

# STATE OF NEW YORK

9674

## IN SENATE

May 17, 2024

Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the judiciary law and the criminal procedure law, in relation to the publication of opinions rendered in criminal causes

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

1 Section 1. Short title. This act shall be known and may be cited as the  
2 "criminal court opinion transparency act".

3 § 2. Subdivision 1 of section 212 of the judiciary law is amended by  
4 adding a new paragraph (z) to read as follows:

5 (z) (i) Collect, compile, and publish online the following statistics  
6 and related data:

7 (A) For each criminal case resulting in an opinion subject to publica-  
8 tion or reporting under article fourteen of this chapter:

9 (1) information about the age, gender, racial and ethnic background of  
10 the defendant;

11 (2) the name of the judge issuing the opinion;

12 (3) the general issue or issues addressed by the opinion;

13 (4) where relevant, for each issue, whether it was granted, denied, or  
14 disposed otherwise; and

15 (5) the date and court of issuance; and

16 (B) For each year:

17 (1) the names of all judges presiding in New York courts;

18 (2) the court or courts where such judges presided, the types of cases  
19 over which such judges had presided;

20 (3) the number of such judges' decisions that were published; and

21 (4) the number of such judges' written decisions that were not  
22 published.

23 (ii) Data regarding defendant characteristics, such as age, gender,  
24 racial and ethnic background, shall be limited to the data maintained by  
25 the office of court administration and the division of criminal justice  
26 services, and shall be provided by them. The first data shall be  
27 published twelve months after the effective date of this paragraph and  
28 shall include data from the first twelve months following such date.  
29 New data shall be published on a quarterly basis in machine-readable  
30 tabular format in a manner that permits quantitative analysis. The data

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

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1 shall be available for bulk download in tabular format, as defined in  
2 subdivision one of section four hundred thirty-three-b of this chapter.

3 § 3. Paragraph (u) of subdivision 2 of section 212 of the judiciary  
4 law is amended by adding a new subparagraph (vii) to read as follows:

5 (vii) The chief administrator shall take such actions and adopt such  
6 measures as may be necessary to create a program by which the act of  
7 docketing an opinion by the clerk of any court, whether of record or not  
8 of record, shall without further intervention transmit a copy of that  
9 opinion to the law reporting bureau in accordance with section four  
10 hundred thirty-two of this chapter. The expenses incurred in the devel-  
11 opment and implementation of such program, including training officials  
12 in the use of such program, shall be borne by the state and not by any  
13 municipality.

14 § 4. Section 432 of the judiciary law, as amended by chapter 138 of  
15 the laws of 1939, is amended to read as follows:

16 § 432. Copies of opinions, decisions and papers to be furnished to  
17 state reporter. 1. For the purposes of this section, the term "machine-  
18 readable format" shall mean data or text presented in a format easily  
19 processed by a computer without human intervention and which ensures no  
20 loss of semantic meaning.

21 2. The chief administrator of the courts shall in every cause provide,  
22 in any program of electronic means that has been employed in the filing  
23 and service of papers in any cause, including but not limited to  
24 programs authorized by section 10.40 of the criminal procedure law and  
25 rule two thousand one hundred and eleven of the civil practice law and  
26 rules, for all opinions of the court filed on the docket in such cause  
27 to be automatically transmitted to the state reporter in machine-reada-  
28 ble format.

29 3. With the exception of court of appeals and appellate division caus-  
30 es directed not to be reported, as provided in section four hundred  
31 thirty-one of this article, and causes where the opinions rendered ther-  
32 ein are automatically transmitted to the state reporter, as provided in  
33 subdivision two of this section, the [~~judges or justices~~] clerks of  
34 every court of record, including surrogates, shall [~~promptly~~] cause to  
35 be delivered in machine-readable format, by such means as the chief  
36 administrator may provide pursuant to subparagraph (vii) of paragraph  
37 (u) of section two hundred twelve of this chapter, to the state repor-  
38 ter, without charge, a copy of every written opinion rendered in causes  
39 determined therein within five days of the rendering of such opinion by  
40 the court.

41 4. The clerks of each criminal court, as that term is defined in  
42 section 10.10 of the criminal procedure law, shall promptly deliver in  
43 machine-readable format to the state reporter, without charge, a copy of  
44 the portions of the transcript of a pre-trial hearing or trial proceed-  
45 ing in a criminal cause in which the court set forth its reasons for a  
46 ruling on any question of law, including mixed questions of fact and  
47 law, that are enumerated in, but not limited to, the list of opinions  
48 designated for publication pursuant to paragraph (a) of subdivision two  
49 of section four hundred thirty-three-b of this article; provided that  
50 oral rulings concerning pretrial detention determination at arraignment,  
51 the imposition of a sentence, and ruling on oral evidentiary objections  
52 made during a trial or in response to testimony in a hearing shall not  
53 be so delivered.

54 5. The chief administrator of the courts shall provide for means by  
55 which the clerks of town and village courts may transmit to the state  
56 reporter a copy of every opinion rendered in a criminal cause therein at

1 the same time as such opinions are rendered or docketed, that are  
2 enumerated in, but not limited to, the list of opinions designated for  
3 publication pursuant to paragraph (a) of subdivision two of section four  
4 hundred thirty-three-b of this article. The expenses of this system  
5 shall be borne by the state. Upon provision of this system, the clerks  
6 of town and village courts shall transmit in machine-readable format to  
7 the state reporter a copy of every opinion rendered in a criminal cause  
8 therein within five days of the rendering of such an opinion by the  
9 court.

10 6. The provisions of this section shall apply to all criminal causes  
11 terminated in favor of the defendant pursuant to subdivision three of  
12 section 160.50 of the criminal procedure law.

