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I N S E N A T E

June 5, 2012

Introduced by Sen. SALAND -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Since 1999, the state has steadily expanded its program in
2 the use of electronic means for the commencement of actions and the
3 exchange of legal papers and other documents between parties in
4 proceedings in New York's civil courts. Throughout this expansion, this
5 program has consistently demonstrated success, measured by its reliability,
6 efficiency, convenience and savings in time and money for the litigating
7 public and for the courts.
8 Finding that use of electronic filing in judicial proceedings also is
9 expanding rapidly across the nation, and believing that the benefits
10 heretofore realized in New York through its use in civil proceedings can
11 likewise be realized through its expansion into criminal and family
12 court proceedings, the legislature enacts this measure to provide the
13 necessary authorization.
14 Introduction of electronic filing in the civil court proceedings was
15 begun slowly in New York. This was to ensure that important rights would
16 not be jeopardized as bench and bar gained experience with use of the
17 technologies involved in such filing. The legislature now finds that
18 proceedings in criminal and family courts can present their own unique

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

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1 complications and that, whatever the hopes and expectations may be for a
2 successful deployment of electronic filing in the those courts, it is in
3 the public interest that bench and bar deliberately and carefully
4 explore its use. Accordingly, this act limits the initial authorization
5 for such use. This authorization, in the form of a three-year pilot
6 program, will permit a careful examination by all affected interests to
7 ensure that no rights are prejudiced and that the administration of
8 justice is not in any manner compromised. Under this pilot program,
9 electronic filing may be used in only a limited number of criminal supe-
10 rior courts and family courts, and then only where the chief administra-
11 tor of the courts is satisfied that the circumstances are right for such
12 use. To further ensure that all affected interests are ready and able to
13 participate in the pilot, this act also requires that, while the pilot
14 operates, the principal local interests to be affected -- district
15 attorney, criminal defense bar and county clerk is the criminal courts;
16 authorized presentment agencies and child protective agencies in the
17 family courts -- all acquiesce therein.

18 S 2. Chapter 367 of the laws of 1999, amending the civil practice law
19 and rules and the judiciary law relating to authorization of pilot
20 programs permitting use of facsimile transmission or electronic means to
21 commence an action or special proceeding, is amended by adding two new
22 sections 6-a and 6-b to read as follows:

23 S 6-A. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE CHIEF
24 ADMINISTRATOR OF THE COURTS, WITH THE APPROVAL OF THE ADMINISTRATIVE
25 BOARD OF THE COURTS, MAY PROMULGATE RULES AUTHORIZING A PROGRAM IN THE
26 USE OF ELECTRONIC MEANS IN THE SUPREME COURT AND IN THE COUNTY COURT
27 FOR: (1) THE FILING WITH A COURT OF AN ACCUSATORY INSTRUMENT FOR THE
28 PURPOSE OF ACQUIRING JURISDICTION IN A SUPERIOR COURT, AS PROVIDED BY
29 ARTICLES 195 AND 200 OF THE CRIMINAL PROCEDURE LAW, AND (2) THE FILING
30 AND SERVICE OF PAPERS IN PENDING CRIMINAL ACTIONS AND PROCEEDINGS.

31 (B)(1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, PARTICIPATION
32 IN THIS PROGRAM SHALL BE STRICTLY VOLUNTARY AND WILL TAKE PLACE ONLY
33 UPON CONSENT OF ALL PARTIES IN THE CRIMINAL ACTION OR PROCEEDING; EXCEPT
34 THAT A PARTY'S FAILURE TO CONSENT TO PARTICIPATION SHALL NOT BAR ANY
35 OTHER PARTY TO THE ACTION FROM FILING AND SERVING PAPERS BY ELECTRONIC
36 MEANS UPON THE COURT OR ANY OTHER PARTY TO SUCH ACTION OR PROCEEDING WHO
37 HAS CONSENTED TO PARTICIPATION. FILING AN ACCUSATORY INSTRUMENT BY ELEC-
38 TRONIC MEANS WITH THE COURT FOR THE PURPOSE OF CONFERRING JURISDICTION
39 OVER A CRIMINAL ACTION UPON SUCH COURT SHALL NOT REQUIRE THE CONSENT OF
40 ANY OTHER PARTY.

41 (2) THE CHIEF ADMINISTRATOR MAY ELIMINATE THE REQUIREMENT OF CONSENT
42 TO PARTICIPATION IN THIS PROGRAM IN SUPREME AND COUNTY COURTS OF NOT
43 MORE THAN SIX COUNTIES PROVIDED HE OR SHE MAY NOT ELIMINATE SUCH
44 REQUIREMENT FOR A COURT WITHOUT THE CONSENT OF THE DISTRICT ATTORNEY,
45 THE CRIMINAL DEFENSE BAR (AS REPRESENTED BY THE HEAD OF A LEGAL AID
46 SOCIETY, PUBLIC DEFENDER OR PRESIDENT OF A LOCAL BAR ASSOCIATION, AS
47 APPROPRIATE) AND THE COUNTY CLERK OF THE COUNTY IN WHICH SUCH COURT
48 PRESIDES.

