for review during the legislative session. Recommendations are submitted to the Chief Administrative Judge, who, through his Counsel, communicates with the Legislature and the Executive Branch on such matters in the form of legislative memoranda and letters to Governor's Counsel.

Counsel's Office is also responsible for drafting legislation to implement recommendations made by the Chief Judge in her State of the Judiciary message, as well as bills required by the Unified Court System, including budget requests, adjustments in judicial compensation, and implementations of collective bargaining

agreements negotiated with court employee unions pursuant to the Taylor Law. In addition, Counsel's Office analyzes other legislative measures that have potential impact on the administrative operation of the courts and makes recommendations to the Legislature and the Executive Branch on such matters.

In the discharge of its legislation-related duties, Counsel's Office consults frequently with legislators, the professional staff of legislative committees, and the Governor's Counsel for the purposes of generating support for the Judiciary's legislative program and providing technical assistance in the development of court-related proposals initiated by the Executive and Legislative Branches.

During the 1998 legislative session, Counsel's Office, with the assistance of the Chief Administrative Judge's advisory committees, prepared and submitted 44 new measures for legislative consideration. These were in addition to 97 measures it submitted to the Legislature in its 1997 session that did not achieve passage and were carried over into the 1998 session. Of this total of 141 measures, 18 ultimately were enacted into law. Also during the 1998 session, Counsel's Office furnished Counsel to the Governor and the Legislature with formal written analyses and recommendations on 43 measures.

In December of every year, each of the Advisory Committees submits a report to the Chief Administrative Judge, setting forth its legislative proposals for the coming year. Copies of the 1998 reports may be obtained from Counsel's Office at 25 Beaver Street, New York, New York, 10004. Set forth below is a synopsis of the work of the Committees during 1998 that was incorporated into the Judiciary's legislative program. It is followed by a recitation of the laws relating to

the court system enacted in 1998; the court-related measures introduced as part of the Judiciary's legislative program but not enacted into law; and a listing of the amendments to the Rules of the Chief Judge and the Chief Administrative Judge (22NYCRR) adopted in 1998.

The Work of the Advisory Committees

Advisory Committee on Civil Practice

The Committee annually recommends to the Chief Administrative Judge proposals concerning the Civil Practice Law and Rules ("CPLR"). During 1998, the Committee continued to focus on the use of technology and evaluate its efficacy to facilitate the litigation process. To that end, it proposed that pilot programs be conducted at several locations throughout the State to permit the commencement of a lawsuit by the filing of facsimiles of the legal papers with the County Clerk, or by other means of electronic transmission, such as e-mail.

During the 1998 legislative session, the Committee saw the adoption of the following measure that it had proposed:

- CPLR 311(b) (Personal service upon a corporation or governmental subdivision) was amended to eliminate the need for finding, as a precondition to judicially-ordered service upon a corporation, that filing proof of service would be impracticable, thereby harmonizing the statute with 1997 legislation eliminating the need for proof of service to be filed. (L. 1998, c. 202)

The following are among the Committee's more significant legislative measures proposed in calendar year 1998 for the 1999 legislative session:

(A) Broadened Discovery

This measure would amend the CPLR to simplify the discovery rules for the production of non-party business records and their introduction into evidence. These changes would eliminate the present requirement that, in the absence of a non-party deposition, a party must obtain a court order before being permitted to seek discovery

and inspection of non-party documents or things. In addition, the amendment would eliminate the need for a non-party to appear with business records, instead allowing the production of the documents at the non-party's place of business, or the delivery of certified copies to the party. The amendment also would permit a non-party to make a written objection to a discovery demand, instead of the current requirement of making a motion to quash the request.

(B) Conduct of Depositions

This measure would amend Rules 3113 (Conduct of the examination) and 3115 (Objections to qualifications of person taking deposition) of the CPLR to impose sufficient safeguards against a variety of abusive practices that may be engaged in by parties attempting to obstruct the truth-finding process during depositions. The amendments would provide that every objection be stated succinctly and so as not to suggest an answer to the deponent, and that, upon request by the attorney conducting the deposition, an objection be accompanied by a clear explanation of the alleged defect. Deponents would be required to answer all questions except in certain limited circumstances; and no interruptions of the deposition for an attorney-deponent communication would be permitted unless all parties consent, or where, after entering the reason on the record, the communication involves a claim of privilege, right of confidentiality, or a limitation in a court order.

(C) Neglect to Proceed

This measure would amend CPLR 3216 (Want of prosecution – for cases prior to the filing of the note of issue) and CPLR 3404 (Dismissal of abandoned cases – for cases following the filing of the note of issue), to permit civil courts to dismiss inactive or abandoned cases on their calendars, thereby enhancing effective case management. The proposed changes would make available to the civil courts a greater number of options, including striking the offending parties' pleadings and dismissing the action.

(D) Simplification of the calculation of interest on judgments against Municipalities, Public Corporations and the State of New York

This measure would amend Section 3-a of the General Municipal Law, Section 157(5) of the Public Housing Law, Section 16 of the State Finance Law, Section 2501 of the Unconsolidated

Laws, and Section 2046-i of the Public Authorities Law to clarify the method by which interest may be calculated on judgments against certain governmental entities for which a specific interest rate has not been fixed by statute. The proposed bill would replace the current open-ended provision (“shall not exceed nine per centum per annum”) with an interest rate that would be premised upon a commonly published index, the New York “tax overpayment rate,” but which would be capped at 9%. Interest could then be assessed ministerially.

Advisory Committee on Criminal Law and Procedure

The Committee annually recommends to the Chief Administrative Judge legislative proposals in the area of criminal law and procedure. The Committee’s work centers on the Criminal Procedure Law (“CPL”) and the Penal Law. During 1998, the Committee continued an extensive review and revision of Article 265 of the Penal Law (“Firearms and Other Dangerous Weapons”). The Committee’s goal in this ongoing effort is to provide a blueprint for simplifying and updating what is arguably one of the most complex and cumbersome articles in the entire chapter. The Committee also carefully reviewed several other proposals, ideas and suggestions offered by judges and nonjudicial personnel from around the State to streamline and improve the fairness of criminal court operations and procedures.

During the 1998 legislative session, the Committee saw the adoption of the following measure that it had proposed:

- CPL Section 390.30 (Scope of pre-sentence investigation and report) was amended to allow the court (after consultation with the prosecutor and upon the consent of the defendant), in those cases in which the defendant is eligible for a sentence of probation, to adjourn the sentencing for up to one year to a specified date and order that the defendant be placed on interim probation supervision. This interim probation supervision will enlarge the time for the presentence investigation and enable a sentencing court to make a more informed decision concerning whether a defendant is a suitable candidate for probation (L.1998, c.159).

Among the more significant measures proposed in its December 1998 report, the Committee recommended enactment of the following:

(A) Discovery of Search Warrant Documents and Seized Property

CPL §240.20(1)(f) should be amended to provide that any property seized pursuant to the execution of a search warrant relating to a criminal action or proceeding, and the inventory or return of such property, shall be discoverable by the defendant. Further, a new paragraph (l) should be added to CPL §240.20(1) to provide that the search warrant, the search warrant application and the documents or transcript of any testimony or other oral communication offered in support of the search warrant application also shall be discoverable by the defendant, except to the extent such material or information is protected from disclosure by a court order. This amendment would eliminate confusion over whether these materials and documents are, in fact, discoverable under Article 240.

(B) Submission of Witness List to Jury

Section 310.20 of the CPL should be amended to authorize the trial court, upon the request of a deliberating jury, to provide the jury with a list of the witnesses who have testified. At present, the court may provide jurors with exhibits, a verdict sheet, and, if the jury requests and the parties agree, a copy of relevant statutes. Inasmuch as evidence is presented to the jury through the testimony of witnesses (and by other means in the case of absent witnesses), having a list of those witnesses – particularly in long trials with many witnesses – would assist in conducting organized jury deliberations.

