

Chapter 4

Legislation and Rules Revision

Legislation

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 a new committee on local courts, which was 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 also is responsible for drafting legislative measures to implement recommendations made by the Chief Judge in her State of the Judiciary message, as well as measures required by the Unified Court System, including budget requests, adjustments in judicial

compensation, and measures to implement 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 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 1997 legislative session, Counsel's Office, with the assistance of the Chief Administrative Judge's advisory committees, prepared and submitted 116 new measures for legislative consideration. Of these measures, 19 ultimately were enacted into law. Also during the 1997 session, Counsel's Office furnished Counsel to the Governor with analyses and recommendations on 32 measures awaiting executive action, while the Legislature was supplied with written legislative memoranda on five 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 1997 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 1997 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 1997; 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 1997.

The Work of the Advisory Committees

Surrogate's Court Advisory Committee

The Committee annually recommends to the Chief Administrator proposals related 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 1997, the Committee reviewed proposed new forms for use in ancillary proceedings under the Surrogate's Court Procedure Act. It also completed a major revision of the uniform rules which were approved for use by the Chief Administrative Judge.

During the 1997 legislative session, three of the Committee's proposals were enacted into law:

- Section 1403 of the SCPA (Persons to be served) was amended to provide that process in a probate proceeding must issue to any person who would be adversely affected by an instrument offered for probate that specifically refers to and purports to exercise a power of appointment (L.1997, c. 64).

- A new section 1411 of the SCPA (Citation upon filing of objections) was added to streamline procedures related to the giving of notice of a will contest to the beneficiaries under the will (L. 1997,c. 87).

- Section 2111 of the SCPA (Ex parte applications for advance payment of fees of an attorney, fiduciary or guardian *ad litem*) was amended to provide that, upon application by a guardian *ad litem* for advance payment of compensation on account of services rendered to an estate or person under disability, notice of such application must be given to any attorney or person who has appeared in the proceeding (L.1997, c.100).

In its December, 1997 report, the Committee recommended the following new measures for consideration by the Legislature:

(A) Disposition of Bank Accounts in Trust Form

A new section 7-5.7 of the EPTL (Application) should be enacted to address the problem of how to distribute the proceeds of a bank account in trust form ("Totten trust") upon the depositor's death, where the depositor established the account for two or more beneficiaries and not all survive the depositor. Under this change in the law, unless otherwise provided for by the depositor, the beneficiary or beneficiaries who survive would share one hundred percent of the trust account proceeds.

(B) The Effect of an Adoption by an Unrelated Person on Inheritance Rights

Sections 117 of the Domestic Relations Law (Effect of adoption) and 2-1.3(a)(1) of the EPTL (Adopted children and posthumous children as members of a class) should be amended to preserve the rights of a child to inherit from his or her natural parents after the child is adopted by an unrelated adult (on consent of the custodial parent) who resides with the custodial parent.

(C) Payment of Certain Debts without Administration

Section 1310 of the SCPA (Payment of certain debts without administration) should be amended to facilitate the payment of limited assets (up to \$30,000) to the family of a decedent without administration. It would make any moneys, securities or other personal property deposited with broker-dealers, management-type investment companies or trusts, nursing homes, residential health care facilities and outpatient lodges available to the family without administration, for funeral expenses or living expenses during the period following a death.

(D) Filing of Bonds by Fiduciaries and the Administration of Small Estates

This proposal would amend section 801 of the SCPA (Amount; condition; number of sureties; obligees) by raising the amount for which a bond is not required to be filed by the fiduciary of a small estate from \$10,000 to \$20,000. It also would make a series of technical amendments to other SCPA provisions governing administration of small estates.

The Work of the Advisory Committees

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 1997 (and to be continued in 1998), the Committee was particularly focused on draft legislation to substantially revise Article 265 of the Penal Law ("Firearms and Other Dangerous Weapons"). It also was carefully reviewing numerous ideas and suggestions that were referred by judges and nonjudicial personnel throughout the State to streamline and improve the fairness of criminal court operations and procedures.

During the 1997 legislative session, the Committee saw the adoption of the following measure that it had proposed:

- Section 270.15 (3) of the CPL (Trial jury; examination of prospective jurors; challenges generally) was amended to authorize a trial court, in its discretion, to permit a sworn juror to leave the courtroom during the remainder of jury selection. Prior to this amendment, the trial court could permit a sworn juror to wait in the jury room during this time, but only with the consent of both parties. The amendment eliminates the requirement that the parties consent and further allows the court, in its discretion, to permit a sworn juror to leave the courthouse entirely during the remainder of jury selection (L.1997, c. 634).

