

STATE OF NEW YORK

10706

IN ASSEMBLY

June 15, 2012

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

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

5 § 6-a. (a) Notwithstanding any other provision of law, the chief
6 administrator of the courts, with the approval of the administrative
7 board of the courts, may promulgate rules authorizing a program in the
8 use of electronic means in the supreme court and in the county court
9 for: (1) the filing with a court of an accusatory instrument for the
10 purpose of acquiring jurisdiction in a superior court, as provided by
11 articles 195 and 200 of the criminal procedure law, and (2) the filing
12 and service of papers in pending criminal actions and proceedings.

13 (b) (1) Except as otherwise provided in this subdivision, partic-
14 ipation in this program shall be strictly voluntary and will take place
15 only upon consent of all parties in the criminal action or proceeding;
16 except that a party's failure to consent to participation shall not bar
17 any other party to the action from filing and serving papers by elec-
18

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

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1 tronic means upon the court or any other party to such action or
2 proceeding who has consented to participation. Filing an accusatory
3 instrument by electronic means with the court for the purpose of confer-
4 ring jurisdiction over a criminal action upon such court shall not
5 require the consent of any other party; provided, however, that upon
6 such filing any person who is the subject of such accusatory instrument
7 and any attorney for such person shall be permitted to immediately
8 review and obtain copies of such instrument if such person or attorney
9 would have been authorized by law to review or copy such instrument if
10 it had been filed with the court in paper form.

11 (2) The chief administrator may eliminate the requirement of consent
12 to participation in this program in supreme and county courts of not
13 more than six counties provided he or she may not eliminate such
14 requirement for a court without the consent of the district attorney,
15 the consent of the criminal defense bar as defined in section six-c of
16 this act and the consent of the county clerk of the county in which such
17 court presides. Notwithstanding the foregoing, the chief administrator
18 may not eliminate the requirement of consent to participation in a coun-
19 ty hereunder until he or she shall have provided all persons or organ-
20 izations, or their representative or representatives, who regularly
21 appear in criminal actions or proceedings in the superior court of such
22 county with reasonable notice and an opportunity to submit comments with
23 respect thereto and shall have given due consideration to all such
24 comments, nor until he or she shall have consulted with the members of
25 the advisory committee continued pursuant to subdivision (c) of section
26 6 of chapter 416 of the laws of 2009, as amended.

27 (c) Where the chief administrator eliminates the requirement of
28 consent as provided in paragraph two of subdivision (b) of this section,
29 he or she shall afford counsel the opportunity to opt out of the
30 program, via presentation of a prescribed form to be filed with the
31 court where the criminal action is pending. Said form, which shall not
32 be part of the case record, shall permit an attorney to opt out of
33 participation in the program under any of the following circumstances,
34 in which event, he or she will not be compelled to participate:

35 (1) Where the attorney certifies in good faith that he or she lacks
36 appropriate computer hardware and/or connection to the internet and/or
37 scanner or other device by which documents may be converted to an elec-
38 tronic format; or

39 (2) Where the attorney certifies in good faith that he or she lacks
40 the requisite knowledge in the operation of such computers and/or scan-
41 ners necessary to participate. For the purposes of this paragraph, the
42 knowledge of any employee of an attorney, or any employee of the attor-
43 ney's law firm, office or business who is subject to such attorney's
44 direction, shall be imputed to the attorney.

45 Notwithstanding the foregoing: (i) where a party is not represented by
46 counsel, he or she may not participate in the program except upon his or
47 her request and permission of the court; (ii) a party not represented by
48 counsel who has opted in shall be afforded the opportunity to opt out of
49 the program for any reason via presentation of a prescribed form to be
50 filed with the clerk of the court where the proceeding is pending; and
51 (iii) a court may exempt any attorney from being required to participate
52 in the program upon application for such exemption, showing good cause
53 therefor.

54 (d) For purposes of this section, "electronic means" shall be as
55 defined in subdivision (f) of rule 2103 of the civil practice law and
56 rules.

1 (e) (1) Nothing in this section shall affect or change any existing
2 laws governing the sealing and confidentiality of court records in crim-
3 inal proceedings or access to court records by the parties to such
4 proceedings, nor shall this section be construed to compel a party to
5 file a sealed document by electronic means.

6 (2) Notwithstanding any other provision of this chapter, no paper or
7 document that is filed by electronic means in a criminal proceeding in
8 supreme court or county court shall be available for public inspection
9 on-line. Subject to the provisions of existing laws governing the seal-
10 ing and confidentiality of court records, nothing herein shall prevent
11 the unified court system from sharing statistical information that does
12 not include any papers or documents filed with the action; and, provided
13 further, that this paragraph shall not prohibit the chief administrator,
14 in the exercise of his or her discretion, from posting papers or docu-
15 ments that have not been sealed pursuant to law on a public website
16 maintained by the unified court system where: (i) the website is not the
17 website established by the rules promulgated pursuant to subdivision (a)
18 of this section, and (ii) to do so would be in the public interest. For
19 purposes of this subdivision, the chief administrator, in determining
20 whether posting papers or documents on a public website is in the public
21 interest, shall, at a minimum, take into account for each posting the
22 following factors: (i) the type of case involved; (ii) whether such
23 posting would cause harm to any person, including especially a minor or
24 crime victim; (iii) whether such posting would include lewd or scandal-
25 ous matters; and (iv) the possibility that such papers or documents may
26 ultimately be sealed.