(C) Speedy Trial

In order to increase the effectiveness of the speedy trial rule, and decrease the often inordinate time from indictment to verdict, CPL §30.20 (Speedy trial; in general) should be amended to authorize the Chief Administrator to promulgate rules promoting speedy trials so as to accord criminal courts greater authority to fix and enforce expeditious schedules for hearings and trials. In addition, CPL §30.30 (Speedy trial; time limitations) should be amended to limit the making of speedy trial motions on the eve of trial; require defendants to specify in their speedy trial motion the time periods chargeable to the prosecution; require courts to rule at each court

appearance whether adjournments are chargeable to the prosecution; and authorize a court to inquire into a prosecutor's statement of readiness and to nullify the statement when it appears that the prosecutor is not ready for trial.

(D) Comprehensive Discovery Reform

Article 240 (Discovery) and other sections of the Criminal Procedure Law should be amended to effect broad reform of discovery in criminal proceedings. The major features of this measure call for: (1) elimination of the need for a formal discovery demand; (2) expansion of information required to be disclosed in advance of trial and reduction of the time within which disclosure must be made; (3) modification of the defendant's obligations with respect to notice of a psychiatric defense; (4) amendment of CPL §470.05(1) to provide that, upon a direct appeal of a conviction, an appellate court may reverse or modify the conviction based upon the prosecutor's failure to disclose *Rosario* material (prior written or recorded witness statements) only if the defendant demonstrates a reasonable possibility that such failure affected the outcome of the case; and (5) amendment of section 710.30 of the CPL to provide that the court, upon finding that there is no prejudice to the defendant, may permit in the interest of justice, late notice – up until the time of trial – of the prosecution's intent to use identification testimony and statements made by the defendant.

(E) Motion to Dismiss Indictment for Failure to Afford Defendant the Right to Testify Before the Grand Jury

CPL §210.20 (Motion to dismiss or reduce indictment) provides for the dismissal of an indictment for failure to notify a defendant who has been arraigned in a local criminal court upon a felony complaint that a grand jury proceeding is pending and to afford the defendant a reasonable time to exercise the right to testify before the grand jury. This would amend the law to condition the dismissal upon the defendant actually testifying before the grand jury to which the charges are to be resubmitted.

Family Court Advisory and Rules Committee

The Family Court Advisory and Rules Committee annually recommends to the Chief Administrative Judge proposals in the areas of

Family Court procedure and family law that may be incorporated in the Chief Administrative Judge's legislative program, comments on proposals pending in the Legislature and recommends revisions in Family Court rules and forms.

The Committee achieved notable success during the 1998 legislative session in obtaining enactment of three significant pieces of legislation in the areas of domestic violence, adoption and Family Court procedure. In brief, the following Committee proposals were enacted:

- Interstate enforcement of orders of protection. This legislation facilitates implementation in Supreme, Family and County Courts, as well as local criminal courts, of the "full faith and credit" mandate of the federal *Violence Against Women Act*, 18 U.S.C. §§2265, 2266, which was enacted in 1994. Like statutes that have been enacted in approximately 32 states, this bill incorporates the criteria and requirements of federal law into relevant state statutes, specifically, the requirements regarding notice and an opportunity to be heard with respect to orders of protection issued on an emergency, *ex parte* basis, as well as final orders, and the limitations on enforcement of mutual orders unsupported by pleadings and supportive findings, all in order to ensure that out-of-state orders will be enforced *as if* they had been issued by courts of this State. The law provides clear, simple guidance for law enforcement regarding on-the-scene enforcement, incorporating references to out-of-state orders into the mandatory and presumptive arrest provisions, while leaving the more detailed criteria for ultimate resolution by the courts. The statute provides that victims of domestic violence can present orders for entry onto the domestic violence registry without fee, but that inclusion in the computer system is *not* a pre-condition for enforcement. Finally, the law provides that the formal requirements of the *Uniform Enforcement of Foreign Judgments Act* (Article 54 of the Civil Practice Law and Rules) do not apply with respect to entry of out-of-state orders of protection onto the domestic violence registry. (L.1998, c.597)

- Agency adoption venue. This statute expands upon prior 1996 and 1997 enactments regarding venue in expedited adoption cases to extend the option of filing agency adoptions in the county in which the termination or surrender

proceedings took place to all agency adoptions. Since numerous agency adoption cases are filed shortly after, rather than prior to, the conclusion of the termination of parental rights or surrender proceedings, they do not literally fall within the cases covered by the expedited adoption provisions of chapter 588 of the Laws of 1991 [Domestic Relations Law §112(8); Social Services Law §§383-c, 384-b(11)]. Nonetheless, filing these adoptions in the county in which the termination of parental rights proceeding is conducted may be as helpful in expediting the proceedings as it is for those cases filed pursuant to chapter 588. Therefore, while retaining the existing venue options for agency adoptions – the county in which the adoptive parents reside or, where the adoptive parents reside out-of-state, the county in which the agency has its principal office – the legislation adds the alternative of filing in the county in which the termination of parental rights or judicial surrender had taken place. (L. of 1998, c. 531)

- Duplicate filing of child custody and support orders. This statute repeals a burdensome, ineffectual provision of the Family Court Act that required dual filing of all orders involving child custody, visitation and support – one copy with the Clerk of the Family Court and one copy with the County Clerk. See Family Court Act §217(2). The original intent of the statute – facilitation of communication between Supreme and Family Courts – was not furthered by the dual filing. Retention of orders by the Clerk of the Family Court and transmittal of necessary case information are far more effective means of promoting coordination and communication between courts. (L. 1998, c.186).

Among the new proposals set forth in its December 1998 report, the Committee is recommending the following:

(A) Uniform Child Custody Jurisdiction and Enforcement Act: *The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)*

This Act, which was developed by the National Conference of Commissioners of Uniform State Laws in 1997 to replace the *Uniform Child Custody Jurisdiction Act (UCCJA)*, should be enacted in New York. The *UCCJEA* remedies several of the flaws in the *UCCJA*, harmonizes it with subsequent enactments, including the federal Parental Kidnaping Prevention Act and the Violence Against

Women Act, and delineates an expedited procedure for the enforcement of child custody orders. Like the recently enacted *Uniform Interstate Family Support Act*, it contains clear *indicia* for determining which Court has jurisdiction to issue, modify or enforce orders and encourages the use of technology, such as telephonic testimony, for the convenience of litigants.

(B) Custody and visitation by persons convicted of homicide

Legislation enacted in 1998 restricted Supreme and Family Courts from awarding custody or visitation to a person convicted of murder of the other parent of the child, but did not address circumstances in which a child, rather than a spouse, has been murdered. See Laws of 1998, c. 150. Comparable limitations should be imposed upon custody and visitation by persons convicted of homicide of a sibling or half-sibling of the child who is the subject of the proceeding. Additionally, the proposal would correct a disparity in the 1998 statute by providing that in cases brought under Family Court Act §1085, like those brought pursuant to Domestic Relations Law §240(1-c)(c), the Court not be bound by the findings of fact, conclusions of law or ultimate conclusion of the Court in which the homicide conviction occurred.

(C) Facilitating permanency planning for children in foster care

Consistent with the “concurrent planning” authorization in the federal *Adoption and Safe Families Act* [Public Law 105-89], legislation should be adopted that would obligate local departments of social services and, as applicable, authorized child care agencies, to gather information necessary for the formulation and effectuation of permanent plans promptly when a child enters care and on an ongoing basis thereafter. The proposal would amend Family Court Act §1017 to require child protective agencies, in abuse and neglect cases involving children removed from their homes, to conduct immediate investigations to locate suitable non-custodial parents, not simply other relatives, with whom the children may reside. Information obtained in such investigations, as well as that obtained in diligent searches for parents of abandoned infants pursuant to Family Court Act §1055, would be recorded in the child’s uniform case record. In addition, the proposal would amend sections 383-c, 384 and 384-a of the Social Services Law

to require agency officials to obtain information from a parent executing a voluntary placement or surrender instrument regarding the child's other parent, any person to whom the parent placing or surrendering the child had been married at the time of conception or birth of the child and any other person who would be entitled to notice of a proceeding to terminate parental rights. Information thus obtained would likewise be recorded in the child's uniform case record.