Among the more significant measures proposed in its December, 1997 report, the Committee recommended enactment of the following:

(A) Discovery

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) the 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.

(B) 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) should be amended to authorize the Chief Administrator of the Courts 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.

(C) The reduction of the number of peremptory challenges.

CPL §270.25 (Trial jury; peremptory challenge of an individual juror) should be amended to reduce the number of peremptory challenges (which presently provides for among the highest number of peremptory challenges in the nation) as a means of improving the efficiency of the jury selection system and to significantly reduce delays in the conduct of criminal jury trials. The court would retain authority to increase the number of allotted peremptory challenges in extraordinary circumstances.

(D) Interim Probation Supervision

Amend CPL §390.30 (Scope of pre-sentence investigation and report) to allow the court (after consultation with the prosecutor and 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 would 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 a sentence of probation.

(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.

Advisory Committee on Civil Practice

The Committee recommends to the Chief Administrative Judge proposals concerning the Civil Practice Law and Rules ("CPLR"). During 1997, the Committee started focusing on the use of technology and evaluating its efficacy to facilitate the litigation process. This will continue throughout 1998.

During the 1997 legislative session, two of the Committee's proposals were enacted into law. They were:

- An amendment to CPLR 1209 (Arbitration of controversy involving infant, judicially declared incompetent or conservatee) to eliminate the need to seek a court order when submitting an infant's personal injury claim to arbitration when the claim is brought under the Insurance Law relating to uninsured motorist or supplementary under-insured motorist claims (L.1997,c.365).

- An amendment to CPLR 306-b (Proof of service) to (a) require service of the summons and complaint within 120 days of filing with the court;

and, (b) in conformity with federal practice, expressly authorizing courts to extend this 120-day service for good cause shown or in the interest of justice (L.1997,c. 476).

The following were among the Committee's more significant legislative measures proposed in 1997:

(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 require: 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. It also would require that a deponent answer every question except in certain limited circumstances; and preclude any interruption of the deposition for an attorney-deponent communication 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) Settlements in Tort Actions

This measure would amend Section 15-108 of the General Obligations Law (release or

covenant not to sue) to help it achieve its original purpose — the encouragement of swift and equitable settlements in multi-party tort actions. The statute was designed to deal with the consequences when a plaintiff with a personal injury or wrongful death claim releases from liability one or more, but not all, alleged tortfeasors. Section 15-108 sets forth the rule governing the maximum liability of each of the remaining defendants. Under the current statute, their liability is reduced by the greater of the amount of the settlement or the amount of the settling defendant's equitable share of the damages, as determined by the jury.

The statute often has operated to reward the non-settlor at the expense of the settlor. In order to encourage, rather than discourage, settlements in personal injury and wrongful death litigation, this amendment would change the rule to require each non-settlor to elect the manner of treatment prior to trial. The options available would be the same as now exist: *viz.*, to have liability reduced by the amount of the settlement, or the amount of the settling defendant's equitable share of the damages as determined by the jury, but because the nonsettlor must make a choice before there is a verdict, upon the basis of which personal liability consequences can be gauged, there will be a stronger element of uncertainty about the outcome. It is this uncertainty — when balanced against the certainty and security offered by settlement — that should provide a true incentive for the parties to make genuine efforts to settle the litigation.

(D) Neglect to Proceed

This measure would amend CPLR 3216 (Want of prosecution) which applies to cases prior to the filing of the note of issue and CPLR 3404 (Dismissal of abandoned cases) which applies to 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 to the rules would make available to the civil courts a greater number of options, including striking the offending parties' pleadings and dismissing the action.

Filing by Electronic Means

In addition to these legislative proposals, the Committee addressed the need to expedite litigation and reduce administrative costs to

parties filing papers in civil proceedings through greater use of available technology. To that end, it proposed that pilot programs be conducted at a select number of 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.

Family Court Advisory and Rules Committee

The Committee recommends to the Chief Administrative Judge proposals in the areas of Family Court procedure and family law. This work encompasses a number of different statutes, including the Family Court Act ("FCA"), the Social Services Law, and the Domestic Relations Law ("DRL"). During 1997, the Committee addressed implementation issues arising from the increasing level of federal regulation and involvement in the family law area. Congress continues to pass legislation containing mandates for state courts that have had, and are continuing to have, a profound impact on the Family Court. The resultant impact on the work of the Committee will continue into 1998 and beyond.

