STATE OF NEW YORK

10350

IN ASSEMBLY

May 18, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Shimsky) -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, the civil practice law and rules, the court of claims act, the New York city criminal court act, the uniform district court act, the uniform city court act, the uniform justice court act, the criminal procedure law and the family court act, in relation to filing by electronic means; to amend chapter 237 of the laws of 2015 amending the judiciary law, the civil practice law and rules and other laws relating to the use of electronic means for the commencement and filing of papers in certain actions and proceedings, in relation to the effectiveness thereof; and to repeal certain provisions of the civil practice law and rules, the criminal procedure law and the family court act, relating to court filings

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

Section 1. Clause (A) of subparagraph (i) and subparagraphs (iv), (v) and (vi) of paragraph (u) of subdivision 2 of section 212 of the judiciary law, clause (A) of subparagraph (i) as amended by chapter 99 of the laws of 2017, subparagraphs (iv), (v) and (vi) as added by chapter 237 of the laws of 2015 and such paragraph as relettered by section 1 of part BB of chapter 55 of the laws of 2017, are amended to read as follows:

(A) Not later than February first in each calendar year, the chief administrator of the courts shall submit to the legislature, the governor and the chief judge of the state a report evaluating the state's experience with programs in the use of electronic means for the commencement of actions and proceedings and the service of papers therein as authorized by law and containing such recommendations for further legislation as he or she shall deem appropriate. In the preparation of such report, the chief administrator shall consult with each county clerk in whose county a program has been implemented in [~~civil cases in~~] the supreme [~~court~~] **and/or county court, each district attorney in whose county a program has been implemented in criminal cases in the courts of**

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

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such county, the advisory committees established pursuant to subparagraphs (ii) through (vi) of this paragraph, the organized bar including but not limited to city, state, county and women's bar associations; the office of indigent legal services; institutional legal service providers; not-for-profit legal service providers; public defenders; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by any programs that have been implemented or who may be affected by the proposed recommendations for further legislation; representatives of victims' rights organizations; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator, and afford them an opportunity to submit comments with respect to such implementation for inclusion in the report and address any such comments.

Public comments shall also be sought via a prominent posting on the website of the office of court administration. All comments received from any source shall be posted for public review on the same website.

(iv) The chief administrator shall maintain an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the commencement of civil actions and proceedings and the service and filing of papers therein in the civil court of the city of New York, the district courts, the city courts outside New York city, and the town and village justice courts. This committee shall consist of such number of members as the chief administrator shall designate, among which there shall be the chief clerk of the civil court of the city of New York; one or more chief clerks of the district courts, the city courts outside New York city, and the town and village justice courts; the president of the state magistrates' association or his or her designee; representatives of the organized bar including but not limited to city, state, county and women's bar associations; [~~attorneys who regularly appear in actions specified in subparagraph (C) of paragraph two of subdivision (b) of section twenty-one hundred eleven of the civil practice law and rules;~~] and unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in [~~the civil court of the city of New York~~] any of the courts specified in this subparagraph; and any other persons as deemed appropriate by the chief administrator. Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts and to obtain input from those who are or would be affected by such electronic filing program, including unrepresented parties, city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of the electronic filing program in any of the [~~civil court of the city of New York~~] courts specified in this subparagraph; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator.

(v) The chief administrator shall maintain an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the commencement of criminal actions and the filing and service of papers in pending criminal actions and proceedings[~~, as first authorized by paragraph one of subdivision (c) of section six of chapter four hundred sixteen of the laws of two thousand nine, as amended by chapter one hundred eighty-four of the laws of two thousand twelve, is continued~~]. The committee shall consist of such number of members as will enable the chief administrator to obtain input from those who are or would be affected by such electronic filing program, and such members shall include county clerks; chief clerks of supreme, county and other courts; district attorneys; representatives of the office of indigent legal services; not-for-profit legal service providers; public defenders; statewide and local specialty bar associations whose membership devotes a significant portion of their practice to assigned criminal cases pursuant to subparagraph (i) of paragraph (a) of subdivision three of section seven hundred twenty-two of the county law; institutional providers of criminal defense services and other members of the criminal defense bar; representatives of victims' rights organizations; unaffiliated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program and other interested members of the criminal justice community. Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts and to obtain input from those who are or would be affected by such electronic filing program, including unrepresented parties, district attorneys, not-for-profit legal service providers, public defenders, statewide and local specialty bar associations whose membership devotes a significant portion of their practice to assigned criminal cases pursuant to subparagraph (i) of paragraph (a) of subdivision three of section seven hundred twenty-two of the county law; institutional providers of criminal defense services and other members of the criminal defense bar, representatives of victims' rights organizations, unaffiliated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program and other interested members of the criminal justice community.