(D) Testimony by telephonic, audio-visual or other electronic means in child support and paternity cases

In order to bring the advantages of the recently-enacted *Uniform Interstate Family Support Act* to intra-state cases, Family Court should be authorized to take testimony by telephone, audio-visual or other electronic means in appropriate support and paternity cases. The proposal would permit the Court, upon application by a party or witness, to authorize use of such means at designated locations in three circumstances: (i) where a party or witness resides in a county not contiguous to the Family Court where the case is pending; (ii) where such party or witness is presently incarcerated, is reasonably expected to be incarcerated on the date that the hearing is scheduled and is not expected to be released within a reasonable period of time after the date that the hearing is scheduled; or (iii) where the Court determines that it would be an undue hardship for such party or witness to testify or be deposed at the Family Court where the case is pending.

(E) Clarification of the authority of Family Court Hearing Examiners

This proposal would resolve ambiguities in the statutory framework governing hearing examiners and eliminate several of the limitations on their authority that impede the expeditious, comprehensive resolution of child support and paternity proceedings. The proposal amends the Civil Practice Law and Rules and Family Court Act to clarify that Family Court hearing examiners, not simply judges, would be authorized to determine motions to quash child support subpoenas issued by local Support Collection Units, conduct judicial reviews of administrative fair hearings regarding driver's license suspensions, issue subpoenas *duces tecum* and warrants, arraign individuals arrested on warrants issued in connection with child support or paternity proceedings and adjudicate

the vast majority of paternity proceedings, contested as well as uncontested.

Local Courts Advisory Committee

The Committee recommends to the Chief Administrative Judge legislative and rules changes intended to improve the practice in and operation of the New York City Civil Court, New York City Criminal Court, District Courts, City Courts and Town and Village Courts. During its initial year, the Committee recommended one legislative measure modifying small claims procedures for inclusion in the Chief Administrative Judge's legislative program. That measure was enacted into law by chapter 100 of the Laws of 1998 and substituted the term "judgment debtor" for the term "defendant" with respect to indexing small claims and commercial claims judgments, thereby affording any prevailing party the benefits of indexed judgments.

In its December 1998 report, the Committee recommended five new proposals for inclusion in the Chief Administrative Judge's legislative program:

(A) Discharge of Village Court Clerks

Section 4-400 of the Village Law should be amended to require the advice and consent of Village Court Justices upon the employment and discharge of their court clerks. While the Town Law requires the advice and consent of Town Court Justices upon the employment and discharge of their court clerks, the advice and consent of Village Court Justices is required only upon the employment of their court clerks. Because both Town and Village Court Justices are ultimately responsible for the operation of their Courts and can be disciplined or even removed from office for errors or shortcomings in court operations, there is no basis for treating the two Courts differently with regard to the employment and discharge of their respective court clerks.

(B) Warrants of arrest based on simplified informations

To correct an apparent oversight in the law, Section 120.20 of the Criminal Procedure Law ("CPL") should be amended to exclude all simplified informations from the class of accusatory instruments that can support issuance of an arrest

warrant. Currently, section 120.20 excludes only simplified traffic informations from this class of accusatory instruments. Because none of the simplified informations establish the threshold of reasonable cause that is necessary to justify issuance of a warrant of arrest, the statute should be amended to exclude all from the class of accusatory instruments that can support issuance of an arrest warrant.

(C) Adjournments in contemplation of dismissal in cases involving marihuana

Section 170.56 of the CPL should be amended to require a criminal court to release a defendant charged with certain offenses involving marihuana on the defendant's own recognizance upon ordering a case adjourned in contemplation of dismissal. Section 170.55 of the CPL already imposes such a requirement with respect to adjournments in contemplation of dismissal granted with respect to all other offenses. In the absence of this requirement, criminal courts must continue monitoring a case involving marihuana offenses. For example, the court must retain posted bail during the period of adjournment and, upon expiration of such period, expend resources trying to locate the defendant or another party to return the exonerated bail.

(D) Grounds for vacating default judgments entered pursuant to Vehicle and Traffic Law Section 1806-a

Section 1806-a of the Vehicle and Traffic Law should be amended to authorize grounds and procedures for vacating a default judgment entered against a defendant charged with a traffic infraction. This amendment would authorize two grounds for vacating: excusable default and failure to provide proper notice.

(E) Grounds for vacating a default judgment against a corporate defendant for failure to appear

Section 440.10 of the CPL should be amended to authorize a court to entertain an application to vacate a plea of guilty and sentence imposed when a corporate defendant fails to appear. Although section 440.10 of the CPL sets forth grounds for a motion to vacate a judgment in a criminal case, none of the enumerated grounds specifically addresses a default judgment entered against a corporate defendant. Corporations, unlike all other criminal defendants, are subject to default judgments in criminal cases upon failure

to appear. Often, such failure to appear occurs simply because a corporation did not receive a timely notice to appear. This amendment would allow a corporate defendant to make a motion to vacate a default judgment entered under such circumstances.

Surrogate's Court Advisory Committee

The Committee annually recommends to the Chief Administrator proposals relating to the Estates, Powers and Trusts Law (EPTL), Surrogate's Court Procedure Act (SCPA), and other legal issues involving practice and procedure affecting the Surrogate's Courts. As part of its work in 1998, the Committee reviewed and proposed forms for use in administration d.b.n and c.t.a. proceedings, which were approved for use by the Chief Administrative Judge.

During the 1998 legislative session, two of the Committee's proposed bills were enacted by the Legislature:

- Section 1310 of the SCPA (Payment of certain debts without administration) was amended to provide for an expanded list of assets available to be distributed, without administration, to the family of a decedent for purposes of funeral expenses or living expenses following a death. (L. 1998, c. 69)

- A new section 7-5.7 of the EPTL (Multiple beneficiaries) was added to address the problem of how to distribute the proceeds of a deceased depositor's "Totten Trust" bank account established for multiple beneficiaries where not all beneficiaries survive the depositor. The new section makes clear that, unless otherwise provided for by the depositor, the surviving beneficiaries share equally all of the trust account proceeds. (L. 1998, c. 518)

In its December 1998 Report, the Committee recommended the following new measures for consideration by the Legislature:

(A) Fiduciaries' power to amend trusts for specific tax purposes

A new section 11-1.11 of the EPTL should be enacted to grant a limited power to trustees to amend administrative provisions of a trust that have no significant dispositive effect in order to obtain certain beneficial tax consequences. This

measure would provide that, unless otherwise prohibited by the terms of the trust instrument, a trustee would be granted a limited power to amend administrative provisions of the trust to qualify it for purposes of the charitable deduction or the marital deduction for a non-citizen spouse, or to qualify it as a qualified personal residence trust. This proposal would allow fiduciaries to promptly obtain tax benefits without the need for judicial reformations that are routinely granted.

(B) Allocation of the cost of pre-objection attesting witness examinations

Sections 1404 (Witnesses to be examined; proof required) and 2302 (Award of costs and allowances) of the SCPA should be amended to provide for the allocation of expenses of attesting witnesses in probate proceedings involving pre-objection witness examinations. This proposal would address a lack of uniformity among the Surrogate's Courts regarding the allocation of costs in pre-objection witness examinations. In addition, this proposal would clarify the meaning of the statutory term "the person who prepared the will" so as to identify persons subject to examination, and would clarify a statutory ambiguity regarding the payment of counsel fees for an executor named in a will that is not admitted to probate.

(C) Confirming appointments of standby guardians made in other jurisdictions

This proposal would amend section 1726 of the SCPA (Standby guardians) to promote the appointment of a standby guardian in accordance with the needs and interest of the parent or guardian. The measure would establish a savings provision setting forth the circumstances under which a designation of a standby guardian would be deemed effective, even if made in another state, and would resolve the problem of conflicting designations by recommending that the most recent designation be given effect. In addition, it would make a series of technical amendments regarding the events which may trigger the appointment of a standby guardian and the authority of a standby guardian to act.