During the 1997 legislative session, six of the Committee's proposals were enacted into law:

- FCA §1113 (Time of appeal) was amended to provide that a notice of appeal must be filed within 30 days of receipt by the appellant of the challenged order in court, within 30 days of service of the order by a party or law guardian upon an appellant, or 35 days from the mailing of the order by the Family Court, whichever is earliest. Further, it requires notice of the time-frames to be included on all orders and incorporates the language regarding "service by a party" contained in Rule 5513 of the CPLR.

(Time to take appeal) (L.1997,c.461).

- Section 113(3) of the DRL was amended to permit expedited adoptions initiated following surrenders executed pursuant to Social Services Law §383-c(10) to take place in the county in which the surrender had been approved. It also makes certain technical changes to the DRL concerning the residency requirement in agency adoptions and deletes an anachronistic provision regarding instruments consenting to adoption in

order to avoid confusion with, and circumvention of, the strict statutory requirements for surrender instruments, including the notice requirements for judicial and extra-judicial surrenders.

- The Family Court Act and the Criminal Procedure Law were modified to authorize local criminal courts, when the Supreme and Family Courts are closed, to arraign Family and Supreme Court parties arrested at night or on weekends and to issue or modify Family Court orders of protection on the basis of simple, generic affidavits in lieu of Family Court pleadings. The temporary orders issued would remain in effect for up to four days, at which time further relief could be sought in Family Court. Transmission of the orders and affidavits to Family Court may be made initially by facsimile, followed by immediately sending the originals (L.1997, c.186).

- Legislation was enacted to make clear that the appointment of a law guardian in a child protective proceeding continues through the extension of placement and post-termination review stages, unless the Family Court appoints another law guardian. Where the court has appointed a law guardian in a foster care placement or review proceeding, that appointment continues unless the Court has appointed another law guardian. The law guardian may move to be relieved and, if granted, another law guardian must be appointed by the court. Notification of review proceedings conducted pursuant to FCA §1055-a (Status of children freed for adoption) and Social Services Law §392 (Foster care status) must be furnished to the law guardian who represented the child in the original child protective, foster care placement, or termination of parental rights proceeding, unless appointment of another law guardian had been made, in which case notification would be required to be given to that law guardian (L.1997, c.353).

- As required by federal welfare legislation, the Legislature enacted the "Uniform Interstate Family Support Act," to replace the Uniform Support of Dependents Law ("UIFSA"). Instead of having the problem of multiple orders issued in different states, all running simultaneously, there now are clear indicia for identifying the court with "exclusive continuing jurisdiction," thereby limiting the ability of other courts to issue new, conflicting orders or to modify existing orders. The UIFSA also provides new flexibility for the Family Court in

fulfilling its responsibility for obtaining evidence and testimony from other jurisdictions by permitting utilization of electronic means, with appropriate protections to assure procedural fairness (L. 1997, c. 398).

- The comprehensive child support and paternity legislation enacted in order to implement federal welfare legislation incorporated a number of the Committee's proposals concerning the resolution of challenges to proposed adjusted orders of child support regarding orders issued prior to September 15, 1989, including imposition of the burden of going forward and the burden of proof upon the objecting party; requiring Support Collection Units to provide complete information regarding the children covered by the orders, authorizing hearing examiners either to issue newly calculated orders or to remand matters to Support Collection Units when sustaining challenges and clarifying the effective date of the adjusted orders so issued (L. 1997, c. 398).

Among the more significant measures proposed in its December, 1997 report, the Committee recommended enactment of the following:

(A) Interstate enforcement of orders of protection

In order to assure implementation of the "full faith and credit" mandate of the federal "Violence against Women Act," this measure would clarify the enforceability in New York State criminal and civil proceedings of orders of protection issued by courts in other state, territorial and tribal jurisdictions. The bill incorporates the federal "full faith and credit" criteria into the Domestic Relations Law, and Family Court Act; amends the mandatory arrest, menacing and criminal contempt provisions to include cases involving out-of-state orders, as well as authorizes entry without fees of out-of-state orders of protection onto the statewide automated registry of orders of protection and related warrants.

(B) Criminal Records Screening

Two measures would amend existing law to increase the information required to be submitted before a child may be adopted, placed in foster care, be subject to a direct placement, or have a guardian appointed. Their purpose is to ensure the safety and appropriateness of the

placement of the children involved. The first would permit the Family Court to inquire about the criminal history of proposed custodians and applicants for visitation and require prospective adoptive parents and guardians to provide their criminal histories to the Family and Surrogate's Court. It also would require the production of child abuse registry histories of all individuals over the age of 16 residing in the home. The second would require criminal records and child abuse screening of prospective foster parents and individuals accepting direct placements of children into their homes within 30 days of the placement.