(vi) The chief administrator shall maintain an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the origination of [~~juvenile delinquency~~] proceedings [~~under article three of the family court act and abuse or neglect proceedings pursuant to article ten of the family court act~~] in family court and the filing and service of papers in such pending proceedings[~~, as first authorized by paragraph one of subdivision (d) of section six of chapter four hundred sixteen of the laws of two thousand nine, as amended by chapter one hundred eighty-four of the laws of two thousand twelve, is continued~~]. The committee shall consist of such number of members as will enable the chief administrator to obtain input from those who are or would be affected by such electronic filing program, and such members shall include chief clerks of family courts; representatives of authorized presentment and child protective agencies; other appropriate county and city government officials; institutional providers of legal services for children and/or parents; not-for-profit legal service providers; public defenders; representatives of the office of indigent legal services; attorneys assigned pursuant to article eighteen-B of the county law; and other members of the family court bar; representatives of victims' rights organizations; unaffil-

iated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program; and other interested members of the family practice community. Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts and to obtain input from those who are or would be affected by such electronic filing program, including unrepresented parties, representatives of authorized presentment and child protective agencies, other appropriate county and city government officials, institutional providers of legal services for children and/or parents, not-for-profit legal service providers, public defenders, attorneys assigned pursuant to article eighteen-B of the county law and other members of the family court bar, representatives of victims' rights organizations, unaffiliated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program, and other interested members of the criminal justice community.

§ 2. Subdivision (a) of section 2111 of the civil practice law and rules, as added by chapter 237 of the laws of 2015, is amended to read as follows:

(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 facsimile transmission only in the court of claims and electronic means in the [~~supreme court, the civil court of the city of New York, surrogate's courts and the court of claims~~] courts of New York having civil jurisdiction for: (i) the commencement of civil actions and proceedings, and (ii) the filing and service of papers in pending actions and proceedings. Provided, however, the chief administrator shall consult with the county clerk of a county outside the city of New York before the use of electronic means is to be authorized hereunder in the supreme court or the county court of such county, afford him or her the opportunity to submit comments with respect thereto, consider any such comments and obtain the agreement thereto of such county clerk.

§ 3. Paragraphs 1, 2 and 2-a of subdivision (b) of section 2111 of the civil practice law and rules are REPEALED and two new paragraphs 1 and 2 are added to read as follows:

1. Participation in this program may be required or may be voluntary as provided by the chief administrator, except that it shall be strictly voluntary as to any party to an action or proceeding who is not represented by counsel.

2. (A) Where participation in this program is to be voluntary:

(i) commencement of an action or proceeding by facsimile transmission or electronic means shall not require the consent of any other party; nor shall a party's failure to consent to participation in an action or proceeding bar any other party to the action or proceeding from filing and serving papers by facsimile transmission or electronic means upon the court or any other party to such action or proceeding who has consented to participation;

(ii) all parties shall be notified clearly, in plain language, about their options to participate in filing by electronic means;

(iii) no party to an action or proceeding shall be compelled, directly or indirectly, to participate;

(iv) where a party is not represented by counsel, the court shall explain such party's options for electronic filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented

litigant may participate in the program only upon his or her request, which shall be documented in the case file, after said party has been presented with sufficient information in plain language concerning the program.

(B) Where participation in this program is to be required:

(i) such requirement shall not be effective in a court in a county unless, in addition to consulting with the county clerk of such county and obtaining his or her agreement thereto if the court is a supreme court or county court, the chief administrator shall:

(1) first consult with members of the organized bar including but not limited to city, state, county, and women's bar associations and, where they practice in such court in such county, with (a) institutional service providers, (b) not-for-profit legal service providers, (c) attorneys assigned pursuant to article eighteen-B of the county law, (d) unaffiliated attorneys who regularly appear in proceedings that are or have been affected by a program of electronic filing in such county, and (e) any other persons as deemed to be appropriate by the chief administrator;

(2) afford all those with whom he or she consults pursuant to item one of this clause the opportunity to submit comments with respect to the program, which comments, including but not limited to comments related to unrepresented litigants, he or she shall consider and shall post for public review on the office of court administration's website; and

(ii) as provided in paragraph three of this subdivision, no party who is not represented by counsel nor any counsel in an affected case who opts out of participation in the program shall be required to participate therein.