Measures Enacted into Law in 1998

Chapter 58 (Senate bill 6098-B/Assembly bill 9098-C). Amends numerous Consolidated and Unconsolidated Laws in relation to State programs

and practices; and, among its provisions, includes amendment of section 39-b of the Judiciary Law to adjust the phase-in mechanism created by chapter 686 of the Laws of 1996 — legislation providing for State assumption of fiscal responsibility for the cleaning and minor repair of court facilities. Eff. 4/1/98.

Chapter 69 (Assembly bill 9762). Amends section 1310 of the Surrogate's Court Procedure Act to broaden the definition of "debt" in subparagraphs (i) and (viii) of subdivision (1)(a) of that section in order to facilitate the payment of limited assets to a decedent's family without administration. Eff. 5/21/98 (and applicable to the estate of any person dying before or after such date).

Chapter 70 (Assembly bill 10753). Implements 1995-99 collective bargaining agreements between the Unified Court System and: (1) the Ninth Judicial District Court Employees Association, and (2) the Association of Supreme Court Reporters within the City of New York. Eff. retroactively to 4/1/95.

Chapter 71 (Assembly bill 10754). Implements a 1995-99 collective bargaining agreement between the Unified Court System and the New York State Court Clerks Association. Eff. retroactively to 4/1/95.

Chapter 100 (Assembly bill 9992). Amends section 1811 of each of the Uniform Court Acts and section 1811-A of the New York City Civil Court Act, the Uniform District Court Act and the Uniform City Court Act to require the affected courts to index all wholly or partially unsatisfied small claims judgments and commercial claims part judgments alphabetically and chronologically under the name of the judgment debtor. Eff. 7/9/98.

Chapter 159 (Senate bill 3781). Amends section 390.30 of the Criminal Procedure Law to authorize a criminal court to adjourn a sentencing and place defendant on interim supervision by a probation agency. Eff. 10/5/98.

Chapter 177 (Senate bill 6704-A). Amends section 182.20 of the Criminal Procedure Law to add Cattaraugus County to the list of counties in which electronic court appearance may be

sanctioned by the Chief Administrative Judge. Eff. 7/7/98.

Chapter 185 (Senate bill 6418). Amends section 90(8) of the Judiciary Law to eliminate an erroneous cross-reference in the attorney disciplinary statute to the Constitution's grant of jurisdictional authority to the Court of Appeals. Eff. 7/7/98.

Chapter 186 (Senate bill 6419). Amends section 217(2) of the Family Court Act to repeal the requirement that original copies of all spousal maintenance, child custody and visitation orders issued by Family Court be filed with the County Clerk as well as the Clerk of Family Court. Eff. 7/7/98.

Chapter 202 (Senate bill 6812). Amends section 311(b) of the CPLR to eliminate as a precondition to judicially-ordered service upon a corporation a finding that compliance with requirements as to filing proof of service would be impracticable, thereby harmonizing the statute with 1997 legislation eliminating the requirement that proof of service be filed. Eff. 7/7/98.

Chapter 213 (Senate bill 7468-A). Amends section 54-j(1-a)(a) of the State Finance Law and section 39-b of the Judiciary Law to: (1) authorize current year reimbursement of State aid to a local government that enters into a lease for the provision of Appellate Division facilities; and (2) modify 1996 legislation providing for a State takeover of the cleaning and minor repair of court facilities to insure that local governments do not lose State aid on account of that legislation. Eff. 7/7/98.

Chapter 445 (Senate bill 6583). Amends section 521 of the Judiciary Law to restore the program by which jurors may voluntarily forego the *per diem* fees to which they are entitled for service and direct that the amount of those fees be deposited in a special State fund to underwrite the cost of adding minor amenities in jury facilities. Eff. 7/22/98 (and applicable to all jurors serving on or after February 15, 1998).

Chapter 518 (Assembly bill 9763). Amends section 7-5.7 of the Estates, Powers and Trusts Law to clarify that, in the absence of instructions

otherwise, where a depositor establishes a Totten Trust in favor of two or more beneficiaries and one of those beneficiaries predeceases the depositor, all of the proceeds are to pass entirely to the surviving beneficiaries upon the depositor's death. Eff. 7/29/98 (and applicable to the estates of depositors dying on or after such effective date).

Chapter 519 (Assembly bill 9993). Amends section 524 of the Judiciary Law to provide an extended period of disqualification from future jury service for all jurors who have provided jury service for a period of eleven or more days; and to authorize a Commissioner of Jurors to extend beyond four years the disqualification period for all jurors in the county if the county's needs permit such an extension. Eff. 8/1/98.

Chapter 520 (Assembly bill 9994). Amends section 501 and 509(a) of the Judiciary Law, and repeals section 514, to clarify ambiguities in the jury law as it applies to grand jurors. Eff. 7/29/98.

Chapter 531 (Assembly bill 10990). Amends section 113 of the Domestic Relations Law to permit agency adoption cases, whether or not expedited, to be brought in the county in which the termination of parental rights proceedings or surrender proceedings took place. Eff. 10/27/98.

Chapter 597 (Senate bill 7859-A). Amends the Family Court Act, the Domestic Relations Law and the Criminal Procedure Law to delineate federal requirements for state courts to honor and enforce out-of-state orders of protection; to clarify the applicability of mandatory arrest, menacing and criminal contempt provisions to cases involving out-of-state orders; and to authorize entry of out-of-state orders onto the statewide automated registry of orders of protection and family offense warrants. Eff. 12/22/98.

Chapter 605 (Senate 6704-A). Amends chapter 689 of the Laws of 1993 and the Criminal Procedure Law: (1) to extend, until December 31, 2001, statutory authorization for use of audio-visual technology to enable appearances in criminal court proceedings by certain participants who are not physically present in the courtroom; and (2) to add Albany and Richmond Counties to the list of venues in which such electronic court appearances may be permitted. Eff. 9/30/98.

Measures Introduced in the 1998 Legislative Session and Not Enacted Into Law

Senate 6452. This measure would amend section 801 of the Surrogate's Court Procedure Act, which sets forth bond requirements for State fiduciaries, by raising the amount for which no bond is required from \$10,000 to \$20,000.

Senate 7180. This measure would amend section 117 of the Domestic Relations Law and section 2-1.3(a)(1) of the Estates, Powers and Trusts Law, to clarify that an adoptive child is not to be penalized by losing either inheritance rights from the child's natural parents under EPTL 4-1.1 or the right to receive a lifetime or testamentary disposition from the child's natural family as a member of a class under EPTL 2-1.3 where a relationship is maintained with the child's natural family after entry of the adoption order as a result of continuing to reside with the natural parent.

Senate 6810/Assembly 11015. This measure would amend section 270.35(1) of the Criminal Procedure Law to make clear that when the foreperson of a jury is discharged from service during the course of a trial, the new foreperson shall be the juror whose name was second drawn and called during jury selection, and not the alternate juror who replaces the discharged foreperson.

Senate 6805. This measure would amend section 730.30(2) of the Criminal Procedure Law to provide that, when examination of a defendant is ordered under Article 730 and each psychiatric examiner concludes that the defendant is not an incapacitated person, the court may, but is not required to, conduct a hearing on the defendant's mental capacity.

Senate 6806/Assembly 11016. This measure would add a new section 210.47 to the Criminal Procedure Law authorizing a superior court to adjourn an action in contemplation of dismissal where the sole remaining count or counts of an indictment charge only a misdemeanor offense.

Senate 6809/Assembly 11018. This measure would authorize the judge in a criminal case to provide the jury with a list of the witnesses from whom the jury has heard.

Senate 7516. This measure would (1) amend the CPLR and the Family Court Act to clarify that Family Court hearing examiners, not just judges, would be authorized to determine motions to quash child support subpoenas issued by local Support Collection Units, to conduct judicial reviews of administrative fair hearings regarding driver's license suspensions, to issue subpoenas *duces tecum* and warrants and to arraign individuals arrested on warrants issued in connection with child support or paternity proceedings; (2) amend the CPLR to provide employers and income payors with notice and an opportunity to be heard prior to imposition of sanctions for non-compliance with income deduction orders; (3) provide needed clarification with respect to challenges to the "cost of living adjustments"; and (4) clarify the procedure for challenging an administrative directive to submit to a genetic test in cases in which a paternity petition has not yet been filed.