27 (3) Nothing in this section shall affect or change existing laws
28 governing service of process, nor shall this section be construed to
29 abrogate existing personal service requirements as set forth in the
30 criminal procedure law.

31 § 6-b. (a) Notwithstanding any other provision of law, the chief
32 administrator of the courts, with the approval of the administrative
33 board of the courts, may promulgate rules authorizing a program in the
34 use of electronic means in the family court for: (1) the origination of
35 proceedings in such court, and (2) the filing and service of papers in
36 pending proceedings.

37 (b) (1) Except as otherwise provided in this subdivision, partic-
38 ipation in this program shall be strictly voluntary and will take place
39 only upon consent of all parties in the proceeding; except that failure
40 of a party or other person who is entitled to notice of the proceedings
41 to consent to participation shall not bar any other party from filing
42 and serving papers by electronic means upon the court or any other party
43 or person entitled to receive notice of such proceeding who has
44 consented to participation. Filing a petition with the court by elec-
45 tronic means for the purpose of originating a proceeding shall not
46 require the consent of any other party; provided, however, that, upon
47 such filing, a party to such proceeding and any attorney for such person
48 shall be permitted to immediately review and obtain copies of such docu-
49 ments and papers if such person or attorney would have been authorized
50 by law to review or obtain copies of such documents and papers if they
51 had been filed with the court in paper form.

52 (2) In the rules promulgated pursuant to subdivision (a) of this
53 section, the chief administrator may eliminate the requirement of
54 consent to participation in this program in family courts of not more
55 than six counties for:

1 (i) the filing with the court of a petition originating a juvenile
2 delinquency proceeding under article 3 of the family court act by a
3 presentment agency as defined in section 301.2 of such act;

4 (ii) the filing with the court of a petition originating a proceeding
5 to determine abuse or neglect pursuant to article 10 of the family court
6 act by a child protective agency, as defined in section 1012 of such
7 act; and

8 (iii) the filing and service of papers in proceedings specified in
9 subparagraphs (i) and (ii) of this paragraph where, pursuant to such
10 subparagraphs, such proceedings were originated in the court by elec-
11 tronic filing.

12 Notwithstanding the foregoing, the chief administrator may not elimi-
13 nate the requirement of consent to participation without the consent of
14 each authorized presentment agency, child protective agency of an
15 affected county, the family court bar providing representation to
16 parents, and the family court bar providing representation to children
17 (as represented by the head of each legal services organization repres-
18 enting parents and/or children, the head of each public defender organ-
19 ization, and president of the local bar association as applicable) in
20 any county in which such elimination shall apply.

21 Notwithstanding the foregoing, the chief administrator may not elimi-
22 nate the requirement of consent to participation in a county hereunder
23 until he or she shall have provided all persons or organizations, or
24 their representative or representatives, who regularly appear in
25 proceedings in the family court of such county, in which proceedings the
26 requirement of consent is to be eliminated, with reasonable notice and
27 an opportunity to submit comments with respect thereto and shall have
28 given due consideration to all such comments, nor until he or she shall
29 have consulted with the members of the advisory committee continued
30 pursuant to subdivision (d) of section 6 of chapter 416 of the laws of
31 2009, as amended.

32 (c) Where the chief administrator eliminates the requirement of
33 consent as provided in paragraph two of subdivision (b) of this section,
34 he or she shall afford counsel the opportunity to opt out of the
35 program, via presentation of a prescribed form to be filed with the
36 clerk of the court where the proceeding is pending. Said form, which
37 shall not be part of the case record, shall permit an attorney to opt
38 out of participation in the program under any of the following circum-
39 stances, in which event, he or she will not be compelled to participate:

40 (1) Where the attorney certifies in good faith that he or she lacks
41 appropriate computer hardware and/or connection to the internet and/or
42 scanner or other device by which documents may be converted to an elec-
43 tronic format; or

44 (2) Where the attorney certifies in good faith that he or she lacks
45 the requisite knowledge in the operation of such computers and/or scan-
46 ners necessary to participate. For the purposes of this paragraph, the
47 knowledge of any employee of an attorney, or any employee of the attor-
48 ney's law firm, office or business who is subject to such attorney's
49 direction, shall be imputed to the attorney.

50 Notwithstanding the foregoing: (i) where a party or a person entitled
51 to notice of the proceedings is not represented by counsel, he or she
52 may not participate in the program except upon his or her request and
53 permission of the court; (ii) a party who is not represented by counsel
54 that has opted in, shall be afforded the opportunity to opt out of the
55 program for any reason via presentation of a prescribed form to be filed
56 with the clerk of the court where the proceeding is pending; and (iii) a

1 court may exempt any attorney from being required to participate in the
2 program upon application for such exemption, showing good cause there-
3 for.