§ 4. The opening paragraph of paragraph 3 of subdivision (b) of section 2111 of the civil practice law and rules, as added by chapter 237 of the laws of 2015, is amended to read as follows:

Where the chief administrator [~~eliminates the requirement of consent~~] requires participation in electronic filing as provided in paragraph [~~two~~] one of this subdivision, he or she shall afford counsel the opportunity to opt out of the program, via presentation of a prescribed form to be filed with the clerk of the court where the action is pending. [~~Said~~] Such form shall permit an attorney to opt out of participation in the program under any of the following circumstances, in which event, he or she will not be compelled to participate:

§ 5. Section 2112 of the civil practice law and rules, as amended by chapter 99 of the laws of 2017, is amended to read as follows:

§ 2112. Filing of papers in the appellate division by electronic means. Notwithstanding any other provision of law, and except as otherwise provided in subdivision (c) of section twenty-one hundred eleven of this article, the appellate division in each judicial department may promulgate rules authorizing a program in the use of electronic means for: (i) appeals to such court from the judgment or order of a court of original instance or from that of another appellate court, (ii) making a motion for permission to appeal to such court, (iii) commencement of any other proceeding that may be brought in such court, and (iv) the filing and service of papers in pending actions and proceedings. Provided however, such rules shall not require an unrepresented party or any attorney who furnishes a certificate specified in subparagraph (A) or (B) of paragraph three of subdivision (b) of section twenty-one hundred eleven of this article to take or perfect an appeal by electronic means. Provided further, however, before promulgating any such rules, the appellate division in each judicial department shall consult with the

chief administrator of the courts and shall provide an opportunity for review and comment by all those who are or would be affected including city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by promulgation of rules concerning the use of the electronic filing program in the appellate division of any judicial department; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by any appellate division. To the extent practicable, rules promulgated by the appellate division in each judicial department pursuant to this section shall be uniform **and may apply to any appellate term established by an appellate division**.

§ 6. Subdivision 1 of section 11-b of the court of claims act, as added by chapter 237 of the laws of 2015, is amended to read as follows:

1. Notwithstanding any other provision of law, the chief administrator of the courts[~~, with the approval of the administrative board of the courts,~~] may authorize a program in the [~~voluntary~~] use of facsimile transmission and electronic means in the court as provided in article twenty-one-A of the civil practice law and rules.

§ 7. The New York city criminal court act is amended by adding a new section 42 to read as follows:

§ 42. Use of electronic filing authorized. (1) Notwithstanding any other provision of law, the chief administrator of the courts may authorize a program in the use of electronic means in cases in the criminal court of the city of New York as provided in section 10.40 of the criminal procedure law.

(2) For purposes of this section, "electronic means" shall have the same meaning as defined by subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

§ 8. The uniform district court act is amended by adding a new section 2103-a to read as follows:

§ 2103-a. Use of electronic filing authorized.

(a) Notwithstanding any other provision of law, the chief administrator of the courts may authorize a program in the use of electronic means in civil cases in a district court as provided in article twenty-one-A of the civil practice law and rules, and in criminal cases as provided in section 10.40 of the criminal procedure law.

(b) For purposes of this section, "electronic means" shall have the same meaning as defined by subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

§ 9. The uniform city court act is amended by adding a new section 2103-a to read as follows:

§ 2103-a. Use of electronic filing authorized.

(a) Notwithstanding any other provision of law, the chief administrator of the courts may authorize a program in the use of electronic means in civil cases in a city court as provided in article twenty-one-A of the civil practice law and rules, and in criminal cases as provided in section 10.40 of the criminal procedure law.

(b) For purposes of this section, "electronic means" shall have the same meaning as defined by subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

§ 10. The uniform justice court act is amended by adding a new section 2103-a to read as follows:

§ 2103-a. Use of electronic filing authorized.

(a) Notwithstanding any other provision of law, the chief administrator of the courts may authorize a program in the use of electronic means in civil cases in a justice court as provided in article twenty-one-A of the civil practice law and rules, and in criminal cases as provided in section 10.40 of the criminal procedure law.