Senate 7048/Assembly 9943. This measure would amend sections 376, 377 and 378-a of the Social Services Law to authorize criminal history and child abuse and maltreatment screening of prospective foster parents, including kinship foster parents, as well as prospective guardians and individuals accepting direct placements of children.

Senate 7182. This measure would codify the Court of Appeals' decision in *Rose v. Moody* to permit support obligors to rebut the presumption in favor of a minimum child support of \$25 per month.

Senate 6908/Assembly 9944. This measure would streamline and consolidate procedures for review of children freed for adoption, including (i) provision that the same foster care review rules apply regardless of how a child came into foster care and of the manner in which the child was freed for adoption; and (ii) provision for prompt review of all children freed for adoption.

Senate 6907/Assembly 9942. This measure would eliminate geographic disparities and enhance flexibility in the provisions regulating changes of venue and transfers of juvenile delinquency cases between judges.

Senate 6803/Assembly 11022. This measure would amend sections 2305(b), 3120 and 3122 of the CPLR and add a new section 3122-a to

simplify methods for obtaining discovery of documents, particularly routine business records, from non-party witnesses and procuring their admission into evidence.

Senate 7171/Assembly 11017. This measure would amend CPLR 2214(d) to require a party seeking an order to show cause clearly to specify why he or she is proceeding via an order to show cause, and not by another, less urgent, method.

Senate 6813/Assembly 11019. This measure would (1) add a new rule 3115(e) to the CPLR to establish reasonable and clear limits on the practice of directing a witness not to answer a question; (2) amend rule 3115 of the CPLR to prohibit an attorney from interrupting a deposition to communicate with the deponent except under narrow circumstances; and (3) make several technical changes to rules 3113 and 3115.

Senate 6804. This measure would amend CPLR 4517 to permit use at trial of the prior trial testimony of: (1) a party, (2) any person who was a party when the testimony was given, or (3) any person who at the time the testimony was given was an officer, director, member, employee or managing or authorized agent of a party.

Assembly 10027. This measure would amend CPLR 325(d) to require Supreme Court to remove civil cases in which the *ad damnum* calls for damages of \$50,000 or less to appropriate lower civil courts for pre-trial and trial proceedings.

Senate 7457-A/Assembly 10972-A. This measure would authorize conduct of experiments in the filing and exchange of legal documents by means of telefax machines and by use of electronic mail.

Senate 6808. This measure would add a new section 4547 to the CPLR to establish a procedure for the pre-trial determination of a variety of evidentiary issues in civil actions in which there has been a demand for a jury trial.

Senate 6775/Assembly 11020. This measure would amend sections 10.20 and 10.30 of the Criminal Procedure Law and provisions of Articles 195 and 200 thereof to authorize the filing of a superior court information in New York City's local

criminal court (*i.e.*, the NYC Criminal Court) and permit that court to accept a plea to that instrument (and sentence defendant thereon).

Senate 6807. This measure would amend section 310.10 of the Criminal Procedure Law to delete the requirement that a sequestered jury in a criminal action be "continuously" kept together during deliberations and to prescribe circumstances and conditions under which a juror may be separated from the others.

Senate 6776. This measure would amend CPLR 4107 to authorize the Chief Administrative Judge to deploy Judicial Hearing Officers to preside over the *voir dire* phase of a civil trial.

Senate 6852. This measure would amend section 87(2) of the Public Officers Law to exempt law enforcement records relating to pending criminal actions and proceedings from disclosure under New York's Freedom of Information Law.

Assembly 6486. This measure would amend section 16(h) of Article VI of the Constitution to expand the term of office of judges of the District Court from 6 to 10 years.

Senate 3432/Assembly 7035. This measure would amend section 35(3) of the Judiciary Law and section 722-b of the County Law to increase the hourly rates and maximum amounts for counsel assigned to indigent persons, and make rates the same for hours reasonably spent in court or out, and make rates the same for all types of crimes and for appeals.

Senate 4497/Assembly 7843. This measure would amend section 5519(a) of the Civil Practice Law and Rules to exclude judgments and orders in matrimonial actions that award maintenance or child support from provisions authorizing an automatic stay upon filing of an appeal.

Senate 3475. This measure would amend sections 237 and 238 of the Domestic Relations Law to require the court in a matrimonial case (or proceeding to enforce a judgment therein) involving parties with greatly unequal financial resources to order the monied party to pay counsel fees for the non-monied party during the course of the case so as to enable that party to carry on or defend it.

Senate 5326. This measure would amend section 60.43 of the Criminal Procedure Law to provide that the same protections against the admissibility of evidence of a victim's sexual conduct in a non-sex offense criminal case apply also to a witness in such a case.

Senate 3771/Assembly 7841. This measure would amend section 270.15(1)(a) of the Criminal Procedure Law expressly to require trial courts to screen the entire juror array before prospective jurors are subject to individual *voir dire*.

Senate 5192-A. This measure would amend section 35 of the Judiciary Law and sections 722-b and 722-c of the County Law to provide that a claim for compensation determined by a trial court shall be subject to review by the appellate court with jurisdiction over the action in which the claim was made.

Senate 3453. This measure would amend section 90 of the Judiciary Law to provide that where an Appellate Division censures, suspends or removes an attorney from the practice of law, or accepts his or her resignation from office, the court shall order the attorney to pay the expenses of any disciplinary proceedings and certain of the attorney grievance committee's costs in prosecuting the charges therein.

Assembly 6483. This measure would amend section 26 of Article VI of the State Constitution to allow judges of the Surrogate's Court outside the city of New York in counties of less than 300,000 people to be temporarily assigned to the Surrogate's Court in any such county.

Senate 4557/Assembly 7074. This measure would amend section 4110-b of the Civil Practice Law and Rules to authorize the trial judge to provide a deliberating jury with a copy of its instructions.

Senate 5170/Assembly 7075. This measure would amend the CPLR and the Criminal Procedure Law to clarify in statute that jurors, in both civil and criminal cases, shall have the opportunity to take notes during the evidentiary phase of trial court proceedings.

Assembly 7872-A. This measure would repeal subdivision 1-a of section 270.15 of the Criminal Procedure Law and add a new section 270.17,

permitting a criminal court to issue an order precluding disclosure of jurors' and prospective jurors' names and addresses upon a showing by the People that such an order is necessary to prevent their physical injury or harassment or efforts at bribery or jury tampering.

Senate 4538/Assembly 7076. This measure would amend the CPLR: (1) to add a statutory direction that a court, at the outset of a civil jury trial, must provide preliminary instructions to the jury concerning its duties, its conduct, the order of proceedings and the elementary legal principles that will govern procedures at the trial, and (2) to authorize a trial court to direct counsel, during the jury trial of a civil case, but before the close of the evidence, to provide summations on one or more issues that have been raised.

Senate 4226-A. This measure would amend the Constitution to consolidate New York's nine major trial courts into two courts: (1) a Supreme Court, comprised of commercial, criminal, family, public claims and probate divisions (plus, for the balance of the caseload, any other divisions the Chief Administrative Judge determines to establish), and (2) a District Court, with a single branch in New York City (this to be subdivided into civil, criminal and housing divisions) and multiple branches outside the City; and eliminate the long-standing constitutional limit whereby the number of Justices of the Supreme Court in any Judicial District may not exceed a ratio of one for every 50,000 people in that District.

Assembly 7079. This measure would give peace officer status to local personnel designated to furnish security services for the courts, provided such personnel perform no other function or duty; and would require that the peace officer training requirements and qualifications to which such personnel are subject shall first be approved by the Chief Administrator of the Courts.

Senate 5214/Assembly 8055. This measure would amend the CPLR, the Criminal Procedure Law, the General Municipal Law, the Judiciary Law, the Real Property Tax Law, the Retirement and Social Security Law and the Vehicle and Traffic Law to alter provisions applicable to judicial hearing officers to permit former judges to act as quasi-judicial officers of the court and serve on a limited basis.

