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:

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

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

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

(A) For each criminal case resulting in an opinion subject to publication or reporting under article fourteen of this chapter:

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

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

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

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

(5) the date and court of issuance; and

(B) For each year:

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

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

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

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

(ii) Data regarding defendant characteristics, such as age, gender, racial and ethnic background, shall be limited to the data maintained by the office of court administration and the division of criminal justice services, and shall be provided by them. The first data shall be published twelve months after the effective date of this paragraph and shall include data from the first twelve months following such date. New data shall be published on a quarterly basis in machine-readable 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.

LBD15499-01-4

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) "Bulk download" shall mean the efficient retrieval of a large volume of data from a source, typically a database, in a single operation.

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

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

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

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

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

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

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

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

(D) A motion to exclude expert testimony.

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

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

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

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

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

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

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

§ 433-c. Redaction of personal identifying information of parties and witnesses. The state reporter shall publish or report opinions pursuant to this article only after ensuring that such opinions have been redacted to preserve the privacy interests of parties to the case to the extent required by law, in accordance with rules and regulations promulgated by the chief administrator of the courts with the approval of the administrative board. The rules and regulations promulgated by the chief administrator shall incorporate all preexisting requirements in state and federal law that would require the non-publication or redaction of private information in judicial opinions, including but not limited to protection of the privacy interests of defendants and witnesses, as defined by subdivision one of section 640.10 of the criminal procedure law. The guidelines shall establish the duty of the state reporter to ensure that such defendants and witnesses are exclusively referred to by their initials in all criminal causes reported or published pursuant to section four hundred thirty-one and paragraph (a) of subdivision two of section four hundred thirty-three-b of this article, including, but not limited to, in the title of the published document. The guidelines shall further require the redaction of all addresses and other personal identifying information of all such defendants and witnesses. The guidelines shall further provide that the state reporter may not redact the names of police officers and peace officers, as defined by subdivision thirty-four of section 1.20 and section 2.10 of the criminal procedure law, when described in their professional capacity as witnesses, or individuals qualified or professed as expert witnesses by any party, to the extent that such names appear in an opinion.

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

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

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