13 7. The [~~judges or justices~~] clerks of the court of appeals and of the  
14 appellate divisions and the appellate terms of the supreme court shall,  
15 in addition, cause to be delivered to the state reporter, without  
16 charge, a list of all decisions rendered by the respective courts,  
17 together with copies of such points of counsel and records and papers on  
18 appeal, if practicable, as the state reporter may require.

19 § 5. The judiciary law is amended by adding a new section 433-b to  
20 read as follows:

21 § 433-b. Publication of unreported opinions. 1. For the purposes of  
22 this section, the following terms shall have the following meanings:

23 (a) "Bulk download" shall mean the efficient retrieval of a large  
24 volume of data from a source, typically a database, in a single opera-  
25 tion.

26 (b) "Machine-readable format" shall mean data or text presented in a  
27 format easily processed by a computer without human intervention and  
28 which ensures no loss of semantic meaning.

29 (c) "Online electronic database" shall mean a free and publicly acces-  
30 sible website hosted on the law reporting bureau's official website that  
31 offers both basic and advanced opinion search functionalities, including  
32 but not limited to searches of opinions by the issuing judge, party  
33 name, date range, court of issuance, and keywords within the opinion  
34 text, identifies each reported cause by a unique citation, and permits  
35 bulk download of its contents for free in tabular and machine-readable  
36 format.

37 (d) "Tabular format" shall mean a systematic organization of data into  
38 rows and columns for easy interpretation, including but not limited to a  
39 spreadsheet or CSV file.

40 (e) "Unreported opinions" shall mean all opinions transmitted to the  
41 law reporting bureau pursuant to section four hundred thirty-two of this  
42 article, including transcripts of oral rulings not reported pursuant to  
43 section four hundred thirty-one of this article.

44 2. (a) (i) The state reporter shall publish, at a minimum, all opin-  
45 ions in criminal causes that are not selected for reporting pursuant to  
46 section four hundred thirty-one of this article and that decide on any  
47 of the following legal issues raised in a pre-trial motion:

48 (A) A motion to suppress evidence or to controvert a search warrant.

49 (B) A motion to dismiss individual charges, or the entirety of an  
50 accusatory instrument, as defined by sections 100.05, 200.10, and 200.15  
51 of the criminal procedure law.

52 (C) An omnibus motion filed pursuant to section 255.20 of the criminal  
53 procedure law.

54 (D) A motion to exclude expert testimony.

55 (E) A motion to challenge the validity of a certificate of compliance,  
56 as defined by section 245.50 of the criminal procedure law.

1 (F) A motion to sever made pursuant to sections 200.20 and 200.40 of  
2 the criminal procedure law.

3 (ii) The state reporter may publish additional opinions beyond those  
4 required to be published pursuant to subparagraph (i) of this paragraph  
5 for the purpose of enhancing legal transparency and public understanding  
6 of criminal jurisprudence.

7 (b) The state reporter shall publish opinions pursuant to this section  
8 in an online electronic database no later than seven business days after  
9 receipt of such opinions. The state reporter may include headnotes,  
10 tables, or indices in any opinion published pursuant to this subdivi-  
11 sion.

12 (c) The state reporter may publish in an online electronic database  
13 any opinion in a civil cause.

14 3. The provisions of this section shall apply to all criminal causes  
15 terminated in favor of the defendant pursuant to subdivision three of  
16 section 160.50 of the criminal procedure law.

17 § 6. The judiciary law is amended by adding a new section 433-c to  
18 read as follows:

19 § 433-c. Redaction of personal identifying information of parties and  
20 witnesses. The state reporter shall publish or report opinions pursuant  
21 to this article only after ensuring that such opinions have been redact-  
22 ed to preserve the privacy interests of parties to the case to the  
23 extent required by law, in accordance with rules and regulations promul-  
24 gated by the chief administrator of the courts with the approval of the  
25 administrative board. The rules and regulations promulgated by the chief  
26 administrator shall incorporate all preexisting requirements in state  
27 and federal law that would require the non-publication or redaction of  
28 private information in judicial opinions, including but not limited to  
29 protection of the privacy interests of defendants and witnesses, as  
30 defined by subdivision one of section 640.10 of the criminal procedure  
31 law. The guidelines shall establish the duty of the state reporter to  
32 ensure that such defendants and witnesses are exclusively referred to by  
33 their initials in all criminal causes reported or published pursuant to  
34 section four hundred thirty-one and paragraph (a) of subdivision two of  
35 section four hundred thirty-three-b of this article, including, but not  
36 limited to, in the title of the published document. The guidelines shall  
37 further require the redaction of all addresses and other personal iden-  
38 tifying information of all such defendants and witnesses. The guidelines  
39 shall further provide that the state reporter may not redact the names  
40 of police officers and peace officers, as defined by subdivision thir-  
41 ty-four of section 1.20 and section 2.10 of the criminal procedure law,  
42 when described in their professional capacity as witnesses, or individ-  
43 uals qualified or professed as expert witnesses by any party, to the  
44 extent that such names appear in an opinion.

45 § 7. Paragraph (d) of subdivision 2 of section 10.40 of the criminal  
46 procedure law is amended by adding a new subparagraph (iv) to read as  
47 follows:

48 (iv) Nothing in this section shall be construed as to limit or qualify  
49 the delivery of opinions to the law reporting bureau and reporting or  
50 publication thereof pursuant to article fourteen of the judiciary law.

51 § 8. This act shall take effect on the one hundred eightieth day after  
52 it shall have become a law; provided, however, that the amendments to  
53 paragraph (d) of subdivision 2 of section 10.40 of the criminal proce-  
54 dure law made by section seven of this act shall not affect the expira-  
55 tion of such section and shall expire and be deemed repealed therewith.