Senate 5430. This measure would amend the CPLR to authorize use of Judicial Hearing Officers to hear and determine any issue in an action so long as no parties' constitutional rights (e.g., right to jury trial) would thereby be compromised.

Senate 3454/Assembly 7041. This measure would amend section 110(g) of the New York City Civil Court Act to extend the terms of office of the members of the Advisory Council for the Housing Part by one year, to a term of 4 years; and provide for the staggering of the expiration dates of the terms of the members of the Advisory Council.

Senate 5162-B. This measure would amend section 2-1.11(c) of the Estates, Powers and Trusts Law, which regulates the renunciation of property interests created under a will or trust for the benefit of infants, incompetents, conservatees and deceased persons, and section 5-1502G(3) of the General Obligations Law, which regulates the language and effect of the New York short form power of attorney with respect to an agent entering into "estate transactions," to make the sections consistent.

Senate 4264. This measure would amend the Judiciary Law to provide that formal complaints and hearings of the State Commission on Judicial Conduct shall no longer be confidential and that transcripts of such hearings shall be available to the public.

Assembly 7039. This measure would repeal provisions of section 516 of the Family Court Act requiring court approval for an agreement between mother and putative father for support and education of an out-of-wedlock child.

Senate 3455. This measure would amend section 249 of the Family Court Act to mandate the assignment of a law guardian for the child in every foster care review proceeding brought pursuant to sections 358-a and 392 of the Social Services Law.

Senate 4490/Assembly 7839. This measure would amend section 1204 of the CPLR to provide compensation from state or county funds for guardians *ad litem* appointed for children and adults in civil proceedings.

Senate 3424/Assembly 6327. This measure would amend provisions of the Family Court Act to add flexibility to existing dispositional alternatives available in PINS proceedings.

Senate 3440. This measure would amend section 221-a of the Executive Law to make the knowing or willful authorized disclosure of information stored in the statewide computer system of orders of protection and warrants a Class A misdemeanor, and authorize the imposition of a civil penalty, not to exceed \$5,000 for any willful, knowing or grossly negligent disclosure.

Senate 5112/Assembly 7636. This measure would amend section 315.2 of the Family Court Act to provide that undue delay in the filing of a juvenile delinquency petition is a permissible ground for a motion to dismiss in furtherance of justice.

Senate 3757. This measure would amend section 235 of the Domestic Relations Law to allow access by prosecutors to confidential records in matrimonial actions for purposes of pending criminal investigations.

Senate 3618. This measure would amend sections 1012, 1046 and 1051 of the Family Court Act and section 384-b of the Social Services Law to authorize Family Court, at the fact-finding stage of a child abuse proceeding, to render additional findings of either severe or repeated child abuse, if there is "clear and convincing" evidence in support thereof; render a criminal conviction involving homicide or another violent felony offense admissible in termination of parental rights proceedings; and delete the anomalous requirement of competent evidence in dispositional hearings in termination of parental rights proceedings based upon severe or repeated child abuse.

Senate 3612. This measure would amend section 221-a of the Executive Law and sections 1029 and 1056 of the Family Court Act to provide for inclusion in the statewide registry of orders of protection and family offense warrants, orders and warrants issued in abuse and neglect proceedings.

Senate 3601/Assembly 7842. This measure would amend section 308 of the CPLR to add a new undesignated paragraph at its end to provide

that if both acts of service pursuant to subdivision 2, or subdivision 4 when applicable, have been attempted and only one of them is validly effected, a showing by clear and convincing evidence that the defendant actually received process shall be sufficient to sustain the service.

Senate 2786-A/Assembly 7037. This measure would amend the General Obligations Law regarding liability in tort actions involving multiple tortfeasors where one of them settles.

Senate 5169/Assembly 7838. This measure would amend CPLR 1603 and 3018 to require that a defendant relying on provisions limiting liability of persons jointly liable raise such issue as an affirmative defense.

Assembly 7875. This measure would amend CPLR 4517 to permit use at trial of the prior trial testimony of: (1) a party, (2) any person who was a party when the testimony was given, or (3) any person who at the time the testimony was given was an officer, director, member, employee, or managing or authorized agent of a party.

Senate 3615/Assembly 7840. This measure would amend CPLR 217(1) to make it clear when the period of limitations commences to run, within which an aggrieved party must bring a proceeding to review a determination made by, or a refusal to act by, a public agency, body or officer.

Senate 3616-A/Assembly 7874. This measure would amend the CPLR to provide for the service of a subpoena *duces tecum* on the State or a municipal corporation at least five days in advance unless a court orders otherwise in most cases.

Assembly 7032. This measure would amend CPLR 6313(a) to regularize the giving of notification to other parties upon application for a temporary restraining order.

Senate 3614/Assembly 7853. This measure would amend CPLR 2106, which now permits certain professional persons to substitute an affirmation for an affidavit in judicial proceedings, to replace the use of an affidavit for all purposes in a civil action by the use of an affirmation; and add a new section 210.46 to the Penal Law to create a class E felony for making a false statement contained in an affirmation.

Senate 3602. This measure would amend CPLR 3214 to provide that service of a notice of motion for summary judgment shall stay only disclosures noticed after the date of service of such motion and that such disclosure shall be stayed for a period of 120 days from the date of service unless the court orders otherwise.

Senate 3599. This measure would amend CPLR 5221 to provide that where a judgment sought to be enforced was entered in the New York City Civil Court, enforcement proceedings shall only be commenced in the county where respondent lives, works, or has a place for the regular transaction of business.

Senate 3613. This measure would amend CPLR 5519(a) to provide that the automatic stay granted municipal corporations and municipalities when appealing from a judgment or order shall be limited to staying enforcement of the order or judgment that was the subject of appeal.

Senate 3617-B. This measure would amend the CPLR to clarify procedure pertaining to motions for leave to reargue or renew a prior motion.

Senate 3607. This measure would amend CPLR 4518 to permit introduction into evidence as a business record of data electronically used or stored as a business record in any tangible form that accurately represents the information.

Senate 4532. This measure would amend CPLR 3213 to permit wider use of the motion for summary judgment in lieu of complaint in five selected commercial causes of action which warrant expedited treatment, where the claim is based on a writing and is for a debt in an amount certain or which can be made certain; and permit a motion for summary judgment in lieu of complaint when there has been a breach of a settlement agreement and the terms of the agreement state that a breach will be tantamount to an entry of judgment on behalf of the party injured by the breach.

Senate 3361/Assembly 7073. This measure would amend the Family Court Act, the Domestic Relations Law and the Social Services Law to allow a Family Court hearing examiner to conduct a review of a collection unit's determination with regard to suspension of a driver's license for

non-payment of child support; provide that reviews shall be heard in the court that issued the underlying support order; and allow family court hearing examiners to issue warrants and make arraignments.

Senate 3442-A/Assembly 10422-A. This measure would amend sections 240 and 252 of the Domestic Relations Law to permit a court in matrimonial proceedings to issue a temporary order of protection for a party in need of immediate relief and an order requiring the surrender of firearms licenses; and to direct payment of restitution in an amount not to exceed ten thousand dollars as a condition of an order of protection.

Senate 4830/Assembly 6253. This measure would amend section 422 of the Social Services Law to authorize disclosure of sealed, unfounded reports of child abuse to subsequent investigators when the investigation involves the same perpetrator of abuse; authorize disclosure of such reports to multi-disciplinary teams which are conducting a child abuse investigation; authorize admission of such reports in a judicial or administrative proceeding where necessary for due process or with consent of the subject of the report; and prohibit destruction of such reports until 10 years after the 18th birthday of the youngest child named in the report.

Assembly 6326. This measure would make the maximum age for female persons in need of supervision (“PINS”) 16 years of age, the same age limit which applies to males, and establish a judicial procedure for admissions in persons in PINS cases if respondent waives his or her right to a fact-finding hearing.