49 (C) WHERE THE CHIEF ADMINISTRATOR ELIMINATES THE REQUIREMENT OF
50 CONSENT AS PROVIDED IN PARAGRAPH (2) OF SUBDIVISION (B) OF THIS SECTION,
51 HE OR SHE SHALL SHALL AFFORD COUNSEL THE OPPORTUNITY TO OPT OUT OF THE
52 PROGRAM, VIA PRESENTATION OF A PRESCRIBED FORM TO BE FILED WITH THE
53 COURT WHERE THE CRIMINAL ACTION IS PENDING. SAID FORM, WHICH SHALL NOT
54 BE PART OF THE CASE RECORD, SHALL PERMIT AN ATTORNEY TO OPT OUT OF
55 PARTICIPATION IN THE PROGRAM UNDER ANY OF THE FOLLOWING CIRCUMSTANCES,
56 IN WHICH EVENT, HE OR SHE WILL NOT BE COMPELLED TO PARTICIPATE:

(1) WHERE THE ATTORNEY CERTIFIES IN GOOD FAITH THAT HE OR SHE LACKS THE COMPUTER HARDWARE AND/OR CONNECTION TO THE INTERNET AND/OR SCANNER OR OTHER DEVICE BY WHICH DOCUMENTS MAY BE CONVERTED TO AN ELECTRONIC FORMAT; OR

(2) WHERE THE ATTORNEY CERTIFIES IN GOOD FAITH THAT HE OR SHE LACKS THE REQUISITE KNOWLEDGE IN THE OPERATION OF SUCH COMPUTERS AND/OR SCANNERS NECESSARY TO PARTICIPATE. FOR THE PURPOSES OF THIS PARAGRAPH, THE KNOWLEDGE OF ANY EMPLOYEE OF AN ATTORNEY, OR ANY EMPLOYEE OF THE ATTORNEY'S LAW FIRM, OFFICE OR BUSINESS WHO IS SUBJECT TO SUCH ATTORNEY'S DIRECTION, SHALL BE IMPUTED TO THE ATTORNEY.

NOTWITHSTANDING THE FOREGOING: (I) WHERE A PARTY IS NOT REPRESENTED BY COUNSEL, HE OR SHE MAY NOT PARTICIPATE IN THE PROGRAM EXCEPT UPON PERMISSION OF THE COURT; AND (II) A COURT MAY EXEMPT ANY ATTORNEY FROM BEING REQUIRED TO PARTICIPATE IN THE PROGRAM UPON APPLICATION FOR SUCH EXEMPTION, SHOWING GOOD CAUSE THEREFOR.

(D) FOR PURPOSES OF THIS SECTION, "ELECTRONIC MEANS" SHALL BE AS DEFINED IN SUBDIVISION (F) OF RULE 2103 OF THE CIVIL PRACTICE LAW AND RULES.

(E)(1) NOTHING IN THIS SECTION SHALL AFFECT OR CHANGE ANY EXISTING LAWS GOVERNING THE SEALING AND CONFIDENTIALITY OF COURT RECORDS IN CRIMINAL PROCEEDINGS, NOR SHALL THIS SECTION BE CONSTRUED TO COMPEL A PARTY TO FILE A SEALED DOCUMENT BY ELECTRONIC MEANS.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, NO PAPER OR DOCUMENT THAT IS FILED BY ELECTRONIC MEANS IN A CRIMINAL PROCEEDING IN SUPREME COURT OR COUNTY COURT SHALL BE AVAILABLE FOR PUBLIC INSPECTION ON-LINE; PROVIDED, HOWEVER, THAT THIS PARAGRAPH SHALL NOT PROHIBIT THE CHIEF ADMINISTRATOR, IN THE EXERCISE OF HIS OR HER DISCRETION, FROM POSTING PAPERS OR DOCUMENTS THAT HAVE NOT BEEN SEALED PURSUANT TO LAW ON A PUBLIC WEBSITE MAINTAINED BY THE UNIFIED COURT SYSTEM WHERE: (I) THE WEBSITE IS NOT THE WEBSITE ESTABLISHED BY THE RULES PROMULGATED PURSUANT TO SUBDIVISION (A) OF THIS SECTION, AND (II) TO DO SO WOULD BE IN THE PUBLIC INTEREST.