(C) Termination of Parental Rights on Grounds of Severe and Repeated Child Abuse

Although the federal "Adoption and Safe Families Act of 1997" requires filing of termination of parental petitions in cases involving severe and repeated child abuse, at present, a major constitutional obstacle exists to utilization of these provisions under New York's Social Services Law. Because parental rights termination must be based upon clear and convincing proof, it has not been possible to utilize child abuse adjudications, which are based upon the lower preponderance of the evidence standard, as predicates for termination on severe or repeated child abuse grounds. This measure would authorize Family Court, in child abuse and neglect proceedings, to make additional findings of severe or repeated abuse at the higher clear and convincing evidence standard that could be used later at a termination of parental rights hearing. The proposal also sets forth additional related changes in both the termination and child abuse statutes.

(D) Child Support

This measure would amend the Family Court Act and the CPLR to authorize hearing examiners, in addition to judges, 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. In addition, it would provide employers and income payers with notice and an opportunity to be heard prior to imposition of sanctions for noncompliance with income deduction orders; and provide that sanctions

against employers and income payers for discriminating against individuals subject to income deduction orders would be imposed in the context of civil damages actions brought by aggrieved individuals, and not as part of a child support or paternity proceeding. The measure also would clarify the law with respect to challenges to cost of living adjustments applicable to orders issued after September, 1989; and make a variety of changes to the review and adjustment process as to both pre- and post-1989 orders.

(E) Changes in Elisa's Law

Elisa's Law, which was adopted in 1996, gives investigatory agencies greater access to information maintained by the Statewide Central Register of Child Abuse and Maltreatment ("Register") and delineates circumstances under which information regarding child abuse fatalities can be disseminated to the public. Under the law as written, access to unfounded reports (reports where abuse or maltreatment was not supported by credible evidence upon investigation) is available to certain investigative agencies during the investigation of a subsequent report involving the same child. This measure would allow such access also where a subsequent investigation involved the same alleged perpetrator as the earlier report. In addition, it would allow the release of sealed reports to all members of multi-disciplinary investigative teams so long as confidentiality provisions are observed, and allow the admission in court or at an administrative proceeding of a sealed unfounded report in the Register upon a finding that due process requires same or where the report's subject consents. Finally, the measure would prohibit expunging unfounded reports until ten years following the 18th birthday of the youngest child named in any report in the Register involving the same perpetrator, not simply ten years following the 18th birthday of the child who is the subject of the particular report.

Local Courts Advisory Committee

The Local Courts Advisory Committee was established in 1997 to propose and review legislation and procedures affecting the city courts, district courts, New York City Civil Court, New York City Criminal Court, and town and

village courts. It will issue its first set of legislative proposals in 1998.

Measures Enacted into Law in 1997

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Chapter 64 (Assembly bill 6487). Amends section 1403 of the Surrogate's Court Procedure Act to provide that process in a probate proceeding must issue to any person who would be adversely affected by an instrument offered for probate that specifically refers to and purports to exercise a power of appointment. Eff. 5/20/97.

Chapter 87 (Assembly bill 6488). Amends section 1411 of the Surrogate's Court Procedure Act to streamline procedures for the provision of notice of a will contest to beneficiaries under the will. Eff. 1/1/98 (and applicable only to new probate proceedings commenced on or after such date).

Chapter 100 (Senate bill 3791-A). Amends section 2111 of the Surrogate's Court Procedure Act to provide that, upon application by a guardian *ad litem* for advance payment of compensation on account of services rendered an estate or person under disability, notice of such application must be given to all attorneys who have appeared for parties to the proceeding. Eff. 6/11/97.

Chapter 186 (Assembly bill 7029). Amends provisions of the Criminal Procedure Law, the Domestic Relations Law and the Family Court Act to clarify the powers and responsibilities of local criminal courts as back-ups to Family Court when the latter is not in session; and, among its provisions, it: (1) creates simple mechanisms for a local criminal court to issue a Family Court temporary order of protection in the absence of a Family Court family offense petition and to modify a Family Court order of protection or temporary order of protection when Family Court is not in session; (2) permits admission of a record of a Family Court warrant or protective order in the Statewide computerized registry as evidence of a Family Court filing where an adult is arrested under the Family Court Act and brought before a local criminal court judge for arraignment; and (3) authorizes law enforcement officials to bring a person arrested for violation of an order of protection issued by Supreme Court in a matrimonial proceeding (or upon a warrant issued

in connection with that violation) to a local criminal court under circumstances where Supreme Court is not in session. Eff. 7/8/97.