(b) For purposes of this section, "electronic means" shall have the same meaning as defined by subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

§ 11. Paragraph (a) of subdivision 2 of section 10.40 of the criminal procedure law, as added by chapter 237 of the laws of 2015, is amended to read as follows:

(a) Notwithstanding any other provision of law, the chief administrator, with the approval of the administrative board of the courts, may promulgate rules authorizing a program in the use of electronic means ("e-filing") in the [~~supreme court and in the county court~~] courts of New York having criminal jurisdiction for: (i) the filing with a court of an accusatory instrument for the purpose of commencement of a criminal action or proceeding [~~in a superior court, as provided by articles one hundred ninety-five and two hundred of this chapter~~], and (ii) the filing and service of papers in pending [~~criminal~~] actions and proceedings. Provided, however, the chief administrator shall consult with the county clerk of a county outside the city of New York before the use of electronic means is to be authorized hereunder in the supreme court or county court of such county, afford him or her the opportunity to submit comments with respect thereto, consider any such comments and obtain the agreement thereto of such county clerk.

§ 12. Paragraph (b) of subdivision 2 of section 10.40 of the criminal procedure law is REPEALED and a new paragraph (b) is added to read as follows:

(b) Participation in this program may be required or may be voluntary as provided by the chief administrator, except that it shall be strictly voluntary as to any party to an action or proceeding who is not represented by counsel unless such party, upon his or her request, chooses to participate.

§ 13. Paragraphs (c) and (d) of subdivision 2 of section 10.40 of the criminal procedure law, as added by chapter 237 of the laws of 2015, are relettered paragraphs (d) and (e) and a new paragraph (c) is added to read as follows:

(c) (i) Where participation in this program is to be voluntary: (A) filing an accusatory instrument by electronic means with the court for the purpose of commencement of an action or proceeding shall not require the consent of any other party; nor shall a party's failure to consent to participation in an action or proceeding bar any other party to such action or proceeding from filing and serving papers by facsimile transmission or electronic means upon the court or any other party to such action or proceeding who has consented to participation;

(B) all parties shall be notified clearly, in plain language, about their options to participate in filing by electronic means;

(C) no party to an action or proceeding shall be compelled, directly or indirectly, to participate;

(D) where a party is not represented by counsel, the court shall explain such party's options for electronic filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the program only upon his or her request,

which shall be documented in the case file, after said party has been presented with sufficient information in plain language concerning the program.

(ii) Where participation in this program is to be required:

(A) such requirement shall not be effective in a court in a county unless, in addition to consulting with the county clerk of such county and obtaining his or her agreement thereto if the court is a supreme court or county court, the chief administrator shall:

(1) first consult with and obtain the agreement of the district attorney and the criminal defense bar of such county, provide all persons and organizations, or their representative or representatives, who regularly appear in criminal actions or proceedings in the criminal courts of such county with reasonable notice and opportunity to submit comments with respect thereto and give due consideration to all such comments, and consult with the members of the advisory committee specified in subparagraph (v) of paragraph (u) of subdivision two of section two hundred twelve of the judiciary law; and

(2) afford all those with whom he or she consults pursuant to item one of this clause the opportunity to submit comments with respect to the program, which comments, including but not limited to comments related to unrepresented litigants, he or she shall consider and shall post for public review on the office of court administration's website; and

(B) as provided in paragraph (d) of this subdivision, no party who is not represented by counsel nor any counsel in an affected case who opts out of participation in the program shall be required to participate therein.

§ 14. The opening paragraph of paragraph (d) of subdivision 2 of section 10.40 of the criminal procedure law, as added by chapter 237 of the laws of 2015 and such paragraph as relettered by section thirteen of this act, is amended to read as follows:

Where the chief administrator [~~eliminates the requirement of consent~~] requires participation in electronic filing as provided in [~~subparagraph (ii) of~~] paragraph (b) of this subdivision, he or she shall afford counsel the opportunity to opt out of the program, via presentation of a prescribed form to be filed with the court where the criminal action is pending. Said form shall permit an attorney to opt out of participation in the program under any of the following circumstances, in which event, he or she will not be compelled to participate:

§ 15. Subparagraph (ii) of paragraph (e) of subdivision 2 of section 10.40 of the criminal procedure law, as added by chapter 237 of the laws of 2015 and such paragraph as relettered by section thirteen of this act, is amended to read as follows:

(ii) 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. Subject to the provisions of existing laws governing the sealing and confidentiality of court records, nothing herein shall prevent the unified court system from sharing statistical information that does not include any papers or documents filed with the action; and, provided further, 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: (A) the website is not the website established by the rules promulgated pursuant to paragraph (a) of this subdivision, and (B) to do so would be in the public interest. For purposes of this subparagraph, the chief administrator, in determin-

ing whether posting papers or documents on a public website is in the public interest, shall, at a minimum, take into account for each posting the following factors: (A) the type of case involved; (B) whether such posting would cause harm to any person, including especially a minor or crime victim; (C) whether such posting would include lewd or scandalous matters; and (D) the possibility that such papers or documents may ultimately be sealed.