S 6-B. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE CHIEF ADMINISTRATOR OF THE COURTS, WITH THE APPROVAL OF THE ADMINISTRATIVE BOARD OF THE COURTS, MAY PROMULGATE RULES AUTHORIZING A PROGRAM IN THE USE OF ELECTRONIC MEANS IN THE FAMILY COURT FOR: (1) THE ORIGINATION OF PROCEEDINGS IN SUCH COURT, AND (2) THE FILING AND SERVICE OF PAPERS IN PENDING PROCEEDINGS.

(B) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, PARTICIPATION IN THIS PROGRAM SHALL BE STRICTLY VOLUNTARY AND WILL TAKE PLACE ONLY UPON CONSENT OF ALL PARTIES IN THE PROCEEDING; EXCEPT THAT A PARTY'S FAILURE TO CONSENT TO PARTICIPATION SHALL NOT BAR ANY OTHER PARTY FROM FILING AND SERVING PAPERS BY ELECTRONIC MEANS UPON THE COURT OR ANY OTHER PARTY TO SUCH PROCEEDING WHO HAS CONSENTED TO PARTICIPATION. FILING A PETITION WITH THE COURT BY ELECTRONIC MEANS FOR THE PURPOSE OF ORIGINATING A PROCEEDING SHALL NOT REQUIRE THE CONSENT OF ANY OTHER PARTY.

(2) IN THE RULES PROMULGATED PURSUANT TO SUBDIVISION (A) OF THIS SECTION, THE CHIEF ADMINISTRATOR MAY ELIMINATE THE REQUIREMENT OF CONSENT TO PARTICIPATION IN THIS PROGRAM IN FAMILY COURTS OF NOT MORE THAN SIX COUNTIES FOR:

(I) THE FILING WITH THE COURT OF A PETITION ORIGINATING A JUVENILE DELINQUENCY PROCEEDING UNDER ARTICLE 3 OF THE FAMILY COURT ACT BY A PRESENTMENT AGENCY AS DEFINED IN SECTION 301.2 OF SUCH ACT;

(II) THE FILING WITH THE COURT OF A PETITION ORIGINATING A PROCEEDING TO DETERMINE ABUSE OR NEGLECT PURSUANT TO ARTICLE 10 OF THE FAMILY COURT

1 ACT BY A CHILD PROTECTIVE AGENCY, AS DEFINED IN SECTION 1012 OF SUCH
2 ACT; AND

3 (III) THE FILING AND SERVICE OF PAPERS IN PROCEEDINGS SPECIFIED IN
4 SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH WHERE, PURSUANT TO SUCH
5 SUBPARAGRAPHS, SUCH PROCEEDINGS WERE ORIGINATED IN THE COURT BY ELEC-
6 TRONIC FILING.

7 NOTWITHSTANDING THE FOREGOING, THE CHIEF ADMINISTRATOR MAY NOT ELIMI-
8 NATE THE REQUIREMENT OF CONSENT TO PARTICIPATION WITHOUT THE CONSENT OF
9 EACH AUTHORIZED PRESENTMENT AGENCY AND CHILD PROTECTIVE AGENCY OF AN
10 AFFECTED COUNTY.

11 (C) WHERE THE CHIEF ADMINISTRATOR ELIMINATES THE REQUIREMENT OF
12 CONSENT AS PROVIDED IN PARAGRAPH 2 OF SUBDIVISION (B) OF THIS SECTION,
13 HE OR SHE SHALL AFFORD COUNSEL THE OPPORTUNITY TO OPT OUT OF THE
14 PROGRAM, VIA PRESENTATION OF A PRESCRIBED FORM TO BE FILED WITH THE
15 CLERK OF THE COURT WHERE THE PROCEEDING IS PENDING. SAID FORM, WHICH
16 SHALL NOT BE PART OF THE CASE RECORD, SHALL PERMIT AN ATTORNEY TO OPT
17 OUT OF PARTICIPATION IN THE PROGRAM UNDER ANY OF THE FOLLOWING CIRCUM-
18 STANCES, IN WHICH EVENT, HE OR SHE WILL NOT BE COMPELLED TO PARTICIPATE:

19 (1) WHERE THE ATTORNEY CERTIFIES IN GOOD FAITH THAT HE OR SHE LACKS
20 THE COMPUTER HARDWARE AND/OR CONNECTION TO THE INTERNET AND/OR SCANNER
21 OR OTHER DEVICE BY WHICH DOCUMENTS MAY BE CONVERTED TO AN ELECTRONIC
22 FORMAT; OR

23 (2) WHERE THE ATTORNEY CERTIFIES IN GOOD FAITH THAT HE OR SHE LACKS
24 THE REQUISITE KNOWLEDGE IN THE OPERATION OF SUCH COMPUTERS AND/OR SCAN-
25 NERS NECESSARY TO PARTICIPATE. FOR THE PURPOSES OF THIS PARAGRAPH, THE
26 KNOWLEDGE OF ANY EMPLOYEE OF AN ATTORNEY, OR ANY EMPLOYEE OF THE ATTOR-
27 NEY'S LAW FIRM, OFFICE OR BUSINESS WHO IS SUBJECT TO SUCH ATTORNEY'S
28 DIRECTION, SHALL BE IMPUTED TO THE ATTORNEY.