Assembly 6446. This measure would amend provisions of the Domestic Relations Law, the Family Court Act and the Social Services Law to clarify and add uniformity to statutes establishing the triennial review and adjustment of child support process.

Senate 5175. This measure would add a new section 657 to the Family Court Act and a new section 242 to the Domestic Relations Law setting forth the powers of the courts and procedures to be followed in the event of violations of custody and visitation orders and related orders of protection and temporary orders of protection.

Senate 5435-B/Assembly 8651-B. This measure would amend sections 315.3 and 360.2 of the Family Court Act to codify the Court of Appeals’ decision in *Matter of Edwin L.* with respect to procedures to be observed and the applicable burden of proof to be met before a delinquency case in which an ACD has been issued is restored to the court’s calendar for failure to observe conditions of the ACD; and the Appellate Division’s decision in *Matter of Donald MM* to clarify that the period of a conditional discharge in a delinquency case should be tolled during the pendency of a petition charging its violation.

Senate 5163/Assembly 7861. This measure would clarify that family offenses committed by persons younger than age 16 shall be treated as juvenile delinquency or PINS proceedings under Article 3 or 7 of the Family Court Act rather than as family offenses under Article 8 of such Act.

Senate 3788. This measure would amend section 30.30 of the Criminal Procedure Law to provide criminal courts with greater authority to fix and enforce schedules for hearings and trials.

Senate 3786. This measure would amend section 30.30 of the Criminal Procedure Law to exclude certain serious crimes from the 90-day ready for trial requirement imposed on the prosecution and extends such time limit to 120 days for second violent felony offenders.

Senate 5165/Assembly 7846. This measure would amend section 210.20 of the Criminal Procedure Law to clarify that when there is an order reducing an indictment, the indictment may be amended on its face; and provide that if the prosecution fails to exercise one of its options within 30 days of the court’s order, the order takes effect and the prosecution has an affirmative obligation to amend the indictment, file a reduced indictment or dismiss the indictment.

Senate 3782/Assembly 7859. This measure would amend section 220.10 of the Criminal Procedure Law to permit a terminally-ill defendant to plead guilty to any lesser included offense of the offense charged.

Senate 3787-A/Assembly 7849-A. This measure would add a new section 190.51 to the Criminal Procedure Law to address the problem arising when a defendant in custody requests an

opportunity to testify before the grand jury but is not produced for such testimony and the CPL 180.80 time period is about to elapse.

Senate 3790. This measure would add a new section 60.27 to the Criminal Procedure Law to allow, in certain circumscribed situations, a third party to testify to a witness's pre-trial identification of the defendant when the witness is unwilling to identify the defendant in court because of fear.

Senate 5172/Assembly 7856. This measure would amend sections 460.50 and 460.60 of the Criminal Procedure Law to permit a judge who has received an application for leave to appeal to the Court of Appeals to issue an order staying execution of the judgment or sentence being appealed regardless of the nature of the sentence that was imposed.

Senate 5171/Assembly 7866. This measure would add a new section 180.85 to the Criminal Procedure Law to provide that, after arraigning defendant upon a felony complaint, the local or superior court before which the action is pending, on motion of either party, may dismiss the felony complaint on the ground that defendant has been denied the right to a speedy trial, pursuant to section 30.30 of the Criminal Procedure Law.

Senate 3781/Assembly 7867. This measure would add a new subdivision 6 to section 390.30 of the Criminal Procedure Law to authorize a court to adjourn a sentencing and place a defendant on interim supervision.

Senate 3780/Assembly 7078. This measure would amend section 200.70 of the Criminal Procedure Law to authorize a trial court, upon timely application by the People, to order the amendment of an indictment to add an offense that was omitted from the indictment because of a clerical error.

Senate 3792/Assembly 7845. This measure would amend sections 70.04 and 70.06 of the Penal Law to provide that the 10-year tolling period for predicate felony purposes may be tolled for an additional five years for any period of time the defendant was at-large by virtue of an escape and that, regardless of whether there has been an escape, the tolling period shall not exceed 10 years.

Senate 3767/Assembly 7847. This measure would amend section 450.20 of the Criminal Procedure Law to provide that the People may appeal as of right from an order prohibiting the introduction of certain evidence or the calling of certain witnesses that was entered before trial pursuant to section 240.70 of the Criminal Procedure Law; and amend section 450.50 of the Criminal Procedure Law to permit the People to take an appeal from a preclusion order, if the People file a statement asserting that they are unable to prosecute without the evidence precluded, and to provide that the taking of an appeal from a preclusion order constitutes a bar to prosecution unless or until such order is reversed or vacated.

Senate 3784/Assembly 7848. This measure would amend section 440.10(1) of the Criminal Procedure Law to authorize a prosecutor to move to vacate a judgment on the grounds specified in that section.

Senate 3789-A/Assembly 7857-A. This measure would add a new subdivision seven to section 530.70 of the Criminal Procedure Law to provide that a bench warrant issued by the New York City Criminal Court, in a case in which the defendant is held for the action of the grand jury or in which the Criminal Court is divested of jurisdiction by the filing of an indictment in the Supreme Court, shall remain effective in most cases until the Supreme Court issues its own bench warrant.

Senate 5173/Assembly 7860. This measure would amend paragraphs (c) and (d) of section 30.30(5) of the Criminal Procedure Law to provide that, when a criminal action is commenced by the filing of a felony complaint that is replaced by an indictment in which the highest offense charged is a misdemeanor, the period of time within which the prosecution must be ready for trial is the statutory period applicable to misdemeanor offenses, not the six-month period applicable to felony offenses.

Senate 3785-A/Assembly 7852-A. This measure would amend section 210.20(1)(c) of the Criminal Procedure Law to provide that an order dismissing an indictment for failure to notify defendant of the right to testify before the grand jury shall be conditioned upon defendant's

testifying before the grand jury to which the charges are to be submitted or resubmitted.

Senate 3816/Assembly 7855. This measure would amend section 530.40(3) of the Criminal Procedure Law to allow a superior court to order bail or recognizance for a defendant who has been convicted of a class A-II felony if the defendant is providing, or has agreed to provide, material assistance pursuant to section 65.00(1)(b) of the Penal Law.

Senate 3798/Assembly 7850. This measure would add a new paragraph to section 210.40(1) of the Criminal Procedure Law to require that a court, in determining whether to grant a motion to dismiss an indictment in the interest of justice, consider whether there has been unreasonable delay due to repeated and unjustifiable failure by the prosecution to proceed with the action after both sides have answered ready and the court has fixed a date for a hearing or trial.

Senate 3854/Assembly 7863. This measure would amend provisions of the Criminal Procedure Law requiring that pre-trial motions be made in writing to permit oral pre-trial motions whenever the defendant and the prosecutor consent and the court agrees.

Senate 3853/Assembly 7858. This measure would add a new section 60.41 to the Criminal Procedure Law to provide a trial court with discretion, in certain circumstances, to permit the admission of evidence of a person's prior violent conduct.

Senate 3758/Assembly 7864. This measure would amend the speedy trial statute and other provisions of the Criminal Procedure Law to accord criminal courts greater authority to fix and enforce expeditious schedules for hearings and trials, and to minimize opportunities for delay by requiring earlier disclosure of *Rosario* material.

Assembly 7873. This measure would amend section 410.91 of the Criminal Procedure Law to eliminate the requirement that the prosecution consent before a court may sentence a defendant to parole supervision.

Senate 3772/Assembly 7862. This measure would amend section 300.50(2) of the Criminal

Procedure Law to provide that a request to submit a lesser-included offense to the jury be made prior to the summations.

Senate 3773/Assembly 7869. This measure would revise several provisions of the Criminal Procedure Law to establish a procedure for amending an indictment, prior to retrial, to charge lesser-included offenses of counts that have been disposed of under such circumstances as to preclude defendant's retrial thereon.

Senate 4066/Assembly 6447. This measure would add a new Article 740 to the Criminal Procedure Law to permit a superior court, upon defendant's application and with the consent of the prosecutor, to order that prosecution of certain felony cases be deferred for a period of up to two years. If, by the end of the deferral period, the case has not been restored to the calendar and resumed due to defendant's violation of a condition of the deferral, the case would be dismissed in furtherance of justice.