4 (d) For purposes of this section, "electronic means" shall be as
5 defined in subdivision (f) of rule 2103 of the civil practice law and
6 rules.

7 (e) Notwithstanding any provision of this chapter, no paper or docu-
8 ment that is filed by electronic means in a proceeding in family court
9 shall be available for public inspection on-line. Subject to the
10 provisions of existing laws governing the sealing and confidentiality of
11 court records, nothing herein shall prevent the unified court system
12 from sharing statistical information that does not include any papers or
13 documents filed with the action.

14 (f) Nothing in this section shall affect or change any existing laws
15 governing the sealing and confidentiality of court records in family
16 court proceedings or access to court records by the parties to such
17 proceedings, nor shall this section be construed to compel a party to
18 file a sealed document by electronic means.

19 (g) Nothing in this section shall affect or change existing laws
20 governing service of process, nor shall this section be construed to
21 abrogate existing personal service requirements as set forth in the
22 family court act and the civil practice law and rules.

23 § 6-c. (a) For purposes of section six-a of this act, "consent of the
24 criminal defense bar" shall mean that consent has been obtained from all
25 provider offices and/or organizations in the county that represented
26 twenty-five percent or more of the persons represented by public defense
27 providers pursuant to section 722 of the county law, as shown in the
28 most recent annual reports filed pursuant to subdivision one of section
29 722-f of the county law. Such consent, when given, must be expressed in
30 a written document that is provided by a person who is authorized to
31 consent on behalf of the relevant public defender organization, agency
32 or office.

33 (b) Notwithstanding the provisions of any other law, no party or his
34 or her counsel shall be charged a fee for viewing information filed by
35 electronic means, or for downloading or printing such information
36 through the use of such party's or counsel's own equipment. The chief
37 administrator of the courts shall ensure that sufficient computer termi-
38 nals and staff are available at the courthouse of each court participat-
39 ing in the program in the use of electronic means, to enable parties and
40 their counsel to access information, subject to the provisions of
41 sections six-a and six-b of this act and laws governing the sealing and
42 confidentiality of court records, filed by electronic means at such
43 courthouse in a prompt and convenient manner.

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

52 1. One or more classes of cases (excluding matrimonial actions as
53 defined by the civil practice law and rules, election law proceedings,
54 proceedings brought pursuant to article 78 of the civil practice law and
55 rules, and proceedings brought pursuant to the mental hygiene law) in
56 supreme court in Erie, Livingston, Monroe, Rockland, Tompkins, Allegany,

1 Essex, Onondaga, Suffolk and Westchester counties and in the counties
2 within the city of New York, and

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

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

39 (2) No later than January 1, [~~2012~~] 2015, the chief administrator of
40 the courts shall submit to the legislature, the governor and the chief
41 judge of the state a report of the evaluation including the entities or
42 individuals consulted, the input received, all problems encountered or
43 otherwise brought to the attention of the chief administrator of the
44 courts or his or her agents, all solutions devised to address the prob-
45 lems, presentment of all outstanding problems, any recommendations of
46 the advisory committee to the chief administrator, along with recommen-
47 dations for legislation [~~authorizing the development of a program relat-~~
48 ~~ing~~] in relation to the use of electronic means for the commencement of
49 criminal actions and the filing and service of papers in pending crimi-
50 nal actions and proceedings. In the report, the chief administrator also
51 shall address issues that bear upon the need for the courts, district
52 attorneys and others to retain papers filed with courts or served upon
53 parties in criminal proceedings where electronic means can or have been
54 used and make recommendations for such changes in laws requiring
55 retention of such papers as to the chief administrator may seem appro-
56 priate.

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

33 (2) No later than January 1, [~~2012~~] 2015, the chief administrator of
34 the courts shall submit to the legislature, the governor and the chief
35 judge of the state a report of the evaluation including the entities or
36 individuals consulted, input received, all problems encountered or
37 otherwise brought to the attention of the chief administrator of the
38 courts or his or her agents, all solutions devised to address the prob-
39 lems, presentment of all outstanding problems, any recommendations of
40 the advisory committee to the chief administrator, along with recommen-
41 dations for legislation [~~authorizing the development of a program relat-~~
42 ing] in relation to the use of electronic means for the origination of
43 juvenile delinquency proceedings under article 3 of the family court act
44 and abuse or neglect proceedings pursuant to article 10 of the family
45 court act in family court and the filing and service of papers in such
46 pending proceedings.

47 § 4. This act shall take effect immediately; provided, however, that
48 sections 6-a, 6-b, and 6-c of chapter 367 of the laws of 1999, as added
49 by section one of this act, shall expire and be deemed repealed Septem-
50 ber 1, 2015; and provided further that the amendments to paragraph (B)
51 of subdivision (b) of section 6 of chapter 367 of the laws of 1999 made
52 by section two of this act shall not affect the expiration of such
53 provisions and shall be deemed to be repealed therewith.