§ 16. Subdivision (b) of section 214 of the family court act is REPEALED and a new subdivision (b) is added to read as follows:

(b)(i) Notwithstanding any other provision of law, the chief administrator, with the approval of the administrative board of the courts, may promulgate rules authorizing a program in the use of electronic means ("e-filing") in the family court for: (1) the origination of proceedings in such court, and (2) the filing and service of papers in pending proceedings.

(ii) Participation in this program may be required or may be voluntary as provided by the chief administrator, except that it shall be strictly voluntary as to any party to an action or proceeding who is not represented by counsel unless such party, upon his or her request, chooses to participate.

§ 17. Subdivisions (c), (d), (e), (f) and (g) of section 214 of the family court act, as added by chapter 237 of the laws of 2015, are relettered subdivisions (d), (e), (f), (g) and (h) and a new subdivision (c) is added to read as follows:

(c) (i) Where participation in this program is to be voluntary:

(1) filing a petition by electronic means with the court for the purpose of originating a proceeding shall not require the consent of any other party; nor shall the failure of a party or other person who is entitled to notice of the proceedings to consent to participation bar any other party from filing and serving papers by electronic means upon the court or any other party or person entitled to receive notice of such proceeding who has consented to participation;

(2) all parties shall be notified clearly, in plain language, about their options to participate in filing by electronic means;

(3) no party to an action or proceeding shall be compelled, directly or indirectly, to participate;

(4) where a party is not represented by counsel, the court shall explain such party's options for electronic filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the program only upon his or her request, which shall be documented in the case file, after said party has been presented with sufficient information in plain language concerning the program;

(5) upon the filing of a petition with the court by electronic means, a party to the proceeding and any attorney for such person shall be permitted to immediately review and obtain copies of such documents and papers if such person or attorney would have been authorized by law to review or obtain copies of such documents and papers if they had been filed with the court in paper form.

(ii) Where participation in this program is to be required:

(1) such requirement shall not be effective in a court in a county unless the chief administrator shall:

(A) first consult with and obtain the agreement of each authorized presentment agency, child protective agency, the family court bar providing representation to parents, and the family court bar providing

representation to children (as represented by the head of each legal services organization representing parents and/or children, the head of each public defender organization, and president of the local bar association as applicable) of such county, provide all persons or organizations, or their representative or representatives, who regularly appear in proceedings in the family court of such county, in which proceedings the requirement of consent is to be eliminated with reasonable notice and an opportunity to submit comments with respect thereto and give due consideration to all such comments, and consult with the members of the advisory committee continued pursuant to subparagraph (vi) of paragraph (u) of subdivision two of section two hundred twelve of the judiciary law; and

(B) afford all those with whom he or she consults pursuant to clause (A) of this subparagraph with a reasonable opportunity to submit comments with respect to the program, which comments he or she shall consider and shall post for public review on the office of court administration's website; and

(C) consult with the members of the advisory committee continued pursuant to subparagraph (vi) of paragraph (u) of subdivision two of section two hundred twelve of the judiciary law; and

(2) as provided in subdivision (d) of this section, no party who is not represented by counsel nor any counsel in an affected case who opts out of participation in the program shall be required to participate therein.

§ 18. Section 11 of chapter 237 of the laws of 2015 amending the judiciary law, the civil practice law and rules and other laws relating to the use of electronic means for the commencement and filing of papers in certain actions and proceedings, as amended by chapter 554 of the laws of 2022, is amended to read as follows:

§ 11. This act shall take effect immediately[~~; provided that sections four, five, six and seven of this act shall each expire and be deemed repealed September 1, 2027; and provided that paragraph 2-a of subdivision (b) of section 2111 of the civil practice law and rules, as added by section two of this act, shall expire and be deemed repealed September 1, 2027~~].

§ 19. This act shall take effect immediately.