Chapter 242 (Senate bill 3608-A). Amends section 524 of the Judiciary Law: (1) to extend to persons who have served as jurors in Town or Village Justice Courts the same disqualification period from further jury service as heretofore has been enjoyed by persons who have served as jurors in other courts; and (2) to permit persons who have served as jurors and who are subject to this disqualification period to request that it be reduced so as to enable them to be called to jury service more frequently. Eff. 8/1/98 (and applicable to jury service whether performed before, on, or after such effective date).

Chapter 353 (Senate bill 3423). Amends provisions of the Family Court Act and the Social Services Law, in relation to notification of parties and law guardians in child protective and foster care review proceedings, to: (1) clarify that appointment of a law guardian pursuant to section 1016 of the Family Court Act continues through the extension of placement and post-termination review stages, unless the court appoints a successor guardian; (2) clarify that once the court appoints a law guardian in a foster care placement or review proceeding pursuant to section 358-a or 392 of the Social Services Law, that appointment continues until a successor appointment is made; and (3) require that notification of review proceedings pursuant to section 1055-a of the Family Court Act and section 392 of the Social Services Law must be furnished to the law guardian who represented the child in the original termination proceeding unless a successor law guardian has been appointed. Eff. 11/3/97.

Chapter 365 (Senate bill 4531). Amends section 1209 of the Civil Practice Law and Rules to eliminate the need to seek a court order when submitting an infant's personal injury claim to arbitration, under circumstances where the claim is brought pursuant to paragraph (1) or (2) of section 3420(f) of the Insurance Law (*viz.*, uninsured motorist and supplementary underinsured motorist claims). Eff. 8/5/97.

Chapter 375 (Senate bill 5164). Amends sections 111(2)(e), 113(3) and 116(1) of the Domestic Relations Law to conform their

provisions to recent changes in the State's adoption laws. Eff. 8/5/97.

Chapter 398 (Senate bill 5771). Amends numerous Consolidated Laws relating to establishment of paternity and the establishment, enforcement, and collection of child support orders; and, among its provisions, includes: (1) substitution of biennial cost of living adjustment for the current review and adjustment process for child support orders and utilization of current process for one-time only review and adjustment or orders issued prior to 1989; (2) establishment of additional procedural tools by which to expedite establishment of paternity, including automatic administrative ordering of genetic tests; (3) reduction of the period for rescission of paternity acknowledgments to 60 days and establishment of procedures for such rescission; (4) a procedure to suspend and withhold professional, business, driver's, and recreational licenses when a person fails to comply with a summons, subpoena, or warrant relating to a child support or paternity proceeding; (5) enactment of the Uniform Interstate Family Support Act and repeal of the Uniform Support of Dependents Law; (6) automatic administrative imposition of real and personal property liens and direct income withholding; (7) requirements for courts to gather information and issue Qualified Medical Support Orders; and (8) establishment of an automated State case registry of child support orders, which, along with the directory of new hires, will be linked to Federal registries currently in development. Eff. 1/1/98 (but see statutory text for special effective dates applicable to certain provisions).

Chapter 435 (Senate bill 5784). Amends numerous Consolidated and Unconsolidated Laws in relation to State programs and practices; and, among its provisions, includes: (1) extension, until June 30, 1999, of the effectiveness of section 290-a of the Judiciary Law, which authorizes the Chief Administrative Judge to direct use of mechanical recording in lieu of court reporting to record testimony and other proceedings in Surrogate's Court, the Court of Claims, Family Court, the New York City Civil Court, and in civil parts of the District Courts and City Courts outside New York City; (2) extension, until June 30, 1999, of the 1995 amendment to section 310.10 of the Criminal Procedure Law authorizing a criminal court, without the parties' consent, to permit separation

of a deliberating jury overnight or on weekends in cases not involving a Class A felony or a Class B or C violent felony; and (3) statutory implementation of the 1996-99 collective bargaining agreements between the Unified Court System and public employee unions representing court employees in the New York State Supreme Court Officers Unit, the New York State Court Officers Unit, the Nassau County Unit, and the Suffolk County Unit. Eff. 8/20/97 (but see statutory text for special effective dates applicable to certain provisions, including 3/31/97 [mechanical recording and sequestration] and 4/1/96 [collective bargaining provisions]).