29 NOTWITHSTANDING THE FOREGOING: (I) WHERE A PARTY IS NOT REPRESENTED BY
30 COUNSEL, HE OR SHE MAY NOT PARTICIPATE IN THE PROGRAM EXCEPT UPON
31 PERMISSION OF THE COURT; AND (II) A COURT MAY EXEMPT ANY ATTORNEY FROM
32 BEING REQUIRED TO PARTICIPATE IN THE PROGRAM UPON APPLICATION FOR SUCH
33 EXEMPTION, SHOWING GOOD CAUSE THEREFOR.

34 (D) FOR PURPOSES OF THIS SECTION, "ELECTRONIC MEANS" SHALL BE AS
35 DEFINED IN SUBDIVISION (F) OF RULE 2103 OF THE CIVIL PRACTICE LAW AND
36 RULES.

37 (E) NOTWITHSTANDING ANY PROVISION OF THIS SECTION, NO PAPER OR DOCU-
38 MENT THAT IS FILED BY ELECTRONIC MEANS IN A PROCEEDING IN FAMILY COURT
39 SHALL BE AVAILABLE FOR PUBLIC INSPECTION ON-LINE.

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

49 1. One or more classes of cases (excluding matrimonial actions as
50 defined by the civil practice law and rules, election law proceedings,
51 proceedings brought pursuant to article 78 of the civil practice law and
52 rules, and proceedings brought pursuant to the mental hygiene law) in
53 supreme court in ERIE, Livingston, Monroe, Rockland, Tompkins, Allegany,
54 Essex, Onondaga, SUFFOLK and Westchester counties AND IN THE COUNTIES
55 WITHIN THE CITY OF NEW YORK, and

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

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

37 (2) No later than January 1, [2012] 2015, the chief administrator of
38 the courts shall submit to the legislature, the governor and the chief
39 judge of the state a report of the evaluation including the entities or
40 individuals consulted, the input received, any recommendations of the
41 advisory committee to the chief administrator, along with recommenda-
42 tions for legislation [authorizing the development of a program relat-
43 ing] IN RELATION to the use of electronic means for the commencement of
44 criminal actions and the filing and service of papers in pending crimi-
45 nal actions and proceedings. THIS REPORT SHALL DEVOTE SPECIAL ATTENTION
46 TO THE QUESTION WHETHER SUCH USE OF ELECTRONIC MEANS SHALL BE AUTHORIZED
47 IN THE LOCAL CRIMINAL COURTS OF THE STATE. IN THE REPORT, THE CHIEF
48 ADMINISTRATOR ALSO SHALL ADDRESS ISSUES THAT BEAR UPON THE NEED FOR THE
49 COURTS, DISTRICT ATTORNEYS AND OTHERS TO RETAIN PAPERS FILED WITH COURTS
50 OR SERVED UPON PARTIES IN CRIMINAL PROCEEDINGS WHERE ELECTRONIC MEANS
51 CAN OR HAVE BEEN USED AND MAKE RECOMMENDATIONS FOR SUCH CHANGES IN LAWS
52 REQUIRING RETENTION OF SUCH PAPERS AS TO THE CHIEF ADMINISTRATOR MAY
53 SEEM APPROPRIATE.

54 (d) (1) The [chief administrator shall create an] advisory committee
55 to consult with [him or her] THE CHIEF ADMINISTRATOR regarding the
56 development of a program relating to the use of electronic means for the

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

30 (2) No later than January 1, [2012] 2015, the chief administrator of
31 the courts shall submit to the legislature, the governor and the chief
32 judge of the state a report of the evaluation including the entities or
33 individuals consulted, input received, any recommendations of the advi-
34 sory committee to the chief administrator, along with recommendations
35 for legislation [authorizing the development of a program relating] IN
36 RELATION to the use of electronic means for the origination of juvenile
37 delinquency proceedings under article 3 of the family court act and
38 abuse or neglect proceedings pursuant to article 10 of the family court
39 act in family court and the filing and service of papers in such pending
40 proceedings.

41 S 5. This act shall take effect immediately; provided, however, that
42 sections 6-a and 6-b of chapter 367 of the laws of 1999, as added by
43 section two of this act, shall expire and be deemed repealed September
44 1, 2015; and provided further that the amendments made to paragraph (B)
45 of subdivision (b) of section 6 of chapter 367 of the laws of 1999 made
46 by section three of this act shall not affect the expiration and repeal
47 of such provisions and shall be deemed to be repealed therewith.