Senate 5226. This measure would amend section 60.43 of the Criminal Procedure Law to provide that the same protections against the admissibility of evidence of a victim's sexual conduct in a non-sex offense criminal case apply also to a witness in such a case.

Senate 3846/Assembly 7865. This measure would amend Article 240 and other sections of the Criminal Procedure Law to effect broad reform of discovery in criminal proceedings.

Senate 3783-A/Assembly 7868-A. This measure would amend section 270.25 of the Criminal Procedure Law to authorize a limited and experimental reduction in the numbers of peremptory challenges available in criminal cases.

Assembly 7884. This measure would amend CPLR Article 41 and Articles 270 and 340 of the Criminal Procedure Law to revise the current procedure for selecting trial jurors in civil and criminal cases, respectively, by postponing the differentiation of "trial" and "alternate" jurors until after the court's charge to the jury.

Assembly 7080. This measure would amend the CPLR to provide a procedure by which jurors in a civil trial could pose questions to a witness.

Assembly 8054. This measure would amend section 11-1.5 of the Estates, Powers and Trusts Law and section 2102 of the Surrogate's Court Procedure Act to provide that interest is payable on pecuniary dispositions not in trust at the six-month US treasury bill rate in effect at time of decedent's death, payable from seven months after the issuance of letters, unless the will provides otherwise, without the need for the legatee to bring a proceeding to compel payment thereof.

In addition to the foregoing, the Chief Administrative Judge sent to the Legislature 15 proposals that were not introduced, including: a measure to amend the Constitution, in relation to proposing amendments to article VI of the Constitution, in relation to establishing for the City of New York a court of city-wide jurisdiction over actions and proceedings in relation to housing; a measure to amend the CPLR, in relation to judicial hearing officers; a measure to amend the CPLR, in relation to offers to compromise and in relation to computation of interest in personal injury actions [prejudgment interest]; a measure to amend the Criminal Procedure Law, in relation to verdict sheets; a measure to amend the Domestic Relations Law, in relation to the rights of biological fathers; a measure to amend the Domestic Relations Law, the Family Court Act and the Surrogate's Court Procedure Act, in relation to reports and records in adoption, guardianship, custody and visitation cases; a measure to amend the Family Court Act, the Criminal Procedure Law and the Executive Law, in relation to pre-dispositional and pre-sentence investigations in family offense cases; a measure to amend the Family Court Act and the Criminal Procedure Law, in relation to violations of orders of protection; a measure to amend the Family Court Act and the Executive Law, in relation to dispositions in juvenile delinquency cases; a measure to amend the Judiciary Law in relation to audio-visual coverage of court proceedings; a measure to amend the Judiciary Law, in relation to appointment of commissioners of jurors; a measure to amend the Judiciary Law, in relation to nonjudicial officers and employees of the Unified Court System; a measure to amend the New York City Civil Court Act, in relation to housing judges [10 year terms]; a measure to amend the New York City Civil Court Act, in relation to the jurisdiction of the housing part [jurisdiction over commercial property]; and a

measure to amend the Uniform District Court Act and the Uniform City Court Act, in relation to eliminating jurisdiction of district and city courts over violations of law relating to parking.

Rules of the Chief Judge

The following rules were amended by the Chief Judge during 1998:

Section 8.2 of the Rules of the Chief Judge (22 NYCRR), governing employment of relatives of judges, was amended, effective December 15, 1998, to except from the restriction against appointment of relatives those relatives of judges who were not related to judges when first employed by the courts.

Section 17.1 of the Rules of the Chief Judge (22 NYCRR), governing judges' visitation of custodial facilities, was amended, effective June 29, 1998, to change references to the Division for Youth to the Office of Children and Family Services.

Section 17.3 of the Rules of the Chief Judge (22 NYCRR), governing education and training for judges other than town and village justices, was added, effective December 15, 1998, to provide that judges must attend 24 hours of education and training programs every two years.

Section 34.2 of the Rules of the Chief Judge (22 NYCRR), governing reimbursement to localities for cleaning of court facilities, was added, effective January 8, 1998, and was amended, effective December 15, 1998, to modify the formula for reimbursement.

Section 36.1(b) of the Rules of the Chief Judge (22 NYCRR), governing fiduciary appointments by judges, was amended, effective June 2, 1998, to extend the restrictions against appointment of relatives of judges, to relatives of judges of the Housing Part of the New York City Civil Court.

Rules of the Chief Administrative Judge

The following rules were amended by the Chief Administrative Judge of the Courts during 1998.

Section 100.4(C)(3)(h)(ii) of the Rules of the Chief Administrator governing judicial conduct, relating to attendance by judges at fundraising events, was amended, effective January 8, 1998, to permit judges to attend court employee functions.

Section 118.2 of the Rules of the Chief Administrator, governing attorney registration, was amended, effective April 17, 1998, to fix at \$100 the payment rate for a complete list of registered attorneys.

Section 122.1 of the Rules of the Chief Administrator, governing the Judicial Hearing Officer application process, was amended, effective April 17, 1998, to delete the application form set forth therein and to permit the Chief Administrator to promulgate the form using certain stated criteria.

Section 128.9 of the Rules of the Chief Administrator, governing frequency of juror service, was amended, effective December 21, 1998, to conform the rule to recent legislation addressing exemptions based upon prior juror service.

Section 130-1.1(a) of the Rules of the Chief Administrator, governing attorney sanctions, was amended, effective June 19, 1998, to apply the sanctions rules to proceedings brought pursuant to Article 10 of the Family Court Act.

Section 202.6(a) of the Uniform Civil Rules for the Supreme and County Courts, governing procedures for Requests for Judicial Intervention and preliminary conferences, was amended, effective December 21, 1998, to permit the filing of a Request for Judicial Intervention and a request for a preliminary conference at the inception of a lawsuit.

Sections 202.12(c) and **202.26(g)** of the Uniform Civil Rules for the Supreme and County Courts, governing transfers of cases to lower courts, were amended, effective July 29, 1998, to modify the procedure for transferring a case to a court of lesser jurisdiction pursuant to CPLR 325(d).

Section 202.17 of the Uniform Civil Rules for the Supreme and County Courts, **section 206.14** of the Uniform Rules for the Court of Claims,

section 208.13 of the Uniform Rules for the New York City Civil Court, **section 210.13** of the Uniform Civil Rules for the City Courts, and **section 212.13** of the Uniform Civil Rules for the District Courts, governing the exchange of medical reports in personal injury and wrongful death actions, were amended, effective April 17, 1998, to further articulate what must be contained in the reports and to clarify terminology.

Sections 202.21 and **202.50** of the Uniform Civil Rules for the Supreme and County Courts, governing the use of the uncontested divorce packet, were amended, effective May 26, 1998, to clarify the procedures for use of the forms in the Packet.

Sections 205.6, 205.7, 205.24, 205.66 and **205.74** of the Uniform Rules for the Family Court, governing various procedures in that Court, were amended, effective November 5, 1998, to make technical housekeeping changes.

Sections 206.15 and **206.23** of the Uniform Rules for the Court of Claims, governing various procedures in that Court, were amended, effective January 9, 1999, to make those rules gender-neutral.

Part 207 of the Uniform Rules for the Surrogate's Courts, governing various proceedings in that Court, were amended, effective January 5, 1999, and March 4, 1998, to make a number of minor changes that fine-tune the affected rules.

Section 208.14(d) of the Uniform Rules for the New York City Civil Court, governing restoration of cases to the calendar, was amended, effective November 5, 1998, to provide greater flexibility to restoring those cases.

Section 208.42(c) of the Uniform Rules for the New York City Civil Court, governing assignment of judges to hear cases, was amended, effective November 5, 1998, to permit greater flexibility in the assignment of judges to hear certain motions.

A new **Appendix D** of the Uniform Rules of the Trial Courts, containing separate forms for a preliminary conference stipulation and order for use in commercial cases and cases other than commercial cases, was adopted effective July 1, 1998.