Chapter 461 (Senate bill 2918-B). Amends section 1113 of the Family Court Act to provide that a notice of appeal from a Family Court order must be filed within 30 days of appellant's receipt of the order in court or service of the order upon the appellant by a party or law guardian, or within 35 days of the mailing of the order to the appellant by the court clerk. Eff. 1/1/98 (and applicable to all orders issued on or after that date).

Chapter 474 (Senate bill 4118-A). Amends section 5501(c) of the Civil Practice Law and Rules to provide that a notice of appeal from an order directing summary judgment or judgment on a motion addressed to the pleadings shall be deemed to specify a judgment upon such order entered after service of the notice of appeal and before entry of the order of the appellate court upon such appeal. Eff. 11/24/97.

Chapter 476 (Senate 4553-A). Amends section 306-b of the Civil Practice Law and Rules to: (1) require service of the summons and complaint, summons with notice and third-party summons and complaint within 120 days of filing with the court; and (2) in conformity with Federal practice, expressly authorize a court to extend this 120-day service mandate for good cause shown or in the interest of justice. Eff. 1/1/98 (and applicable to all actions commenced on or after that date).

Chapter 517 (Senate bill 3611). Amends section 730(8) of the Real Property Tax Law to provide that, in a small claims tax assessment review proceeding, service of the petition by the homeowner-petitioner upon the clerk or other appropriate official representing the respondent

assessing unit shall be by personal delivery or by certified mail, return receipt requested. Eff. 1/1/98.

Chapter 634 (Senate bill 3769). Amends section 270.15 of the Criminal Procedure Law to authorize a trial court, in its discretion, to permit a sworn juror to leave the courtroom (and even the courthouse) during the remainder of jury selection. Eff. 9/24/97.

PROPOSED CONSTITUTIONAL AMENDMENT (Senate bill 3001). Amends sections 15(b) and 16(d) of Article VI of the State Constitution: (1) to authorize the Legislature to increase the maximum monetary jurisdiction of the New York City Civil Court from \$25,000 to \$50,000; and (2) to authorize the Legislature to increase the maximum monetary jurisdiction of the District Courts from \$15,000 to an amount not exceeding \$50,000. Eff. 1/1/98, provided the amendment is approved by the voters at the 11/97 General Election.

PROPOSED CONSTITUTIONAL AMENDMENT (Senate bill 2997-A). Amends section 26 of Article VI of the State Constitution to authorize the temporary assignment of full-time City Court Judges (outside New York City) to County Court and Family Court within the county of residence or any adjoining county. Eff. 1/1/00, provided the 1999 Legislature gives second passage to this amendment and the amendment then is approved by the voters at the 11/99 General Election.

Measures Introduced in the 1997 Legislative Session and Not Enacted Into 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; 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 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. All payments would be deposited in the State Treasury to the credit of the Attorney Licensing Fund.

Assembly 6483. This measure would amend section 26 of Article VI of the State Constitution

Measures Introduced in the 1997 Legislative Session and Not Enacted Into Law

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 Civil Practice Law and Rules 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 and provides specific procedures to be observed.

Assembly 7872. 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 section 4110-b of the Civil Practice Law and Rules 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. This measure also would add a new section 4110-d to the Civil Practice Law and Rules, authorizing 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. 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. Affected would be the Court of Claims, the County Courts, the Family Courts and the Surrogate's Court — all of which would be abolished while their judges became Supreme Court Justices; and the New York City Civil and Criminal Courts and the upstate City Courts, which likewise would be abolished while their judges would join the existing corps of District Court Judges. Town and Village Courts and their Justices would be unaffected. This measure also would 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, as well as the constitutional authority for assigning lower court judges temporarily to Supreme Court.

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. It also 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 Civil Practice Law and Rules, 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 Civil Practice Law and Rules to authorize use of Judicial Hearing Officers to hear and determine any issue in an action so long as no party's constitutional rights (e.g., right to jury trial) would thereby be compromised. Under current law, use of the reference to hear and determine is limited.

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 four years. It also would provide for the staggering of the

expiration dates of the terms of the members of the Advisory Council.

Senate 5162-A. 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. It also would amend 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 that section consistent with the proposed amendment to EPTL 2-1.11(c).

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. It also would render section 249 gender neutral.

Senate 4490/Assembly 7839. This measure would amend section 1204 of the Civil Practice Law and Rules 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 make 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 Civil Practice Law and Rules 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 settlement of tort actions involving multiple tortfeasors.

Senate 5169/Assembly 7838. This measure would amend sections 1603 and 3018 of the Civil Practice Law and Rules 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 section 4517 of the Civil Practice Law and Rules 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. Such testimony could be used for any purpose by any party who is adversely interested when the prior testimony is offered in evidence.

Senate 3615/Assembly 7840. This measure would amend section 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 Civil Practice Law and Rules to provide, in most cases, 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.

Assembly 7032. This measure would amend section 6313(a) of the Civil Practice Law and Rules to regularize the giving of notification to other parties upon application for a temporary restraining order (TRO). Overall, its purpose is to curtail unwarranted *ex parte* orders for temporary injunctive relief by introducing a simple and expeditious method of notification, while also providing for TRO's without such notification when appropriate.

Senate 3614/Assembly 7853. This measure would amend section 2106 of the Civil Practice Law and Rules, 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. It also would amend the Penal Law to add a new section 210.46 to create a class E felony for making a false statement contained in an affirmation.

Senate 3602. This measure would amend section 3214 of the Civil Practice Law and Rules 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 section 5221 of the Civil Practice Law and Rules to provide that where a judgment sought to be enforced was entered in the Civil Court of the City of New York and the respondent resides in, is regularly employed, or has a place for the regular transaction of business in person within that city, a special proceeding authorized by Article 52 shall be commenced in the Civil Court in the county in which the respondent lives, works, or has a place for the regular transaction of business.

Senate 3613. This measure would amend section 5519(a) of the Civil Practice Law and Rules 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-A/Assembly 7870-A. This measure would amend the Civil Practice Law and Rules to clarify procedure law pertaining to motions for leave to reargue or renew a prior motion.

Senate 3607. This measure would amend section 4518 of the Civil Practice Law and Rules 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. This measure is intended to address both facsimile storage of original hard copy business records, and also to address reconstruction of data used in the ordinary course of business that may never have been maintained as paper documents.

Senate 4532. This measure would amend section 3213 of the Civil Practice Law and Rules 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. It also would 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. This measure would amend sections 240 and 252 of the Domestic Relations Law to make provisions relating to issuance of temporary orders of protection in matrimonial proceedings for a party in need of immediate relief; issue orders requiring the surrender of firearms licenses; and 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 the disclosure of sealed, unfounded reports of child abuse to subsequent investigators when the investigation involves the same perpetrator of abuse; also 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 16 years of age, the same age limit which applies to males, and establish a judicial procedure for admissions in persons in need of supervision 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/Assembly 8651. This measure would amend sections 315.3 and 360.2 of the Family Court Act to make provisions with respect to violations of adjournments in contemplation of dismissal and orders of conditional discharge in juvenile delinquency cases to clarify procedures applicable with respect to violations thereof.

Senate 5163/Assembly 7861. This measure would clarify that family offenses committed by persons younger than age 16 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 extend 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. It also would

provide that if the prosecution fails to exercise one of its options within 30 days of the court's order, the order would take effect and the prosecution would have 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/Assembly 7849. 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 arraiging a 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 CPL.

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. It also would 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 provide a prosecutor with authority to move to vacate a judgment on the grounds specified in that section.

Senate 3789/Assembly 7857. 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/Assembly 7852. 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 his or her 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 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. The major features of this measure are: (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; and (4) legislative superseder of the Court of Appeals' rulings in *People v. Ranghelle*, 69 N.Y.2d 56 (1986) and *People v. O'Doherty*, 70 N.Y.2d 479 (1987).

Senate 3783/Assembly 7868. 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. It would direct the Chief Administrative Judge, in consultation with the Presiding Justices of the Appellate Division, to select one county in each Judicial Department in which, for a 30-month period, the number of peremptory challenges available to parties in criminal cases other than death penalty cases would be reduced.

Assembly 7884. This measure would amend Article 41 of the Civil Practice Law and Rules 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 Civil Practice Law and Rules 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 amend 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 the time of a 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 Civil Practice Law and Rules, in relation to judicial hearing officers; a measure to amend the Civil Practice Law and Rules, 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 1997:

Sections 24.4(m), 24.11(a) and 25.29(e) of the Rules of the Chief Judge (22 NYCRR), governing career service of unrepresented nonjudicial employees, was amended, effective April 29, 1997, to conform those rules to recent

changes in the collective bargaining agreement with the Civil Service Employees Association.

Section 25.40(d) of the Rules of the Chief Judge (22 NYCRR), governing practice of law by court employees, was amended, effective April 29, 1997, to tighten the requirement for the practice of law by part-time employees.

Part 33 of the Rules of the Chief Judge (22 NYCRR), governing temporary assignments of judges, was amended, effective April 29, 1997, to reflect a new procedure for the temporary assignment of judges to the Supreme Court.

Section 36.1(f) of the Rules of the Chief Judge (22 NYCRR), governing appointments by judges to certain fiduciary positions, was amended, effective June 26, 1997, to increase to \$550 the monetary threshold for filing requirements for persons appointed as referees.

Part 37 of the Rules of the Chief Judge (22 NYCRR), governing costs and sanctions, was amended, effective *nunc pro tunc* as of June 1, 1995, authorizing the Chief Administrator to adopt rules with respect to certain modifications of the requirements governing costs and sanctions.

Rules of the Chief Administrative Judge of the Courts

The following rules were amended by the Chief Administrative Judge of the Courts during 1997:

Section 104.2 of the Rules of the Chief Administrator (22 NYCRR), governing retention of court records, was amended, effective May 2, 1997, to conform the rule to certain statutory records retention requirements.

Part 108 of the Rules of the Chief Administrator (22 NYCRR), governing court reporter transcripts, was amended, effective February 1, 1998, to establish transcript page rate payment guidelines for court reporters and to require written agreements for preparation of transcripts for private parties.

Section 113.2(b) of the Rules of the Chief Administrator (22 NYCRR), governing disabled

judges, was amended, effective May 21, 1997, to reflect required consultation with the appropriate Presiding Justice.

Section 118.2(a)(2) of the Rules of the Chief Administrator (22 NYCRR), governing attorney registration, was amended, effective August 29, 1997, to reflect a change of address for the filing of attorney registration statements.

Part 121 of the Rules of the Chief Administrator (22 NYCRR), governing temporary assignment of judges, was amended, effective April 29, 1997, to reflect a new procedure for the temporary assignment of judges to the Supreme Court.

Part 122 of the Rules of the Chief Administrator (22 NYCRR), governing the procedure for selecting and assigning Judicial Hearing Officers, was amended, effective January 27, 1997, and January 1, 1998, to revise the process for designating Judicial Hearing Officers.

Part 130 of the Rules of the Chief Administrator (22 NYCRR), governing costs and sanctions, was amended, effective March 1, 1998, to require a certification by attorneys that papers filed in court are not frivolous and to make other modifications to the requirements governing costs and sanctions.

Section 135.1 of the Rules of the Chief Administrator (22 NYCRR), governing donations of sick leave to nonjudicial employees, was amended, effective April 29, 1997, to expand the scope of the sick leave donation program.

Section 202.16 of the Uniform Civil Rules for the Supreme and County Courts (22 NYCRR), governing procedure in matrimonial actions, was amended, effective March 1, 1997, to make minor adjustments in the procedures for matrimonial actions, and was amended, effective March 1, 1998, to adopt for matrimonial actions the attorney certification requirement of Part 130.

Sections 202.21 and 202.50 of the Uniform Civil Rules for the Supreme and County Courts (22 NYCRR), governing procedure in uncontested matrimonial actions, was amended, effective March 1, 1998, to establish filing requirements

Rules of the Chief Administrative Judge of the Courts

using the forms in the Uncontested Divorce Packet.

Section 205.4 of the Uniform Rules for the Family Courts (22 NYCRR), governing public access to Family Court proceedings, was amended, effective September 2, 1997, to reinforce the public nature of proceedings in Family Court and to clarify the process by which access may be obtained by the public to Family Court proceedings.

Section 206.20 of the Uniform Rules for the Court of Claims (22 NYCRR), governing sanctions, was amended, effective December 29, 1997, to reflect the application of the Part-130 sanctions rules to the Court of Claims.

Section 208.42(b) and (d) of the Uniform Rules for the New York City Civil Court

(22NYCRR), governing procedures for summary proceedings in the Housing Part, was amended, effective October 6, 1997, to add language to the notice of petition forms concerning rent deposits by tenants seeking adjournments of summary proceedings.

Section 208.42(i) of the Uniform Rules for the New York City Civil Court (22 NYCRR), setting forth the addresses of the Housing Parts of the Court, was amended, effective January 20, 1998, to reflect new addresses.

Sections 212.41(n) and 212.41-a(n) of the Uniform Civil Rules for the District Courts (22 NYCRR), governing proceedings in small claims and commercial small claims proceedings, were amended, effective April 8, 1997, to permit the transfer of such proceedings to Part-28 arbitration parts.